



Labor & Employment Issues

Client Alert

Pitta LLP
For Clients and Friends
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- ALERT -

NLRB GC RAMPS UP 10(J) RELIEF FOR THREATS DURING ORGANIZING

On February 1, 2022, National Labor Relations Board (“NLRB”) General Counsel Jennifer Abruzzo issued Memorandum 22-02, providing specific guidance to NLRB regions regarding when to seek injunctive relief for employer threats and coercion during union organizing campaigns.

Last year, GC Abruzzo announced her intention to “aggressively” seek injunctive relief pursuant to National Labor Relations Act (“NLRA” or “Act”) Section 10(j). GC Memo 21-05. GC Abruzzo highlighted certain categories of unfair labor practices that were more likely than others to lead to the NLRB’s inability to remedy violations of the Act. Among the highlighted violations were discharges during an organizing campaign and violations during an organizing campaign that would ultimately require a *Giselle* bargaining order.

In Memo 22-02, GC Abruzzo observed that unlawful anti-union campaigns often begin with threats or other coercion before resulting in retaliation for union activity. GC Abruzzo noted that such threats can have a psychological impact that is unlikely to dissipate. She additionally explained that, after retaliation takes place, “it becomes more challenging to fully erase the chilling impact on organizing activity.” GC Abruzzo also recognized that employers would be less likely to take retaliatory action under the weight of a federal district court’s order. Since enjoining threats could erase their chilling impact on employees and prevent escalation of the words into action, GC Abruzzo announced that she will begin considering whether to seek Section 10(j) injunctions “immediately after determining that workers have been subject to threats or other coercive conduct during an organizing campaign. . . .”

GC Abruzzo stated that she will seek Section 10(j) relief “in all organizing campaigns where the facts demonstrate that employer threats or other coercion may lead to irreparable harm to employees’ Section 7 rights.” GC Abruzzo directed regions to promptly investigate threats or other coercion made during an organizing drive and immediately submit such cases for 10(j) consideration. She also directed the regions and Injunction Litigation Branch to consider “all contextual circumstances [including:] inherent impact on employees and union support; nature, frequency, severity and dissemination; hierarchal rank of the actor(s); local labor market; and recidivism.”

CORRECTION

Please note that in connection with the article issued in yesterday's In Focus, "RETALIATION & CONSPIRACY CLAIMS DISMISSED AGAINST STATE COURT SYSTEM EMPLOYER & CHIEF JUDGE DiFIORE," we incorrectly stated that Mr. Dennis Quirk is the former President of the New York State Court Officers Association ("COA"). In fact, Mr. Quirk is the COA President, but recently retired as a court officer, after almost 50 years of good and loyal service to the State of New York Unified Court System. We apologize to Mr. Quirk and wish him continued success in his vigorous and dutiful representation and protection of the best interests of COA's members.

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