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# New NLRB General Counsel Signals Greater Utilization of 10(j) Injunctions

**Labor Relations Update Blog** on **August 20, 2021**

The recently-sworn in General Counsel of the National Labor Relations Board, Jennifer Abruzzo, has had a busy month, setting the stage for a slate of new enforcement initiatives. First, the GC issued Advice Memorandum 21-04 (discussed here last week), identifying numerous Board decisions that are all but certain to be reassessed once the full complement of five Board members is seated in the coming weeks. The GC's memo also highlighted expected new initiatives in certain areas, including employee status, *Weingarten* rights, the right to strike, and others. Just one week later, the GC issued GC Memorandum 21-05, "Utilization of Section 10(j) Proceedings," re-affirming the NLRB's emphasis on seeking injunctive relief in federal court for certain urgent matters pursuant to Section 10(j) of the Act.

**Reaffirming Agency Initiatives Regarding 10(j) Injunctions**

The GC started her memorandum by stating, "Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act". The GC illustrated a policy goal that such injunctions should continue to be a priority in appropriate cases. While this does not necessarily represent a policy overhaul like the GC's previous memorandum, it is a reminder of the shifting winds at the NLRB.

Section 10(j) of the National Labor Relations Act allows the Board to seek temporary injunctions in federal court while cases are being litigated in order to ensure that any remedy the Board might issue would not be moot or hollow. Cases where 10(j) injunctions may be appropriate are first identified by the Region processing the underlying charge, then referred to the GC, and the GC must then obtain Board authorization before seeking an injunction in federal court.

In her memorandum, the GC identifies unfair labor practices occurring during organizing campaigns, shortly after certification, and successorship cases as those where Regions should pay particular attention to the question of whether a 10(j) injunction may be appropriate. However, the GC did not stop there, and instead stated that Regions should continue to consider injunctive relief in ***all*** cases where an alleged unfair labor practice could affect employees' Section 7 rights. While the GC noted that Regions have historically done well to address potential injunctions at the outset of appropriate cases, she nonetheless stressed the importance of early action when an injunction appears appropriate in order to maintain or restore the status quo.

**Takeaways**

Though more of a re-emphasis to the Regions rather than a new initiative or precedent shift, GC Memorandum 21-05 nonetheless tips the new GC's hand with respect to upcoming Board enforcement initiatives. Particularly in light of last week's Memorandum 21-04, it is clear that the new GC (predictably) has bold plans for significant changes, and will not hesitate to use tools such as 10(j) injunctions to achieve them and to bring additional pressure on employers.

The proof will be in the pudding as to whether the Regions more frequently seek 10(j) injunctions and under what circumstances. As always, we will continue to keep you apprised of all the latest developments at the NLRB and the impact of this recent Advice Memorandum issued by the GC.

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