

NLRB General Counsel Expands Scope Of Cases Where Board Will Seek 10(j) Relief

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The NLRB's General Counsel, Richard Griffin, issued a [Memorandum](#) recently discussing the NLRB's stance on seeking injunctive relief under Section 10(j) of the NLRA. Under Section 10(j), the NLRB can seek injunctive relief in federal district court to seek immediate redress and stop unfair labor practices. Historically the NLRB has had the Regions focus on particular categories of cases which have been identified as appropriate for 10(j) relief. The new Memorandum in many respects simply reaffirms principles and initiatives that prior General Counsels initiated. However, General Counsel Griffin also identified a new category of cases for scrutiny – cases involving a successor employer's refusal to bargain and/or refusal to hire cases. Such cases can arise in the context of an asset purchase where the selling corporation had an existing bargaining representative and the purchasing corporation does not hire enough employees to trigger a bargaining obligation and there is evidence that this occurred in order to rid the employer of the incumbent union. Additionally, such cases can arise where purchaser exercises its rights to implement its own terms and conditions but refuses to bargain or bargain in good faith regarding a new agreement with the legacy union. The Memorandum identifies that in such cases such employer actions "...will lead to employee disaffection, concomitant loss of bargaining power and the loss of employee benefits that cannot be restored by a final Board order." Accordingly, General Counsel Griffin has asked that Regions provide recommendations on whether 10(j) relief should be sought in all successor employer cases where a decision to issue a complaint has been made. The Memorandum also indicates that NLRB field personnel will receive additional training on the Board's 10(j) policies. While this Memorandum does not signal a significant shift in Board policies, employers should continue to be aware that the Board can and will seek injunctive relief in cases where it believes later remedies would be ineffective. This is especially true for those employers dealing with successor issues, given the General Counsel's new focus on this area.

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