

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 22-02

February 1, 2022

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Seeking 10(j) Injunctions in Response to Unlawful Threats or Other
Coercion During Union Organizing Campaigns

Section 10(j) of the National Labor Relations Act has long been utilized to prevent irreparable destruction of employee rights resulting from employers' unlawful responses to workplace organizing campaigns. Often, unlawful anti-union campaigns begin with threats or other coercion, then escalate to retaliatory actions against union supporters, including discharges. Typically, by the time injunctive relief is sought in cases involving interference with organizing campaigns, the employer has followed through on its threats and terminated union supporters in a transparent attempt to stop a campaign in its tracks.

As General Counsel, I believe it is incumbent upon the Agency to consider seeking Section 10(j) injunctions immediately after determining that workers have been subject to threats or other coercive conduct during an organizing campaign, *before* an employer follows through on its threats or coercion when it becomes more challenging to fully erase the chilling impact on organizing activity. Under the weight of a federal district court's order, employers will be less likely to take further unlawful action to interfere with employees' rights and employees will be able to continue to exercise their statutory rights. Our Congressional mandate and mission is better effectuated when we seek to protect employees from potential discharges and other retaliatory actions, and to diminish the related chilling effect on others in the workplace. Accordingly, my goals in this new initiative are to protect worker rights and deter statutory violations by obtaining Section 10(j) injunctions in the earliest phases of unlawful employer anti-union actions during an organizing effort.

In this memorandum, I will lay out the policies and procedures by which we will determine whether to pursue 10(j) injunctions during organizing campaigns, when threats or other coercion may lead to irreparable harm to employees' rights, even before threats are carried out.

1. Section 10(j) Injunctions Should be Utilized to Prevent Irreparable Harm During Union Organizing Campaigns

As I stated in GC 21-05, I believe that Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act and I reiterated the existing

categories of cases where I will consider pursuing Section 10(j) relief. Further, in GC 22-01, I stated that I will consider seeking Section 10(j) relief in all cases where illegal intimidation regarding immigration status threatens the exercise of Section 7 rights and the Board's remedial authority. Now, in order to safeguard the Act's most basic protections and permit employees to exercise their right to unionize, I will seek prompt 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.

The Board and the courts have repeatedly recognized that unlawful threats or other coercion, such as threatening business closure or discharge, threatening to withhold or promising to grant benefits, or threatening workers based on their immigration status or work authorization, severely chill organizing campaigns. Threats aimed at employees' livelihoods have "a psychological impact on ... employees that is unlikely to dissipate. . . ." *Elec. Prods. Div. of Midland-Ross Corp. v. NLRB*, 617 F.2d 977, 987 (3d Cir. 1980). Indeed, such conduct is recognized as having "a lasting inhibitive effect on a substantial percentage of the work force." *NLRB v. Jamaica Towing, Inc.*, 632 F.2d 208, 212-13 (2d Cir. 1980). Threatening a loss of benefits is also "likely to intimidate employees who otherwise would be disposed to support unionization." *NLRB v. Juniata Packing Co.*, 464 F.2d 153, 156 (3d Cir. 1972). As a result, these highly coercive, hallmark violations routinely "destroy the laboratory conditions necessary for a fair election." *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 612 (1969).

Because threats or other coercion have a well-recognized inhibitive effect on employees, there is a likelihood of immediate harm to employee organizing efforts. Moreover, threats often escalate into action, imposing even more burdens and chilling impact on employees. *See, e.g., Borek Motor Sales, Inc. v. NLRB*, 425 F.2d 677, 681 (7th Cir. 1970) (employee "was fired in order to make good the threat [to fire] and support its intimidating effect on his fellow employees."). They are not mere words hanging over employees' heads, but a prelude to what is to come. *See, e.g., NLRB v. Dorothy Shamrock Coal Co.*, 833 F.2d 1263, 1268 (7th Cir. 1987) (after numerous threats to eliminate employee driver positions in retaliation for organizing activity, "[b]y the end of the month the Company had done just that."). Therefore, I believe that threats or other coercive conduct needs to be enjoined promptly, not only to erase the chilling impact they have on employees, but to prevent escalation of the words into action.

In order to obtain injunctive relief before threats or other coercion escalate into unlawful discharges or other adverse actions, Regions should promptly investigate alleged Section 8(a)(1) threats or other coercion made during an organizing drive and immediately submit those cases for consideration of injunctive relief even in the absence of discharges or other Section 8(a)(3) violations or during the pendency of discharge or other Section 8(a)(3) investigations. In addition, when Charging Parties file charges as soon as they learn of purported employer threats or other coercion arising during organizing campaigns, the Regional Offices will be able to promptly investigate and identify cases where pursuit of injunctive relief may be deemed appropriate.

2. Determining Whether a Section 10(j) Injunction Will be Sought Following Threats or Other Coercion During an Organizing Campaign

During the investigatory stage of an unfair labor practice charge involving an organizing drive, Board agents are already instructed to identify cases appropriate for pursuit of a Section 10(j) injunction. See 10(j) Manual, Category 1 “Interference with Organizational Campaign.” This category will now include cases where employers swiftly react to organizing efforts with threats or other coercion, even in the absence of other unlawful actions. In addition to the principles discussed in the Section 10(j) manual, the Regions and the Injunction Litigation Branch should consider all contextual circumstances to determine whether it may be appropriate to recommend pursuit of an injunction in cases involving threats or other coercion, such as inherent impact on employees and union support; nature, frequency, severity and dissemination; hierarchal rank of the actor(s); local labor market; and recidivism, to name a few.

3. Conclusion

In addition to the injunctive relief policies I have previously announced, I believe that utilizing Section 10(j) to swiftly prevent unlawful threats or other coercion from escalating is critical to protect employees’ Section 7 rights, especially during union organizing campaigns. By invoking the protection of a federal district court order before an employer can follow through on its threats or coercive conduct, employers will be deterred from further interfering with employees’ rights, and employees will enjoy more immediate protection as they exercise their right to organize. I look forward to working with you to implement this initiative.

/s/
J.A.A.