UNITED STATES GOVERNMENT
National Labor Relations Board

Memorandum

Date: September 30, 2010

To: All Staff

From: Lafe E. Solomon
Acting General Counsel

Subject: Importance of Agency's Section 10(j) Program

It is as true now as it was in 1947, when Congress passed Section 10(j), that some violators of the Act can accomplish their unlawful objectives if we simply allow the normal administrative process to unfold. Even the most efficient litigation of unfair labor practices can take many months or even years before the Board issues a decision. In the meantime, employees may be permanently discouraged from exercising their Section 7 rights by unremedied employer or union unfair labor practices. For example, an organizing campaign can be permanently destroyed by unremedied discharges of union supporters or other serious unfair labor practices. Employee support for a certified union, which is necessary for effective collective bargaining, can disappear after an unlawful withdrawal of recognition from the union. In first contract bargaining situations, a newly designated representative not only will be bargaining for a contract but also will be establishing a long term relationship with both the unit employees and the employer; such efforts are undermined by unfair labor practices. And, a union's picket line violence or unlawful strike can threaten employees' choice to refrain from Section 7 activity. In these situations, by the time the Board issues its order, a truly effective remedy may be impossible.

But interim injunctive relief under Section 10(j) can restore employees' statutory rights and enable the Board's order to be meaningful. Interim reinstatement of unlawfully discharged union supporters can revive an organizing campaign in time for the other employees to decide for themselves whether to become represented, without the fear that they, too, will be discharged for exercising their Section 7 rights. A district court's cease-and-desist order, enforceable by contempt, can stop employers or unions from continuing to undermine employee statutory rights. And an interim bargaining order can return parties to the bargaining table at a time when their relative strengths have not been damaged by a prolonged, unlawful refusal to bargain, thereby protecting the collective-bargaining process.

These examples show why I regard the Agency's Section 10(j) program as a top priority. It is imperative that Regional Offices be alert to the need for interim relief and that staff identify potential Section 10(j) cases at the earliest possible stage. Once identified, those cases must be investigated as quickly as possible, and, if merit is found, complaints must be issued promptly. Regional Office memorandums recommending Section 10(j) authorization must be submitted as soon as possible after complaint issues, and the General Counsel will seek expeditious Section 10(j) authorization from the Board. Regional Offices should schedule administrative hearings for the earliest possible date, litigate these cases expeditiously and, to the extent possible, continuously, and seek expedition from the administrative law judges and the Board, including opposing postponements and, if necessary, filing special appeals if harmful postponements are granted.

To facilitate this priority, the Office of the General Counsel has implemented a program to streamline the handling of Section 10(j) cases that involve discharges during organizing campaigns. The goal of this program is to ensure that unlawful discharges of union supporters are remedied as quickly as possible, either through settlement or interim injunctive relief.

In sum, I reaffirm this Agency's commitment to an effective Section 10(j) program at all stages of litigation that will eliminate delays and obstacles to obtaining injunctive relief as quickly as possible. I am hopeful that a renewed Agency-wide focus on interim injunctive relief will provide the greatest benefit to the public we serve.

L. S.

cc: NLRBU
NLRBPA
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