NLRB General Counsel Signals Another Round of Precedent Reversals: What Employers Need to Know About GC Memo 26-04

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On August 26, 2026, NLRB General Counsel Crystal S. Carey issued Memorandum GC 26-04, "Further Guidance Regarding General Counsel Priorities." This is a follow-up to her earlier guidance in GC Memo 26-03 on shifting enforcement priorities, and it's a useful roadmap for any private employer trying to anticipate where federal labor law is heading over the next year or two.

The headline for clients: No changes have been made yet, but many of the precedents adopted by the NLRB during the Biden administration may change over the next months or possibly years while the Trump administration remains in office.

A General Counsel memo does not change what the National Labor Relations Board has held is unlawful. It's a statement of prosecutorial priorities and the legal positions the GC's office intends to argue in pending and future cases. But GC memos are a reliable early-warning system for where Board law is going, and this one specifies, case by case, which Biden-era Board precedents the current GC is actively trying to unwind. The list includes essentially all of the new or revised interpretations of the National Labor Relations Act issued during the Biden administration.

If your organization has non-union operations, unionized operations, or is navigating an organizing campaign, several of these items are worth putting on your radar now.

GC Carey opens by reporting that the agency has resolved 9,247 pending cases since she took office, more than a 50% reduction in the backlog she inherited. Significantly, the regional offices are not required to route cases involving these targeted issues through the Division of Advice. Instead, they will keep investigating and prosecuting under existing Board law while the GC pursues these arguments through litigation.

Positions Already Being Argued in Pending Cases

These are precedents the GC's office has already asked the Board or an administrative law judge to overturn in specific, named cases:

Severance agreements and confidentiality/non-disparagement clauses.
In *Valley Radiology, P.A.*, the GC is arguing to overrule *McLaren Macomb* (2023) — the decision that made broad confidentiality and non-disparagement provisions in severance agreements presumptively unlawful. If the Board agrees, employers will regain more latitude to include standard confidentiality and non-disparagement language in severance and separation agreements without automatically committing an unfair labor practice.

Consent orders.
In the *Amazon* cases, the GC is asking the Board to overturn *Metro Health/Hospital Metropolitano Rio Piedras* (2024), which limited the Board's discretion to approve consent orders (settlement mechanisms) over the General Counsel's objection. A reversal would restore more flexibility for administrative law judges to approve settlements even without GC sign-off.

Work rules and handbook policies.
In *Honeywell International*, the GC is arguing to overturn *Stericycle* (2023), the standard that made facially neutral work rules unlawful if they could "chill" protected activity from the perspective of an economically dependent employee reading them in the worst reasonable light. A rollback would ease pressure on standard handbook provisions — think confidentiality, social media, and civility policies — that many employers rewrote to comply with *Stericycle*.

"Captive audience" meetings.
In *UPS Supply Chain Solutions*, the GC has moved to withdraw exceptions in favor of overturning the current *Amazon.com Services* (2024) rule, which bars employers from requiring employees to attend meetings where the employer expresses its views on unionization. She's urging a return to the decades-old *Babcock & Wilcox* standard, which permitted mandatory captive-audience meetings. This is a significant one for any employer that uses employee meetings as part of a union-avoidance or communication strategy.

Statements predicting the impact of unionization.
In the same UPS case, GC Carey has explicitly broken from her predecessor's position under *Starbucks/Siren Retail* (2024) and will instead urge the Board to reinstate *Tri-Cast* (1985), a more permissive standard for employer statements predicting what might happen to wages, benefits, or working conditions if a union is voted in.

Dress codes.
In *Starbucks Corporation*, the GC argues against the employee-protective standard from *Tesla* (2022) and asks the Board to reinstate *Wal-Mart Stores* (2019), which gave employers more room to enforce dress code and uniform policies — including logo and pin restrictions — without running afoul of Section 7.

Waiver of the right to bargain.
In *HPC Industrial Group*, the GC has flagged *Endurance Environmental Solutions* (2024) for reversal and intends to push for a return to the *MV Transportation* (2019) "contract coverage" standard, which gives more weight to broad management-rights clauses as a basis for unilaterally changing terms and conditions of employment without additional bargaining.

Positions the GC Intends to Raise When the Right Case Comes Along

These are precedents GC Carey has flagged as targets but hasn't yet had a procedural vehicle to formally argue. Employers should watch for these to surface in future litigation:

Bargaining orders without an election.
(Cemex Construction Materials Pacific, 2023): The GC wants the Board to abandon the *Cemex* framework — which allows a bargaining order to issue without a union election in some circumstances — and return to the pre-*Cemex* combination of *Gissel Packing* (1969) and *Linden Lumber* (1971), which is generally viewed as more protective of an employer's right to insist on a secret-ballot election.

Duty to bargain before changing existing terms.
(Wendt Corporation and Tecnocap, both 2023): These decisions currently require bargaining over changes even where there's longstanding past practice guiding the action. The GC views this as slowing down routine contract administration and wants it revisited.

Union dues checkoff after contract expiration.
(Valley Hospital Medical Center, 2022): The GC wants to return to the 1962 *Bethlehem Steel* rule, under which an employer's obligation to deduct union dues from paychecks ends automatically when the collective bargaining agreement (and its checkoff

clause) expires — rather than continuing post-expiration as *Valley Hospital* currently requires.

Objector fee disclosures.
(UFCW Local 700/Kroger, 2014): The GC intends to argue that unions should have to disclose more detailed information to dues objectors than *Kroger* currently requires under *Beck* and *California Saw & Knife Works*.

Protected concerted activity and workplace conduct.
(Miller Plastic Products and Lion Elastomers II, both 2023): The GC has specifically called out *Lion Elastomers II* as extending protection to employee conduct — including conduct that would otherwise be prohibitable — that is only tenuously connected to activity protected under the Act. This case is already pending on remand before the Board.

Enhanced/"make whole" remedies.
(Thryv, 2022): The GC wants the Board to reconsider the expanded consequential-damages remedy adopted in *Thryv*, noting that courts have repeatedly cut back on it and that it hasn't yet been tested through a full compliance proceeding.

What This Means for Your Organization

Every item above requires the Board to actually rule in the GC's favor. National Labor Relations Act will likely stay in flux for months to come.

Practical Takeaways (For Now)

If your severance agreements, handbook policies, or dress code provisions have been revised in the last two to three years specifically to comply with *McLaren Macomb*, *Stericycle*, or *Tesla*, it may be worth flagging those provisions for a fresh look once the Board rules. This may not mean revising them immediately, but it may help you determine in advance what revisions may be permitted or advisable.

If you would rely on mandatory employee meetings as part of your communications strategy during organizing activity, the captive-audience question is one to watch closely, since a reversal would restore an employer tool that's currently off the table, except in a few states that have outlawed captive-audience meetings under state law.

If you're a unionized employer with a broad management-rights clause, the outcome in the waiver-of-bargaining cases could materially affect how much unilateral flexibility you have when administering the contract.