

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 23-01

October 20, 2022

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

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Settling the Section 10(j) Aspect of Cases Warranting Interim Relief

As I stated in General Counsel Memorandum 21-05, “Utilization of Section 10(j) Proceedings,” dated August 19, 2021, Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act. Due to the importance of the Section 10(j) program in securing timely and effective remedies for violations of employees’ rights, I have determined that Regions should routinely attempt to obtain full interim relief by the charged party’s written agreement to resolve the Section 10(j) portion of the case, if the parties cannot agree to an overall settlement of the matter, and then continue to litigate the underlying administrative case.

Under this approach, if efforts to settle the entire administrative case are unsuccessful, charged parties will be given the opportunity to voluntarily agree to an interim settlement that includes remedies, such as reinstating alleged discriminatees or agreeing to bargain, pending final resolution of the administrative case by the Board. Such interim settlements provide several benefits, including enhancing the Board’s ability to effectively remedy statutory violations in the case. Seeking interim settlements by the charged parties of the Section 10(j) portion of the case should result in remedies being obtained more quickly, thus making the interim relief more effective. In that regard, Regions should endeavor to promptly secure interim settlements after attempting to settle the entire administrative case, but before formally submitting a Section 10(j) request to the Injunction Litigation Branch (ILB), though ILB should be consulted before approval of any such interim settlement. Of course, should a charged party breach the terms of the interim settlement, Regions will retain the right to recommend initiation of Section 10(j) proceedings in court through our new Regional streamlined measures of more effectively utilizing the Agency’s resources, as well as to pursue other enforcement actions. As you know, these measures have been put in place with the goal of obtaining Board authorization more promptly.¹

Interim settlements of the Section 10(j) portion of a case should be sought in all cases where interim Section 10(j) relief is appropriate—i.e., discharges during an organizing

¹ Similarly, ILB has streamlined its processes for the same purpose by providing Regions with a fillable form to submit to ILB in lieu of the current, more lengthy, narrative when recommending Section 10(j) relief, and by submitting to the Board abbreviated ILB memoranda seeking Section 10(j) authorization – again, in lieu of a more lengthy narrative.

campaign, violations during an organizing campaign that necessitate a *Gissel* bargaining order, violations during initial contract bargaining, unlawful withdrawals of recognition, unlawful successor refusals to bargain, threats and other unlawful statements as referenced in GC 22-02, and any other case in which the viability of the Board's final order is threatened by a charged party's unlawful conduct. Of course, there might be certain cases where Regions, in the exercise of their discretion, may determine that taking the time and resources to seek an interim settlement is futile, as in cases where the Region has reason to believe that a charged party would not agree or adhere to the terms of an interim settlement. In those cases, the Region may proceed directly with sending a streamlined recommendation to ILB to seek Section 10(j) relief.

It is my hope that this initiative will result in an increase in settlements to obtain crucial interim remedies, will reduce the need for district court litigation, and will conserve the resources of the Agency and all parties.

/s/
J.A.A.