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**24 LRW 1619**

***NLRB***

**NLRB Memo Sets New Injunction Procedures To Target Firings Related to Union Organizing**

Calling for “priority action” and a speedy remedy in every meritorious unfair labor practice case that involves an unlawful discharge during a union organizing effort, the National Labor Relations Board's Acting General Counsel Life Solomon Sept. 30 announced procedures and timelines aimed at encouraging the filing and expediting of petitions for federal court injunctions under Section 10(j) of the National Labor Relations Act.

In a memorandum to the board's regional offices (Memorandum GC 10-07), Solomon said he intends to focus efforts on obtaining remedies for firings during organizing campaigns that violate the anti-discrimination provision in Section 8(a)(3) of the NLRA. An unremedied firing “nips in the bud” employees' efforts to organize themselves and intimidates other employees from exercising their statutory rights, the general counsel wrote.

Section 10(j) authorizes the board to seek a federal district court injunction granting temporary relief while unfair labor practice charges are being considered by the board.

“Section 10(j) injunctions have provided a substantial and relatively swift remedy by requiring employers to offer interim reinstatement to unlawfully discharged employees pending the Board's order,” Solomon said. He outlined an “optimal timeline” for case processing that will require NLRB regional directors and the general counsel to consider seeking injunctive relief in “all meritorious 8(a)(3) nip-in-the-bud cases,” including those now pending before the agency.

**Section 10(j) Seen as Effective Remedy for Firings**

In the memorandum, Solomon said an employer's unlawful firing of an active union supporter during an organizing effort “means not only that the negative message from the unfair labor practices persists but also that the remaining employees are deprived of the leadership of active and vocal union supporters.”

Litigating an unfair labor practice charge to a final board order may take

months or years, and Solomon observed that "with the passage of time, the discharged employees are likely to be unavailable for, or no longer desire, reinstatement when ordered by the Board." Under such circumstances, he said, a resumption of union activity is unlikely and "the ultimate Board order is ineffective to protect rights guaranteed by the Act."

For a number of years NLRB has been committed to "a vigorous Section 10 (j) injunction program as a highly effective tool for achieving meaningful real time remedies." Solomon said. The acting general counsel said he is committed to "continue and enhance" the use of Section 10(j) for "nip-in-the-bud" cases in order "to assure that the passage of time does not undercut our ability to provide effective remedies in these cases."

### **Timeline Seeks Rapid Investigations, Decisions**

The memorandum described an "optimal timeline" for processing cases and a number of procedures to facilitate timely case processing. Solomon said regional offices and agency branches should consider the timeline and procedures as "best practices" for handling discrimination cases and injunctive relief.

The timeline includes the following steps and time frame for "nip-in-the-bud" discharge cases:

- as soon as possible after the filing of an unfair labor practice charge, the regional office should identify whether it is a potential Section 10(j) organizing campaign case;
- within seven calendar days of the filing of the charge, where possible, the regional office should take the "lead" affidavit;
- within 14 days of the charge filing, the region should obtain all of the charging party's evidence; and
- if the charging party's evidence "points to a prima facie case on the merits," the regional office should notify the charged party in writing that the region is considering a request for Section 10(j) relief and that a position statement on that issue should be submitted within seven days of the region's letter.

The memorandum also provides that each regional director "will normally make a determination on the merits of the case within 49 calendar days from the filing of the charge." If the regional director determines that a complaint should be issued in the case, a decision about the need for Section 10(j) relief should be made at the same time, the acting general counsel said.

Regional directors "must submit" to the Injunction Litigation Branch in Washington, D.C., "all meritorious 8(a)(3) discharge nip-in-the-bud cases, including those currently pending in Regions and those pending before an

administrative law judge, that do not settle," Solomon wrote. He added that he will "personally review and decide whether Section 10(j) authorization should be sought in all such cases."

The acting general counsel cautioned that neither the disinterest of an employee in reinstatement nor a union's abandonment of organizing efforts should be considered grounds for declining to seek Section 10(j) relief. "A union's abandonment of an organizing campaign is itself evidence of chill and does not remove the negative message that discharges have on employee statutory rights," he wrote.

"[A] court order offering interim reinstatement may cause the resumption of employee interest in organizing with a previous or new union, whether or not the offer is accepted," Solomon said.

### **Regions Urged to Move Cases Quickly**

The memorandum described a number of "best practice procedures" for regional offices to follow during and after their investigations of discharge cases arising out of union organizing efforts.

Solomon urged regional offices to act promptly to obtain documentary evidence or testimony of neutral witnesses that may be needed during an investigation. He said information should be requested, and subpoenas issued if necessary, without waiting for the regional office to complete its decisionmaking on the merits of an unfair labor practice charge.

The memorandum also encouraged regional offices to collect evidence on the issue of whether injunctive relief would be "just and proper" within the meaning of Section 10(j) at the same time the region is investigating the unfair labor practice charge, in order to expedite processing of any later request for injunctive relief.

Solomon instructed regional offices to consult with NLRB's Injunction Litigation Branch (ILB) if they desire to use the administrative record of an NLRB hearing, rather than witness affidavits, to support a request to a federal court for Section 10(j) relief. "However," he wrote, "if a Region is confident that the administrative record will close within 2-3 weeks after receiving Board authorization [to seek an injunction], the Region may independently decide to try the case on the administrative record and move the court to do so when filing its Section 10(j) petition."

"The key to success of this program," Solomon concluded, "is the free flow of information and communication between the Region and ILB throughout the process."

### **'Vital Enforcement Tool,' NLRB Chairman Says**

In a statement released by the board Sept. 30, NLRB Chairman Wilma B. Liebman said the board members, who must authorize the filing of a Section 10(j) petition for injunctive relief, have reviewed the board's own procedures

for reviewing cases in order to expedite the process. "The Board recognizes that 10(j) injunctions are a vital enforcement tool and time is of the essence in this kind of case," she said.

The board also announced that beginning Oct. 5, it will post on the agency's website, <http://www.nlr.gov>, case names and status updates for all cases in which the board has authorized the filing of a Section 10(j) petition.

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*Text of the memorandum may be accessed at  
<http://op.bna.com/dlrcases.nsf/r?Open=ldue-89sqj2>.*

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