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NLRB General Counsel Abruzzo Encourages Regions to Utilize More Significant Remedies When Resolving Unfair Labor Practices

Labor Relations Update Blog on **September 9, 2021**

In keeping with the momentum of her Office, National Labor Relations Board General Counsel Jennifer Abruzzo issued a memorandum yesterday to all Regional Offices advising them to request that the Board exercise its broad discretion in fashioning remedies for workers impacted by unfair labor practices, indicating the General Counsel's intent to impose more onerous penalties on employers for violations of federal labor law. Seeking Full Remedies GC Memorandum 21-06, (September 8, 2021).

In her most recent memorandum, General Counsel Abruzzo outlines the types of remedies that Regions should be requesting from the Board based on the type of unfair labor practice involved. Notably, the General Counsel encourages Regions to seek consequential damages to cover the cost of economic losses—such as health care expenses incurred as a result of an unlawful termination of health insurance—in appropriate cases, citing the Board's stated willingness to explore this new remedy. Additionally, the General Counsel advises Regions to actively seek *Gissel* bargaining orders in cases involving an ongoing union organizing drive. Lastly, of particular note, the memorandum encourages Regions to seek Board Orders requiring employers to distribute the Notice to Employees through text message and on its social media websites and internal apps that are used by the employer to communicate with its employees—in addition to physical posting and emailing.

Other remedies encouraged in the memorandum, broken down by unfair labor practice, include:

- **Unlawful firings of discriminatees:** Regions are advised to seek compensation for consequential damages, front pay, and liquidated backpay. Where the unlawful terminations involve undocumented workers, Regions should seek additional remedies, including compensation for work performed under unlawfully imposed terms and employer sponsorship of work authorization, intended to prevent the employer's unjust enrichment from its unlawful conduct.

- **Unlawful conduct during organizing drive:** While not an exhaustive list, the General Counsel encourages Regions to seek remedies that will (1) facilitate union access by requiring an employer to provide employee contact information or by granting equal access to the employer's bulletin boards; (2) reimburse unions for organizational costs, including costs incurred during a re-run election; (3) require a public reading of the Notice to Employees; (4) require the employer to provide training to its employees, supervisors, and managers on employee rights under the Act; and (5) impose broad cease-and-desist orders.
- **Unlawful failures to bargain:** Regions should seek alternative remedies including bargaining schedules (i.e. mandatory schedules requiring the employer to bargain for a minimum number of sessions of pre-determined length until an agreement or impasse is reached); submission of periodic progress reports to the Agency on the status of bargaining; an insulation period during the compliance process following an unfair labor practice finding during which the union's status as bargaining representative could not be challenged; and reimbursement of collective bargaining expenses, among other possible remedies.

Takeaways

Counting this most recent memo, General Counsel Abruzzo has issued three advice memoranda since being sworn into office on July 22, 2021. Moreover, she indicated that she plans to issue her fourth memo in short order on the types of remedies Regions should incorporate into settlement agreements. In less than two months in office, General Counsel Abruzzo has taken the NLRB by storm and has kick-started a rapid change in labor law policy. This memo should send a clear signal to employers that the NLRB will be seeking to impose more significant remedies and consequences for employers found by the Board to have committed an unfair labor practice. As always, we will keep you apprised of the latest updates from the NLRB.

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