OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 11-01 December 20, 2010

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

FROM: Lafe E. Solomon, Acting General Counsel

SUBJECT: Effective Remedies in Organizing Campaigns

I. Introduction

The protection of employee free choice regarding unionization is a keystone of the Agency's mission, and I am committed to making the principle of employee free choice meaningful. Accordingly, as Acting General Counsel I have placed a priority on ensuring that the Agency protects employee freedom of choice with regard to unionization by obtaining effective remedies for employers' unlawful conduct during union organizing campaigns. In Memorandum GC 10-07, I outlined my commitment to seek Section 10(j) injunctive relief as a quick and effective remedy for an employer's serious unlawful conduct during union organizing campaigns. But, to fully ensure that the Agency protects employee freedom of choice with regard to unionization, we must seek remedies that enhance the effectiveness of Section 10(j) and Board relief.

In Memorandum GC 10-07, I announced an initiative to seek 10(j) relief in all discriminatory discharges during organizing campaigns (so-called "nip-in-the-bud" cases) because they have a severe impact on employees' Section 7 rights. In such cases, the discharges are often accompanied by other serious unfair labor practices such as threats, solicitation of grievances, promises or grants of benefits, interrogations and surveillance.[1] These additional unfair labor practices

[1] See, e.g., Jewish Home for the Elderly of Fairfield County, 343 NLRB 1069 (2004) (where employer discharged an employee one day before an election, it also threatened job loss and plant closure through its chairman of its board of directors, threatened employees with arrest, created impression of surveillance, videotaped employees, interrogated employees, promised better benefits, increased wages, solicited employees to repudiate the union and revoke authorization cards, prohibited employees from discussing the union but allowed them to discuss other non-work subjects, prohibited off-duty employees access to its facility to talk to coworkers, and restricted the locations of employees' breaks to deny employees from discussing wages, benefits, and terms and conditions with fellow employees); Blockbuster Pavilion, 331 NLRB 1274 (2000) (in addition to refusing pro-union employees work, employer threatened discharge for union activity, threatened to burn its facility before allowing a union

also have a serious impact on employee free choice, as they inhibit employees from engaging in union activity and dry up channels of communication between employees. Thus, in order to provide an effective remedy in these cases, it is just as necessary to remove that impact as it is to remove the impact caused by an unlawful discharge.[2]

In many of these cases, the impact is inherent in the nature of the unfair labor practice. "Hallmark" violations such as discharging employees and threats of job loss and plant closing, for example, "can only serve to reinforce employees' fear that they will lose employment if they persist in union activity."[3] No reasonable employee would engage in any protected activity after witnessing a discharge of a fellow employee for similar conduct; and just as chilled from repeating such activity is the discharged employee, himself, who is now unemployed because he exercised his statutory rights.[4] Furthermore, threats of plant closure or job loss severely and equally affect all employees in the plant.[5] Faced with a threat of loss of work, employees will abandon unionization efforts and effectively relinquish their free choice.

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to represent its employees, and interrogated employees); United States Service Industries, 319 NLRB 231 (1995), enfd. 107 F.3d 923 (D.C. Cir. 1997) (employer discharged ten employees, refused to reinstate unfair labor practice strikers, threatened employees that their union activities would result in discharge, interrogated and surveilled employees, prohibited employees from discussing the union at worksites, and awarded bonuses to non-union employees).

[2] See Federated Logistics, 340 NLRB 255, 256-257, enfd. 400 F.3d 920 (D.C. Cir. 2005) (unfair labor practices during organizational campaigns can jeopardize the possibility that an election will accurately reflect the employees' free choice); Fieldcrest Cannon, Inc., 318 NLRB 470, 473 (1995), enfd. in relevant part 97 F.3d 65, 74 (4th Cir. 1996).

[3] Consec Security, 325 NLRB 453, 454 (1998), enfd. 185 F.3d 862 (3d Cir. 1999). See also Federated Logistics, 340 NLRB at 257 (threats of plant shutdown "serve as an insidious reminder to employees that every time they come to work that efforts on their part to improve their working conditions may not only be futile but may result in the complete loss of their livelihoods").

[4] Eddyleon Chocolate Co., 301 NLRB 887, 891 (1991) (unlawful discharges affect remaining employees who reasonably fear that they too will lose employment if union activity persists).

[5] Spring Industries, 332 NLRB 40, 41 (2000). Compare Crown Bolt, Inc., 343 NLRB 776, 777-779 (2004) (overruling Spring Industries to the extent it held that the Board would presume widespread dissemination of plant closure threats absent evidence to the contrary, while still agreeing that plant closure threats are "a grave matter" and "highly coercive of employee rights").

Similarly, an employer's promise or grant of benefits also has a devastating impact on employee free choice because "[e]mployees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged."[6] Employees are less inclined to exercise their free choice if they know that they will gain benefits by not supporting a union and conversely, that they will lose benefits if they do support a union.

The serious effect of other, non-hallmark violations can not be overlooked. Thus, for example, an employer's solicitation of grievances chills employee unionization efforts because it demonstrates both that employees' efforts to unionize are unnecessary and that the employer will only improve working conditions as long as the workplace remains union-free.[7] In either case, an employer's sudden solicitude towards employees' needs—especially where they previously were ignored—demonstrates to employees the extent to which an employer is willing to go to avoid unionization.

Interrogations and surveillance also have an inhibiting effect on employee free choice. Interrogations have a "natural tendency to instill in the minds of employees fear of discrimination on the basis of information the employer has obtained."[8] Likewise, surveillance or the impression of surveillance inhibits employees' lawful participation in activities by highlighting "that the employer is anxious to find out about union activity which the employees wish to conceal from him to avoid retaliation."[9] If an employer engages in interrogation or surveillance, employees will be less likely to engage in protected activity and express their free

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[6] NLRB v. Exchange Parts Co., 375 U.S. 405, 409 (1964) ("The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove"); Evergreen America Corp., 348 NLRB 178, 180 (2006) (unlawful grants of significant benefits "have a particularly longlasting effect on employees and are difficult to remedy by traditional means. . ."), citing Gerig's Dump Trucking, 320 NLRB 1017, 1018 (1996), enfd. 137 F.3d 936 (7th Cir. 1998).

[7] Center Service System Division, 345 NLRB 729, 730 (2005), enfd. in relevant part, 482 F.3d 425 (6th Cir. 2007) (solicitation of grievances influences employee choice during an organizational campaign because it raises inferences that the employer is promising to remedy those grievances); Alamo Rent-A-Car, 336 NLRB 1155, 1155 (2001) (employer solicited grievances "in order to blunt the employees' enthusiasm for, or at least perceived need for, the Union").

[8] NLRB v. West Coast Casket Co., 205 F.2d 902, 904 (9th Cir. 1953).

[9] Lundy Packing Co., 223 NLRB 139, 147 (1976), enfd. in relevant part 549 F.2d 300 (4th Cir. 1977); Hendrix Mfg. Co. v. NLRB, 321 F.2d 100, 104 n.7 (5th Cir. 1963).

choice because of concern that the employer is trying to learn about their views on unionization and that an employee's actions, either by what he says to the employer, or how he behaves around the workplace, will likely be used to affect his job security or result in economic reprisal.

Finally, any employer conduct that interferes with employees' ability to communicate between themselves and with a union has a damaging impact on employee free choice.[10] Employees must be able to discuss the advantages and disadvantages of organization together and lend each other support and encouragement—such full discussion lies at the very heart of organizational rights guaranteed by the Act.[11] If an employer unlawfully limits employees' opportunities to discuss unionization, employees are unable to assert their statutory rights and talk freely about working conditions and organizing.[12]

The coercive effect of any of this conduct is often magnified by the involvement of high ranking officials,[13] the swiftness of an employer's response to a union campaign,[14] and the proximity to a union's demand for recognition or the filing of a representation petition.[15]

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[10] Republic Aviation v. NLRB, 324 U.S. 793, 803 (1945) (such rules are "an unreasonable impediment to self-organization").

[11] Central Hardware Co. v. NLRB, 407 U.S. 539, 543 (1972) (the right of self-organization depends in some measure on the ability of employees to learn the advantages and disadvantages of self-organizations from others).

[12] See NLRB v. Magnavox Co., 415 U.S. 322, 325 (1974) ("The place of work is a place uniquely appropriate for dissemination of views" by employees).

[13] NLRB v. Anchorage Times Publishing Co., 637 F.2d 1359, 1369-1370 (1981) (noting that impact of unfair labor practices is augmented by participation of upper management). See also Excel Case Ready, 334 NLRB at 5 (involvement of upper managers "exacerbates the natural fear of employees that they will lose employment if they persist in their union activities," and is "likely to have a lasting impact not easily eradicated by the mere passage of time or the Board's usual remedies"), quoting Garney Morris, Inc., 313 NLRB 101, 103 (1993), enfd. 47 F.3d 1161 (3d Cir. 1995); Consec Security, 325 NLRB at 454-455 ("When the antiunion message is so clearly communicated by the words and deeds of the highest levels of management, it is highly coercive and unlikely to be forgotten").

[14] See General Fabrications Corp., 328 NLRB 1114, 1115 (1999), enfd. 222 F.3d 218 (6th Cir. 2000) ("impact of [employer's unlawful conduct] was magnified by its proximity to the onset of the Union's organizational effort"); United States Service Industries, 319 NLRB at 232 (employer's "swift and widespread action each time its employees have attempted to enlist the aid of the Union [was] aimed at ensuring that employees think twice before doing so again"); Bakers of Paris, 288 NLRB 991, 992 (1998), enfd. 929 F.2d 1427 (9th Cir. 1991) (effect of

Because the impact of these unfair labor practices during organizing campaigns is so severe, I want to ensure that, in addition to swiftly remedying unlawful discharges, the impact of these ancillary unfair labor practices is removed as well. In order to remove the impact, we must tailor remedies to recreate an atmosphere that allows employees to fully utilize their statutory right to exercise their free choice. Therefore, in addition to seeking 10(j) reinstatement in all cases involving a discharge during an organizing campaign, Regions should also consider whether to seek additional remedies to remove the impact of the discharge(s), as well as the other Section 8(a)(1) violations. I believe that, in such cases, we have an obligation to seek remedies that are designed to eliminate these coercive and inhibitive effects and restore an atmosphere in which employees can freely exercise their Section 7 rights.

In all organizing cases, the remedial touchstone should be prompt and effective relief to best restore the status quo and recreate an atmosphere in which employees will feel free to exercise their Section 7 right to make a free choice regarding unionization. The Board has broad discretionary authority to fashion remedies that will best effectuate the purposes of the Act and are tailored, as much as possible, to undo the harm created by unfair labor practices.[16] Implicit in this statement of the Board's authority is the obligation to articulate why additional remedies are necessary.[17] The rationale for each of

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unfair labor practices increases when violations begin when employer has knowledge of union campaign).

[15] Consec Security, 325 NLRB at 454, citing Electro-Voice, Inc., 320 NLRB 1094, 1095 (1996) and Astro Printing Services, 300 NLRB 1028, 1029 (1990). See also Homer D. Bronson Co., 349 NLRB 512, 515, 549 (2007), enfd. 273 Fed. Appx. 32 (2d Cir. 2008) (employer's conduct was coercive enough to warrant additional remedies where it committed several unfair labor practices within a week of the union filing a petition).

[16] J.H. Rutter Rex Mfg. Co., 396 U.S. 258, 260-263 (1969). See also Sure-Tan, Inc. v. NLRB, 467 U.S. 883, 898 (1984); Ishikawa Gasket America, Inc., 337 NLRB 175, 176 (2001), enfd. 354 F.3d 534 (6th Cir. 2004) (Board may impose additional remedies "where required by the particular circumstances of a case"); Excel Case Ready, 334 NLRB at 5 (Board has broad discretion to fashion a just remedy to fit the circumstances of each case it decides).

[17] See, e.g., Chinese Daily News, 346 NLRB 906, 909 (2006) ("extraordinary" notice-reading remedy not appropriate, because "neither the General Counsel nor the dissent have offered any evidence to show that the Board's traditional remedies are insufficient" to remedy multiple violations, including threats of job loss, where violations happened four years prior and any "lingering effects" were "not at all clear"); Register Guard, 344 NLRB 1142, 1146 n.16 (notwithstanding multiple 8(a)(1) violations, including a hallmark unit-wide wage increase, "the

these remedies is provided below. In arguing for such remedies, Regions should articulate the lasting or inhibitive coercive impact inherent in the violations alleged, as explained above, use additional evidence adduced, where available, to demonstrate the actual impact of the violations and, as shown below, explain how the remedy sought will remove that impact.

II. Appropriate Remedies to Seek

In nip-in-the-bud organizing cases, the remedial goal should be to recreate an atmosphere free from the effects of an employer's unfair labor practices. The Board's cease-and-desist and notice posting remedies announce to employees, who have been subjected to interference, restraint, and coercion with respect to their right to select a bargaining representative, that they have a protected right to engage in such activity free from unlawful reprisal. Similarly, the reinstatement and backpay remedies aim to "make whole" an affected employee. But because unlawful discharges and other violations during an organizing drive have a lasting or particularly inhibitive effect on the exercise of Section 7 rights and on the Board's ability to conduct a fair election, we must do more to counteract the impact of that unlawful conduct. GC 10-07 provides that when a Region determines that a case involving a nip-in-the-bud discharge has merit, it should submit the case for consideration of 10(j) relief. In addition, Regions are hereby authorized, at the same time, to include in their Complaint any of the remedies listed below that are appropriate to remedy the discharge itself, as well as serious ancillary unfair labor practices. Finally, Regions should include in their 10(j) submissions a recommendation regarding seeking in Section 10(j) proceedings any of these remedies included in their Complaint.

1. Notice Reading – Appropriate in nip-in-the-bud cases

Notice-reading remedies generally require that a responsible management official read the notice to assembled employees or, at the respondent's option, have a Board Agent read the notice in the presence of a responsible management official. The public reading of a notice has been recognized as an "effective but moderate way to let in a warming wind of information and, more important, reassurance."[18] By imposing such a remedy, the Board can assure

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Charging Party has not shown a basis for imposing" a notice-reading remedy); First Legal Support Services, LLC, 342 NLRB 350, 350 n.6 (2004) (additional remedies not warranted, notwithstanding multiple violations, including repeated threats of discharge and plant closure as well as the actual discharge of two union supporters, where "[n]either the General Counsel nor our dissenting colleague has shown that traditional remedies are so deficient here to warrant imposing" additional remedies).

[18] United States Service Industries, 319 NLRB at 232 quoting J.P. Stevens & Co., v. NLRB, 417 F.2d 533, 540 (5th Cir. 1969). See also Concrete Form Walls, Inc., 346 NLRB 831, 841 n.3 (2006) (Member Schaumber, dissenting in part) (notice-

the respondent's "minimal acknowledgment of the obligations that have been imposed by the law. . . . The employees are entitled to at least that much assurance that their organizational rights will be respected in the future."[19] A notice reading will also ensure that the important information set forth in the notice is disseminated to all employees, including those who do not consult the employer's bulletin boards. A reading will also allow all employees to take in all of the notice, as opposed to hurriedly scanning the posting, under the scrutiny of others.[20]

In addition to ensuring that the notice's content reaches all the employees, a personal reading places on the Board's notice "the imprimatur of the person most responsible" and allows employees to see that the respondent and its officers are bound by the Act's requirements.[21] For example, where an employer discharged a union supporter or made threats of plant closure, hearing the Board's cease-and-desist language read will better serve to allay the employees' fear that union activity at work will be met with reprisal. Furthermore, where a high ranking manager personally committed some of the violations, hearing that manager read the notice, or seeing him present while it is read, will "dispel the atmosphere of intimidation he created" and best assure employees that their rights will be respected.[22] Finally, a notice-reading remedy is more effective at remedying violations during an organizing drive than a traditional notice posting because of its heightened psychological impact on employees; "[f]or an employer to stand before her assembled employees and orally read the notice can convey a sense of sincerity and commitment that no mere posting can achieve."[23]

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reading remedy "gives teeth to other notice provisions" that the respondent must also announce).

[19] Federated Logistics, 340 NLRB at 258 n.11. See also United States Service Industries, 319 NLRB at 232 (reading allows employees to gain assurance from a high level employer representative that they view "as the personification of the Company" that an employer will respect their rights).

[20] Regions should specifically seek language in an Order that the notice should be read to the widest possible audience. See, e.g., Vincent/Metro Trucking, LLC, 355 NLRB No.50, slip op. at 2 (2010).

[21] Loray Corp., 184 NLRB 557, 558 (1970).

[22] Three Sisters Sportswear Co., 312 NLRB 853, 853 (1993), enfd. mem 55 F.3d 684 (D.C. Cir. 1995).

[23] Teeter, Fair Notice: Assuring Victims of Unfair Labor Practices that their Rights will be Respected, 63 UMKC L. Rev 1, 11 (Fall, 1994).

2. Access Remedies – Appropriate in cases where there is an adverse impact on employee/union communication

The full exercise by employees of their Section 7 rights requires that employees be fully informed not only concerning those rights, but also concerning the advantages and disadvantages of selecting a particular labor organization, or any labor organization, as their bargaining representative. Where an employer unlawfully interferes with communications between employees, or between employees and a union, the impact of that interference requires a remedy that will ensure free and open communication. Allowing union access to the employer's bulletin boards and providing the union with the names and addresses of employees will restore employee/union communication and assist the employees in hearing the union's message without fear of retaliation.[24] These access remedies assure the employees that they can learn about unionization and can contact union representatives in an atmosphere free of the restraint or coercion generated by an employer's violations.[25]

a. Access to bulletin boards

An order requiring an employer to permit access to its bulletin boards will broaden the opportunity for employee/union communication.[26] Union access to bulletin boards permits employees to see, at the workplace, that open displays of union information are acceptable, and will better thaw the chilling impact of the violations than the bare recitation of rights in a standard notice posting.[27] Access to bulletin boards is the least intrusive of access remedies, and it "serves to

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[24] Teamsters Local 115 v. NLRB, 640 F.2d 392, 399 (D.C. Cir. 1981), enfg. 242 NLRB 1057 (1979). See also United States Service industries, 319 NLRB at 232, quoting United Dairy Farmers Cooperative Assn., 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1054 (3d Cir. 1980).

[25] See Jonbil, Inc., 332 NLRB 652, 652 (2000); United States Service Industries, 319 NLRB at 232.

[26] Where an employer customarily uses electronic means, such as an electronic bulletin board, e-mail, or intranet postings to communicate with employees, Regions should submit the case to the Division of Advice on whether to seek a remedy including union access to those electronic means of communication. See J. Picini Flooring, 356 NLRB No. 9 (2010) (electronic notice posting appropriate where employer regularly utilized electronic bulletin board to communicate with employees).

[27] Excel Case Ready, 334 NLRB at 5 (bulletin-board access remedy provides employees with "reassurance that they can learn about the benefits of union representation, and can enlist the aid of union representatives, if they desire to do so, without fear [of retaliation by the employer]").

reduce the obstacles to free union-employee communication" that were created by the employer's coercive conduct, and reassures the employees that the union has a "legitimate role to play in their decision whether to seek union representation."[28]

b. Employee names and addresses

A names-and-addresses remedy typically requires the employer to provide the union with an updated list of employees' names and addresses, for a longer and earlier time period than would be required under Excelsior Underwear.[29] If an employer's unlawful conduct during an organizing campaign disrupts Section 7 rights and election conditions, the union must restart its organizing campaign and employees will have reason to fear discussing unionization in the workplace because of the employer's past conduct.[30] "To neutralize the effect of the Respondent's face-to-face restraint and coercion, it is necessary that the employees have ready access to union organizers and other officials who can explain to them the Union's point of view with respect to organizational activities."[31] The names-and-addresses remedy "attempts to level a playing field that has been tilted against the employees' organizational rights" by the employer's unfair labor practices and enables the union to contact all the employees outside the work environment free from management's watchful

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[28] Blockbuster Pavilion, 331 NLRB at 1276. See also J.P. Stevens & Co. v. NLRB, 388 F.2d 896, 906 (2d Cir. 1967) (union access to bulletin boards appropriate to offset the company's use of bulletin boards in coercive campaign against the union and to "dissipate the fear in the atmosphere within the Company's plants generated by its anti-union campaign"); John Singer, Inc., 197 NLRB 88, 90 (1972) (union access to bulletin boards necessary because additional forms of communication were needed to allow the union to reclaim allegiance lost as a result of the company's unlawful conduct).

[29] Excelsior Underwear Inc., 156 NLRB 1236 (1966).

[30] The Board has expressly rejected the argument that a names-and-addresses remedy is unnecessary because the union will obtain an Excelsior list of names and addresses in the event an election is scheduled. See, e.g., Federated Logistics, 340 NLRB at 256-258; Blockbuster Pavilion, 331 NLRB at 1275. Providing names and addresses shortly before the election, as with the Excelsior list, is insufficient. Rather, a remedial provision of names and addresses for a longer and earlier time period is designed to restore "the conditions that are a necessary prelude to a free and fair election." Blockbuster Pavilion, 331 NLRB at 1275.

[31] Heck's, Inc., 191 NLRB 886, 887 (1971), enfd. as amended 476 F.2d 546 (D.C. Cir. 1973).

eye.[32] Thus, this remedy is necessary because it facilitates communication between the union and employees outside the employer's domain, and therefore, "insulated from discriminatory reprisal."[33]

III. Instructions to Regions for Investigating and Litigating These Cases

In addition to submitting 8(a)(3) nip-in-the-bud cases for 10(j) relief pursuant to Memorandum GC 10-07, Regions should seek a notice-reading remedy in all such cases and should consider seeking a notice-reading remedy where an employer has committed serious Section 8(a)(1) violations. Hallmark violations such as threats of discharge and plant closure, and promises or grants of benefits, and other serious violations such as solicitation of grievances, high-level or widely disseminated interrogations, and surveillance or impression of surveillance have a pronounced impact on employee free choice. A notice reading remedy will effectively assure employees that their rights will be respected.

When the employer's unfair labor practices interfere with communications between employees, or between employees and a union,[34] Regions should also seek union access to bulletin boards and employee names and addresses.

Regions are authorized to plead these remedies in their Complaint. In addition, Regions should include in their recommendation regarding 10(j) relief whether they would seek on an interim basis the remedies included in their Complaint. A combination of these remedies, as part of our 10(j) relief, will ensure that employees' Section 7 rights are adequately protected and that their ability to exercise free choice regarding unionization is promptly restored.

If a Region determines that an employer's unfair labor practices have had such a severe impact on employee/union communication that bulletin board access and names and addresses are insufficient to permit a fair election, it should submit the case to the Division of Advice with a recommendation as to why additional remedies are warranted, including: granting a union access to nonwork areas during employees' nonwork time; giving a union notice of, and equal time and facilities for the union to respond to, any address made by the company regarding the issue of representation; and affording the union the right to deliver a speech to employees at an appropriate time prior to any Board election. These remedies may be warranted where an employer makes multiple

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[32] Blockbuster Pavilion, 331 NLRB at 1275.

[33] Id. at 1275 n.16, citing J.P. Stevens & Co. v. NLRB, 417 F.2d at 541. See also Excel Case Ready, 334 NLRB at 5.

[34] See Jewish Home for the Elderly of Fairfield County, 343 NLRB at 1069.

unlawful captive audience speeches or where the employer is a recidivist and has shown a proclivity to violate the Act. [35]

In order to secure a notice reading or any access remedies in Section 10(j) and unfair labor practice proceedings, Regions need to articulate why they are necessary. Regions should be prepared to argue that these remedies are needed both because of the impact on employee free choice inherent from the unfair labor practices themselves and, where available, the evidence that demonstrates that impact in a particular case. Thus, although the impact of these unfair labor practices on employee free choice may be inferred from the nature of the violations, Regions should also investigate for evidence to establish actual impact. The evidence that is currently collected during a 10(j) "just and proper" investigation will typically demonstrate the effects of an employer's unfair labor practices on employee free choice. Such evidence will also, therefore, bolster the need for these remedies by providing concrete evidence of impact upon employees.

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[35]For cases where these remedies were concurrently granted, see, e.g., Avondale Industries, 329 NLRB at 1068 (nonwork access, equal time, and a 30 minute pre-election speech ordered where employer committed 141 unfair labor practices including over 30 discriminatory discharges); Fieldcrest Cannon, Inc., 318 NLRB at 473, 490-491 (nonwork access, equal time, and a 30 minute pre-election speech appropriate because managers gave numerous unlawful captive audience speeches); Texas Super Foods, 303 NLRB 209, 209 (1991) (nonwork access, equal time, and a 30 minute pre-election speech ordered to "provide the proper atmosphere for holding a fourth election" after the employer "blatantly disregarded" the Board's finding that it violated the Act); Monfort of Colorado, 298 NLRB 73, 86 (1990), enfd. in rel. part, 965 F.2d 1538, 1548 (10th Cir. 1992), citing Monfort of Colorado, 284 NLRB 1429, 1429-1430, 1479 (1987), enfd. sub. nom. Food & Commercial Workers v. NLRB, 852 F.2d 1344 (D.C. Cir. 1988) (nonwork access, equal time, and a 30 minute pre-election speech appropriate because the large number of incidents that occurred, the many supervisors involved, the personal involvement of the employer president, and the premeditated nature of the employer's violations demonstrated its proclivity to violate the Act); S.E. Nichols, Inc., 284 NLRB 556, 559-560 (1987), enfd. in rel. part, 862 F.2d 952, 960-963 (2d Cir. 1998), cert. denied, 490 U.S. 1108 (1989) (nonwork access, equal time, and a 30 minute pre-election speech necessary where employer was a recidivist who "continued to engage in an obdurate flouting of the Act"). For cases where only one of the remedies was granted, see, e.g., United States Service Industries, 319 NLRB at 231 (union access to nonwork areas during employees' nonwork time necessary because it was the third Board case documenting the employer's unlawful response to its employees' organizing efforts); Pennant Foods Co., 352 NLRB 451, 472-473 (2008) (equal time remedy necessary for third rerun election because the employer violated formal settlement).

In addition to articulating how the impact of the violations supports the need for these remedies, Regions should also articulate, based on the discussion above, how those remedies will remove the effects of the unlawful conduct and restore an atmosphere free of coercion where employees can exercise a free and informed choice.

In summary, I believe that these remedies will further the important goal of ensuring employee freedom of choice with regard to unionization and restore the status quo where an employer has committed serious unfair labor practices in response to an organizing campaign. The Board and courts have recognized these remedies as important tools for restoring the right of employees to make a free and informed choice regarding unionization, and I am committed to seek them in fulfillment of my obligation to protect those rights under the Act.

/s/
L.S.