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Latest NLRB General Counsel Memorandum Directs Regions to Attempt to Settle 10(j) Injunctions Before Going to Court

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National Labor Relations Board ("NLRB") General Counsel ("GC") Jennifer Abruzzo stated over a year ago that 10(j) injunctions in NLRB charges were "one of the most important tools available to effectively enforce the [National Labor Relations] Act." GC Memorandum 21-05. Today, the GC has issued another memorandum on the topic of 10(j) injunctions, GC Memorandum 23-01, directing that "Regions should routinely attempt to obtain full interim relief by the charged party's written agreement to resolve the 10(j) portion of the case," assuming that the parties are unable in the first instance to settle the case as a whole. If such efforts fail, the Region would then pursue a 10(j) injunction in federal court. The GC is careful to note, however, that the Region may determine that such settlement talks would be futile and instead proceed directly to litigation.

10(j) Injunctions

As a reminder, Section 10(j) of the National Labor Relations Act authorizes the NLRB to seek an injunction to remedy an alleged unfair labor practice while the merits of the underlying case are being litigated. An injunction may order, for example, that an employer reinstate an employee who was discharged during a union organizing effort. The NLRB lists fifteen categories of labor disputes wherein 10(j) injunctions may be appropriate, including conduct during bargaining, alleged interference with organizing campaigns, and a successor's refusal to recognize and bargain. Most recently, the GC announced that Regions are encouraged to seek injunctive relief where workers have alleged that employers made unlawful threats or were otherwise coercive during organizing campaigns (even if no actual action had been taken).

Takeaways

The impact on employers of the GC's new directive is unknown. It is possible the directive may actually discourage active settlement discussions prior to filing for an injunction. Directing Regions to seek settlement for "full interim" relief appears to be contrary to the normal cadence of litigation: if you compromise now, defendant, I will not file the litigation. Of course, how this all works will only be understood once the directive has been in place for some time. While the General Counsel ended the Memorandum stating she hopes the new directive "will result in an increase in settlements to obtain crucial interim remedies, will reduce the need for district court litigation, and will conserve the resources of the Agency and all parties," this remains to be seen. As always, employers finding themselves in these situations are encouraged to reach out to counsel for guidance.

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