



Labor Board Issues Updated Guidance On Injunction Actions

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Few things can be as maddening – and costly – for an employer as defending against an injunction action by the National Labor Relations Board (NLRB). 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.

This means a company can be left defending the same charges in federal court as well as before the agency.

The NLRB [recently updated its guidance](#) for Section 10(j) cases, saying in a press release: “Regions will now seek to settle the Section 10(j) aspect of cases warranting interim relief when efforts to settle the administrative case are unsuccessful. Charged parties will be given the opportunity to voluntarily agree to an interim agreement that includes remedies, such as reinstating alleged discriminatees or agreeing to bargain, pending final resolution of the administrative case by the Board. If the parties do not reach a settlement on interim relief, if it would be futile to seek such a settlement, or if a party agrees to such a settlement but violates its terms, the Region may take all appropriate actions, including seeking authorization to petition for injunctive relief in federal district court. In those instances, the Regions and the Injunction Litigation Branch will utilize streamlined 10(j) authorization procedures to facilitate more efficient processing and a more effective

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process for obtaining relief as quickly as possible.”

What this means is that the NLRB may be more open to settling a federal court injunction action rather than insisting on resolution of the related administrative charges as well, which could be helpful to employers who are looking to stave off litigation costs. Of course, companies would need to make sure the terms of any proffered settlement are workable for them.

Jennifer Abruzzo, the agency’s current general counsel, has been vocal about increasing the usage of 10(j) injunctions. Employers should take note, as the NLRB [has a high success rate](#) when seeking these injunctions against employers. According to the NLRB, 91.7 percent of Section 10(j) cases initiated by the agency 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. Accordingly, this is something that shouldn’t be overlooked.