



Stop It! Labor Board Signals More Injunction Litigation Against Companies

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Many companies have had charges filed against them with the National Labor Relations Board (NLRB), but most of them have not had to simultaneously defend against an injunction action in federal court filed by the agency. That could soon change, based on a [recent memo issued](#) by the NLRB's general counsel, Jennifer Abruzzo.

Under Section 10(j) of the National Labor Relations Act, the NLRB has the authority to go to federal court and seek to enjoin certain alleged unfair labor practices if it appears the agency's remedial powers would not be effective should the purported conduct go unabated. In her memo, Abruzzo states:

"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) is the statute's strong weapon that should be used by the Agency 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."

In other words, her intent is clear: companies can expect to see possible

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federal court injunction actions filed against them by the NLRB when certain types of charges are alleged. For example, when employees known to support a union are discharged from their employment during an active union campaign, that is the type of case the NLRB typically would flag for Section 10(j) relief. When an employer has withdrawn recognition or refused to bargain with a union, that is another category of cases where such relief may be sought.

Notably, the agency has a high success rate when seeking these injunctions against employers. Indeed, 91.7 percent of Section 10(j) cases initiated by the NLRB so far in fiscal year 2021 were either granted or settled on terms acceptable to the Board. In fiscal year 2020, that number was 100 percent.

Companies should take notice of this shift and new initiative at the NLRB. Injunction proceedings can be costly to defend and, if issued, tough to manage.