

## Blog Post

# The NLRB is Actively Using the Strongest Weapon in its Arsenal – Quick Injunctions

May 23, 2022

By [Ryan Krone](#)

Last year we warned that the NLRB pendulum was swinging pro-union, but even we could not have predicted just how swiftly the pendulum swing would happen. In the past year alone, General Counsel Jennifer Abruzzo of the National Labor Relations Board (NLRB) has continued to forcibly push the pro-union agenda by revealing the NLRB's intent to explore doctrinal shifts in numerous key areas of labor law, and opining on numerous issues ranging from her belief that some student-athletes at the collegiate level are "employees," to urging regional staff to aggressively seek injunctions under Section 10(j) of the National Labor Relations Act. The bottom line is that defending against a 10(j) petition is a costly undertaking for employers, and therefore, employers need to be aware of the consequences of taking actions that could invite a 10(j) petition.

## Injunctive Relief Under Section 10(j)

By way of background, Section 10(j) of the Act authorizes the NLRB to seek temporary injunctions against employers and unions in federal district courts to preserve the status quo within the workplace and prevent future unfair labor practices while the case works its way through the NLRB's administrative process. To initiate relief under Section 10(j), the Regional Director must submit it to the Injunction Litigation Branch of the NLRB, which in turn makes a recommendation to the General

---

### Related People

[Ryan Krone](#)

---

### Related Work

[Employment Training and Compliance](#)  
[Labor and Employment](#)  
[Traditional Labor Law](#)

---

### Related Offices

[Houston](#)

---

### HR Defense

[Akerman Perspectives on the Latest Developments in Labor and Employment Law](#)

[Visit this Akerman blog](#)

Counsel to seek Board authorization. Once authorized, if a settlement is not reached, a Region can then file for injunctive relief with the District Court.

While the Trump NLRB under then General Counsel Peter Robb rarely sought injunctions under Section 10(j), Abruzzo quickly changed the Agency's approach to pursuing injunctive relief. Shortly after her July 2021 appointment, Abruzzo released Memorandum GC 21-05 in August 2021, which stated that she "believe[s] that Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act," and she indicated that she fully endorsed the use of Section 10(j) injunctions.

On the heels of Memorandum GC 21-05, on February 1, 2022, Abruzzo released Memorandum GC 22-02, where she announced a new initiative that encouraged regions to protect employees from potential discharges and other retaliatory actions in organizing campaigns by seeking injunctive relief under Section 10(j) where the facts demonstrate that employer threats or other coercion may lead to irreparable harm to employees' Section 7 rights.

The NLRB has quickly acted on Abruzzo's stated goal to deter offending conduct before it escalates into unlawful discharges or other adverse actions by actively seeking injunctions against employers. In fact, in April 2022, the NLRB followed suit by seeking injunctive relief against a major coffee chain pursuant to Section 10(j) after the company allegedly disciplined workers unlawfully because they supported the union campaign. The NLRB contended that injunctive relief was appropriate because it believed the company would continue to interfere with the rights of employees to engage in activities protected by Section 7 of the Act and commit more unfair labor practices during the NLRB proceedings and during any subsequent proceedings before a United States Court of Appeals if injunctive relief was not granted. The NLRB also argued the

Union would be unable to obtain a fair election for certification as the collective-bargaining representative if injunctive relief was not granted. The first Unfair Labor Practice at issue was filed on January 26, 2022, which shows you just how quickly the NLRB sought injunctive relief – less than 4 months. And on May 10, 2022, the NLRB again sought injunctive relief against the same coffee chain in another state.

## Implications for Employers

Employers should remember that it takes hard work and dedication to remain union-free, and that it is well worth taking steps before any union activity even starts to establish positive employee relations that are not conducive to union organizing. Should an employer see any signs of union activity, it is very important to respond quickly and effectively.

Despite the NLRB's push to pro-union positions, there are still many effective tools at an employer's disposal. Employers can still explain the disadvantages of belonging to a union, inform employees that a union cannot guarantee them a job, discuss the employer's experience with a union, and let employees know they are not required to talk to union organizers, among other tools.

However, in light of GC 22-02 and the recent case discussed above, employers should be aware that threatening and coercing employees who engage in protected concerted activity run the risk of being quickly hauled into Court by the NLRB. Employees will likely become emboldened in their right to organize as they will enjoy more immediate protection. Accordingly, employers should ensure they are not threatening, interrogating, promising or spying on employees' activities related to union organizing, and be very cognizant of even the appearance of any of these activities.

As always, Akerman attorneys will continue to monitor changes in NLRB guidance and policies. For

any labor or workforce concerns, contact your Akerman labor attorney for further information and guidance.

---

This information is intended to inform firm clients and friends about legal developments, including recent decisions of various courts and administrative bodies. Nothing in this Practice Update should be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this Practice Update without seeking the advice of legal counsel. Prior results do not guarantee a similar outcome.