

NLRB may Delegate Power to its General Counsel to seek Injunctive Relief from District Courts

1 min read

Aug 1, 2011

In 2002, a union local began to organize employees at a hotel. Following failed bargaining between the union and the hotel, the union filed numerous unfair labor practice charges with the regional director of the National Labor Relations Board (NLRB). The regional director investigated the claims and issued an unfair labor practices complaint. After a 13-day hearing, an administrative law judge determined that the hotel had violated numerous sections of the National Labor Relations Act (NLRA) and recommended that the NLRB order the hotel to cease and desist from the unfair labor practices and take other remedial actions. The hotel filed extensive objections to the ruling. As the case remained pending before the Board, the regional director filed a petition with the district court for injunctive relief under Section 10(j) of the NLRA. The hotel opposed the petition, claiming that the district court lacked subject-matter jurisdiction because the regional director had failed to obtain the Board's approval to file the Section 10(j) petition. The U.S. Court of Appeals for the Ninth Circuit held that although the Board may reserve the ultimate decision of whether to petition for Section 10(j) relief in individual cases for itself, it may also exercise its power to petition for such relief by authorizing the general counsel to decide in which case to seek relief on the NLRB's behalf. The Ninth Circuit determined that as far as delegation to subordinates is concerned, express statutory authority for delegation was not required. As such, the general counsel is the NLRB's subordinate insofar as Section 3(d) of the NLRA requires the general counsel to perform "such other duties as the Board may prescribe."

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

National Labor Relations Board (NLRB)