

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 21-05

August 19, 2021

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Utilization of Section 10(j) Proceedings

I believe that Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act. Effective enforcement requires that we timely protect employees' Section 7 right to exercise their free choice regarding engaging in union and protected concerted activities, including organizing and collective bargaining. Section 10(j) provides the tool to ensure that employees' rights will be adequately protected from remedial failure due to the passage of time. During my tenure as General Counsel, I intend to aggressively seek Section 10(j) relief where necessary to preserve the status quo and the efficacy of final Board orders.

As prior General Counsels have noted, certain types of unfair labor practices are more likely than others to lead to remedial failure. In particular, discharges that occur during an organizing campaign, violations during organizing campaigns that lead to a need for a *Gissel* bargaining order, violations that occur during the period following certification when parties should be attempting to negotiate their first collective-bargaining agreement, cases involving withdrawals of recognition from incumbent unions, and cases involving a successor's refusal to bargain and/or refusal to hire, should all be scrutinized to determine whether there is a threat of remedial failure. To ensure that adequate consideration is given to those cases, Regional offices should continue to submit a recommendation to the Injunction Litigation Branch (ILB) as to whether or not to seek an injunction in accordance with previously issued GC Memoranda.

Of course, consideration should be given to seeking an injunction in other types of cases as well if there is a threat of remedial failure. Thus, Regions should maintain the practice of considering whether there is a potential need for injunctive relief, in particular where the unfair labor practices are having an impact on employees' Section 7 rights or the bargaining process such that a final Board order will come too late to effectively restore the lawful status quo.

Regions currently do a good job examining every charge at the outset of an investigation to determine whether there is a potential need to seek injunctive relief under Section 10(j). This is an extremely important step because early identification of a Section 10(j) case leads to an expedited investigation, including early efforts to obtain evidence of the impact of the unfair labor practices on employees' Section 7 rights and/or the collective-bargaining process. Delays in processing a Section 10(j) case diminish the effectiveness of any relief obtained and could preclude relief where the

situation has so changed that restoration of the status quo is impossible or would be no more effective than the Board's order in due course. Further, even if a case is not identified early in the case-handling process, Regions should continue the practice of examining whether injunctive relief is necessary throughout the investigative and prosecutorial process because the impact of the unfair labor practices on employees' Section 7 rights may change at any time. As always, ILB staff is available to answer any questions you may have at any stage of processing your cases.

Section 10(j) initiatives have led to extremely positive results. For instance, our success rate in authorized Section 10(j) cases, including settlements, is 91.7% to date in Fiscal Year 2021 and was 100% in Fiscal Year 2020. These successes have protected the collective-bargaining rights of thousands of employees, restored collective-bargaining relationships, and obtained interim reinstatement for unlawfully discharged union supporters. Of particular note, for example, we recently obtained an interim *Gissel* bargaining order in a unit of about 1350 hotel and casino employees in *NP Red Rock LLC*, Case 28-CA-244484 et al. In *Amerinox Processing, Inc.*, Case 4-CA-268380 et al., we obtained interim reinstatement for 5 union activists discharged during an organizing campaign. And, we obtained interim recognition and bargaining orders in *ADT, LLC*, Case 18-CA-264654 et al. and *Nexstar Broadcasting, Inc.*, Case 19-CA-255180 et al., both involving withdrawals of recognition, and in *NRT Bus, Inc.*, Case 1-CA-268388, a successor refusal to bargain. You can be justifiably proud of this significant record of accomplishments on behalf of America's workers.

I fully endorse the initiatives of my predecessors and, based on the prior successes, I am confident we will obtain similar results. Thank you for ensuring that our Section 10(j) program remains robust and successful so that we can continue to provide timely, effective relief to the victims of unfair labor practices.

/s/

J.A.A.