

# **BARSAMIAN & MOODY**

A Professional Corporation

Attorneys at Law

1141 West Shaw Avenue, Suite 104

Fresno, California 93711-3704

Tel: (559) 248-2360

E-mail: [LaborLaw@TheEmployersLawFirm.com](mailto:LaborLaw@TheEmployersLawFirm.com)

Fax: (559) 248-2370

## **A Perfect Storm is Brewing at the National Labor Relations Board**

Today, recently confirmed General Counsel of the National Labor Relations Board, Jennifer Abruzzo, issued her first memorandum as General Counsel. The memorandum indicates that significant changes are coming to federal and state labor laws. Specifically, the memorandum suggests that the NLRB intends to focus its resources over the next few years to make it easier for unions to organize workers. Further, the memorandum confirms that the Biden-era NLRB aims to be an activist agency that aggressively rolls back Trump-era policies that restored balance to federal and state labor laws. In this way, the memorandum is a kind of early warning sign that employers need to begin taking steps to prepare for increased union-organizing activity.

The General Counsel is responsible for determining the NLRB's litigation and enforcement priorities. In this position, the General Counsel plays a significant role in shaping the interpretation and application of the National Labor Relations Act (NLRA). Further, because California's Agricultural Labor Relations Board (ALRB) is required to follow the NLRB's precedents, the NLRB General Counsel also indirectly shapes the interpretation and application of the Agricultural Labor Relations Act (ALRA).

On July 21, 2021, the U.S. Senate confirmed Ms. Abruzzo to a four-year term as the General Counsel of the NLRB. Given that she was nominated by a President who has promised to be "the most pro-union president you've ever seen," it is no surprise that Ms. Abruzzo is a staunch union supporter. In fact, most recently, she served as a high-ranking official for a major union that supports the "Protecting the Right to Organize (PRO) Act," the labor movement's wish-list bill that would make it easier for unions to organize workers.

General Counsel Abruzzo's memorandum strongly suggests that the NLRB will focus its resources on replacing Trump-era policies with union-friendly policies that make it easier for unions to organize and more difficult for employers to defend against such campaigns. While this was anticipated to an extent, the new General Counsel's memorandum also indicates that the agency will focus on expanding the NLRB's application of the Act in non-union workplaces. In particular, the memorandum suggests that the General Counsel will seek to broaden the scope of "protected concerted activity."

### **What This Means for Employers:**

The General Counsel's memorandum is bad news for both union and non-union employers. Although there is currently a Republican majority in the Board, this is expected to change when Board Member William Emanuel's term expires on August 27, 2021. President Biden has already nominated two Democrats to serve as Board

members. Both nominees are career pro-union attorneys that are expected to consistently side with unions. The combination of a pro-union President and General Counsel coupled with a Democratic majority in the Board means we will likely see an activist NLRB that adopts pro-union policies that will undoubtedly present challenges for all employers. Certainly, the General Counsel's first memorandum suggests that the NLRB is planning to greatly tip the scales in favor of unions. As such, employers should begin taking steps to prepare for increased union-organizing activity. If you have questions about the steps that you can legally take to remain union-free, please contact the attorneys at Barsamian & Moody at (559) 248-2360.

For your convenience, General Counsel Abruzzo's memorandum can be accessed here: <https://apps.nlr.gov/link/document.aspx/09031d4583506e0c>

*The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.*