

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 00-04

May 3, 2000

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

FROM: Leonard R. Page, General Counsel

SUBJECT: Continuation of the Requirement For the Submission of Section 10(j)
Cases Arising During the 1st Year of an Initial Bargaining Relationship
To the Division of Advice for a Second Six-Month Period

On August 3, 1999, General Counsel Memorandum 99-5, "Modification of Requirements for the Submission of Section 10(j) Cases to the Division of Advice for a Six Month Period," was issued. During the period that this memorandum was in effect, approximately 18 cases were submitted to the Injunction Litigation Branch (ILB) for review of the Region's decision not to seek 10(j) injunctive relief or to utilize the expedited hearing procedure in lieu of immediately seeking 10(j) relief in certain cases arising during the first year of an initial bargaining relationship. This submission requirement was added because our experience had shown that Section 10(j) relief is often warranted in cases involving Section 8(a)(3) discharges or Section 8(a)(5) violations arising during the first year of an initial bargaining relationship.

After carefully reviewing the results of the submission requirements under GC Memorandum 99-5 and because I am very interested in the development of these cases, I have decided to continue this submission requirement for another six-month period. Given that the first six-month trial period resulted in only 18 submissions, it does not appear that continuation of this requirement will be burdensome to the field.

Accordingly, effective immediately, for the next six-months from the date of the issuance of this memo, in addition to submitting to the Division of Advice, Injunction Litigation Branch (ILB) any case in which the Region seeks Section 10(j) authorization, Regions should submit the following cases to the ILB:

Any case in which the violations occurred during the first year of an initial bargaining relationship and the Region has found merit to either Section 8(a)(3) discharges or Section 8(a)(5) unfair labor practices, and where the Region also has concluded that 10(j) relief is not warranted or has decided to utilize the expedited hearing procedure in lieu of immediately seeking 10(j) relief. Excluded from the submission requirement is any Section 8(a)(5)

case that exclusively involves a “test of certification” refusal to bargain¹ or any Section 8(a)(3) case in which the discharged employees do not desire reinstatement.

When a Regional Director believes that the 10(j) proceedings are clearly not warranted, the Regional Director, in his/her discretion, may seek clearance from the Division of Operations-Management not to submit the Region’s no-10(j) decision to the Injunction Litigation Branch for review.

Cases should be submitted to the ILB for review by sending a memorandum to the Injunction Litigation Branch setting forth the Region’s summary of the violations, its investigation of the impact of the violations on the exercise of protected rights and the reasons, with supporting evidence, why a Board order in due course is a sufficient remedy and Section 10(j) relief is not necessary. Copies of the complaint and any party position statements on 10(j) should be attached to the submission. Please submit the above-described paperwork within 10 days of complaint issuance. If the Region obtains a settlement in a case shortly after announcing its decision on the merits, then such a case need not be submitted to the ILB for a review of the no-10(j) decision.

Thank you for your anticipated cooperation.

/s/
L.R.P.

cc: NLRBU

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¹This would include a “test of certification” case containing a failure to provide information allegation that is part of the employer’s general refusal to meet and bargain with the union in order to obtain Court review of the Board’s certification of representative.