

NLRB General Counsel Seeks Employer-Friendly Shift in NLRB Precedent

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National Labor Relations Board (“Board”) precedent often shifts with its membership. With a majority now appointed by President Donald Trump, the Board may reconsider several Biden-era decisions, potentially giving employers greater flexibility in workplace policies, employment agreements, and union organizing responses.

In an August 26, 2026 memorandum, NLRB General Counsel Crystal S. Carey, a Trump appointee, identified precedents she has asked—or intends to ask—the Board to overturn. Key areas include:

1. **Severance Agreements (and other Employment Agreements):** In *McLaren Macomb*, 372 NLRB No. 58 (2023), the Board held that offering severance agreements with broad non-disparagement and confidentiality provisions that restrict non-supervisory employees’ NLRA rights violates the National Labor Relations Act (“NLRA”). General Counsel Carey has asked the Board to overrule that decision in a pending case.
2. **Work Rules:** In *Stericycle*, 372 NLRB No. 113 (2023), the Board held that work rules with a reasonable tendency to chill employees’ exercise of NLRA rights are presumptively unlawful. That standard replaced the framework in *Boeing*, 365 NLRB No. 154 (2017), which categorized rules as lawful, requiring individual scrutiny, or unlawful. General Counsel Carey has asked the Board to overrule *Stericycle* in a pending case.
3. **Captive Audience Speeches:** In *Amazon.com Services LLC*, 373 NLRB No. 136 (2024), the Board prohibited employers from requiring employees to attend meetings expressing management’s views on unionization. General Counsel Carey seeks a return to the longstanding standard under *Babcock & Wilcox*, 77

NLRB No. 577 (1948), which permitted mandatory attendance, subject to the prohibition on campaign speeches during the 24 hours before an election.

4. **Bargaining Orders:** Under *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), an employer receiving a union's demand for recognition based on claimed majority support must either recognize the union or promptly file an RM election petition, generally within two weeks, unless the union has already filed a petition. An employer that refuses recognition without filing a timely petition may face a bargaining order. General Counsel Carey intends to seek reversal of *Cemex* and restore the prior framework, under which employers generally could decline recognition and require the union to petition for an election.
5. **Expanded Remedies:** The NLRA authorizes make-whole relief intended to restore employees to the position they would have occupied absent an unfair labor practice. In *Thryv, Inc.* (2022), the Board expanded that relief beyond lost wages and benefits to include direct or foreseeable financial harms, potentially including out-of-pocket medical expenses and credit card debt. Citing repeated court setbacks, General Counsel Carey intends to seek reconsideration of *Thryv*.

What This Could Mean for Employers

Taken together, these priorities signal a potentially significant shift toward greater employer flexibility. If the Board adopts General Counsel Carey's positions, employers could gain more latitude in drafting confidentiality and non-disparagement provisions, maintaining handbook rules, and communicating during union campaigns. Reversal of *Cemex* could ease the procedural burden of responding to recognition demands, while reconsideration of *Thryv* could narrow financial exposure in unfair labor practice cases. The implications extend to both unionized and nonunion employers.

The memorandum itself does not change Board law or guarantee that these precedents will be overturned. It expressly directs regional offices to continue investigating and, where warranted, prosecuting cases under existing law. Employers should therefore continue complying with applicable requirements and consult labor counsel before changing agreements, policies, or organizing strategies.

For additional positions of General Counsel Carey see [NLRB General Counsel Memorandum GC 26-04, August 26, 2026](#).

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