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Ready, Set, Go! NLRB's New General Counsel Outlines Ambitious Pro-Union Agenda

August 17, 2021 | [Labor And Employment](#), [National Labor Relations Board](#), [Union Organizing](#)



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Employers who follow this blog know the NLRB is [set to have a pro-union majority](#) beginning on Aug. 28, 2021. After that date, employers should expect the NLRB to start taking aim at a panoply of employer-friendly rulings and standards. On Aug. 12, newly appointed General Counsel Jennifer Abruzzo took the first step in advancing that pro-union shift by outlining her ambitious agenda in a [10-page memo](#) to NLRB staff across the country. As the NLRB's top prosecutor with the ability to control which cases and issues are investigated and pursued, Abruzzo wields significant power.

While it is common for new general counsels to identify issues they view as significant shortly after taking office (Abruzzo's predecessor Peter Robb [took the same approach](#)), the agenda outlined in Abruzzo's memo is far-reaching. Although the memo does not provide Abruzzo's views on the issues identified, there is no question that she will be aggressively pushing the NLRB in a pro-union direction that likely will go further than the agenda under the Obama administration.

To use a baseball analogy, Abruzzo is swinging for the fences and not interested in singles, doubles, or even triples. She wants home runs for employees and unions, ideally with the ball leaving the ballpark entirely.

As just one example, Abruzzo wants to consider reviving an NLRB doctrine that has not been the law for more than 50 years and dates back to the late

1940s. And no, that's not a typo – in 1949, a case called Joy Silk Mills addressed an employer's obligation in certain circumstances to recognize and bargain with a union through a card-check process, without first having a secret ballot election. The Joy Silk Mills doctrine was curtailed by subsequent decisions and eventually abandoned by the NLRB in the 1960s.

Abruzzo's memo identifies dozens of topics and issues that impact both union and non-union employers and cover numerous different aspects of labor law. Noteworthy issues include the following (in no particular order), but this is by no means an exhaustive list:

- [scrutiny of employee handbooks and policies](#)
- employee use of employer email systems
- [expansion of protected concerted activity](#)
- confidentiality in workplace investigations and separation agreements
- expansion of Weingarten rights to non-union employees
- union access to employer property
- [management rights clauses and employer flexibility to manage under labor agreements](#)
- union dues following contract expiration
- NLRB jurisdiction over religious institutions
- deferral of ULP charges to arbitration
- injunctive relief against employers to remedy alleged violations
- permanent replacement of economic strikers
- independent contractors

All employers are encouraged to start taking proactive measures now to assess the potential impact of the NLRB's shift on their businesses and to prepare for what's to come. Procrastination in doing so may result in the NLRB making an unannounced and uninvited "visit" to your workplace.