

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 26-04

August 26, 2026

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

FROM: Crystal S. Carey, General Counsel

SUBJECT: Further Guidance Regarding General Counsel Priorities

To ensure transparency in relation to my priorities, I am issuing this memorandum to identify cases where I have requested or intend to request the Board to revisit certain precedents. This memorandum does not require specific cases to be submitted to the Division of Advice. Instead, when cases are identified involving the issues herein, Regions should continue to investigate the cases and, if justified, pursue prosecution according to extant Board law. Regions have been, and continue to be, provided with guidance on best practices to use in the settlement, and prosecution, of the cases and issues discussed in the memo.

BACKGROUND

Regardless of who is serving as General Counsel, to effectuate the National Labor Relations Act, the Agency must position itself to process cases in a consistent, efficient, and transparent manner. The role of the General Counsel comes with significant prosecutorial discretion, but it comes with an expectation to use that discretion responsibly. Rather than prioritizing overturning precedent at the expense of case processing, my top priority is two-fold:

- Prioritizing processing of aged cases to reduce the historic backlog burdening the Agency.
- Implementing sustainable, prudent case handling practices to prevent a repetitive backlog of this scale.

I am excited to see that this approach is working. Since taking office, the dedicated public servants at the Agency have successfully completed the investigation of 9,247 cases pending as of January 7, 2026, which amounts to more than a 50 percent reduction in cases awaiting determination in regional offices when I arrived. The progress we have made speaks for itself and would not be possible without the incredible career Agency staff dedicated to the mission of the Act and service to the public. While my initial decision not to issue a mandatory submission memorandum was met with some scrutiny, the material progress on reducing the backlog and the return to normal Agency operations vindicates my approach. I will continue to operate in this manner for the time being. Again, my focus remains on providing efficient service to the parties before us.

POSITIONS TAKEN BY THE GENERAL COUNSEL

The following is a summary of positions I have taken and references where they can be found. Guidance related to these cases was previously communicated to all Regions:

- **Severance Agreements (and other Employment Agreements):** Arguing to overrule *McLaren Macomb*, 372 NLRB No. 58 (2023) in an answering brief in *Valley Radiology, P.A.* ([10-CA-324512](#)).
- **Consent Orders:** Requesting to overturn *Metro Health Inc. d/b/a Hospital Metropolitano Rio Piedras*, 373 NLRB No. 89 (2024) in *Amazon* ([31-CA-317349](#), 31-CA-319781, 31-CA-320596).
- **Work Rules:** Arguing to overturn *Stericycle*, 372 NLRB No. 113 (2023) in *Honeywell International Inc.* ([09-CA-327389](#)).
- **Captive Audience Meetings:** Encouraging the Board to reverse *Amazon.com Services LLC*, 373 NLRB No. 136 (2024), and return to the longstanding “captive audience” standard set in *Babcock & Wilcox*, 77 NLRB No. 577 (1948), in a motion to withdraw exceptions in *UPS Supply Chain Solutions, Inc.* ([32-CA-295913](#), 32-CA-297314).
- **Predictions on Impact of Unionization:** Clearly stating, in a motion to withdraw exceptions in *UPS Supply Chain Solutions, Inc.* ([32-CA-295913](#), 32-CA-297314), that I do not share my predecessor’s views on *Siren Retail Corp. d/b/a Starbucks*, 373 NLRB No. 135 (2024), and will argue to the Board to reinstate *Tri-Cast, Inc.*, 274 NLRB No. 377 (1985).
- **Dress Codes:** In exceptions and supporting brief in *Starbucks Corporation* ([13-CA-322871](#), 13-CA-327142), I argue against application of *Tesla, Inc.*, 371 NLRB No. 131 (2022), and request the Board to reinstate *Wal-Mart Stores, Inc.*, 368 NLRB No. 146 (2019).
- **Waiver of Right to Bargain:** In a supplemental brief filed with the ALJ in *HPC Industrial Group, LLC*. ([07-CA-308650](#)), I noted the standard set in *Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (2024) should be overturned. I intend to urge the Board to return to the standard set in *MV Transportation, Inc.*, 368 NLRB No. 66 (2019).

ANTICIPATED POSITIONS TO PRESENT TO THE BOARD FOR CONSIDERATION

In addition, I intend to challenge several other precedents, if the opportunity arises; however, I have not had the opportunity to formally present my positions to the Board on these issues either because briefing is in process, I have not identified an appropriate vehicle, or a case that would have otherwise been an appropriate vehicle settled. This memorandum may be updated and reissued when arguments are finalized.

- **Bargaining Orders:** Intent to challenge the Board’s decision in *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023), *enfd.*, 2026 WL 1079297 (9th Cir. 2026) because *Cemex* is contrary to Supreme Court precedent and sound labor policy. The Board should return to and reaffirm the binding applicability of *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969) and reinstate

Linden Lumber Div., Summer & Co., 190 NLRB 718 (1971), *revd. sub nom. Truck Drivers Union Local No. 413 v. NLRB*, 487 F.2d C. Cir. 1973), *affd.* 419 U.S. 301 (1974).

- **Employers' Duty to Bargain Prior to Changing Terms and Conditions of Employment:** Intent to challenge the Board's positions in *Wendt Corporation*, 372 NLRB No. 135 (2023), and *Tecnocap, LLC*, 372 NLRB No. 136 (2023), which make for slower labor contracts by requiring parties to bargain over every single issue, even those for which there is longstanding precedent of action, before making a change.
- **Union Dues and Objector Representation Fees:** Intent to argue to the Board to overturn *UFCW Local 700 (Kroger Limited Partnership)*, 361 NLRB 420 (2014), *vacated*, 825 F.3d 778 (D.C. Cir. 2016). *Kroger's* standard requiring unions to only apprise fee-payers of the percentage of full dues they owe after objecting to membership is not within the stated rationales in *California Saw & Knife Works*, 320 NLRB 224 (1995), *enfd. sub nom.*, *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), and *Communication Workers of America v. Beck*, 487 U.S. 735 (1988).
- **Protected Concerted Activity:** Intent to urge the Board to revisit *Miller Plastic Products, Inc.*, 372 NLRB No. 134 (2023), *vacated in part*, 141 4th Cir. 492 (3d Cir. 2025) and *Lion Elastomers, LLC, II* 372 NLRB No. 83, (2023), *vacated and remanded*, 108 F.4th 252 (5th Cir. 2024). *Lion Elastomers II* is problematic and has led to the protection of generally prohibitible employee conduct that is tenuously connected with rights protected under the Act. Notably, *Lion Elastomers* is pending remand before the Board. I will provide my positions to the extent I am given the opportunity.
- **Employers' Obligation to Discuss Dues/Fees Under Security Agreements After the Contract Expires:** I disagree with *Valley Hospital Medical Center, Inc.*, 371 NLRB No. 160, (2022), *enfd.*, 93 F.4th 1120 (9th Cir. 2024) and will urge the Board to reconsider and return to the 1962 *Bethlehem Steel* standard, 136 NLRB 1500 (1962), which held that an employer's statutory obligation to check off union dues ends when its collective-bargaining agreement containing a checkoff provision expires. *Valley Hospital* is a troublesome analysis when there is a post-contract expiration decertification effort, and a blocking charge rule in place.
- **Novel and Unprecedented Enhanced Remedies:** I intend to request the Board to reconsider *Thryv Inc.*, 372 NLRB No. 22 (2022), *vacated in part*, 102 F.4th 727 (5th Cir. 2024). *Thryv* remedies have yet to be tested in a compliance hearing, but the case itself, and accompanying remedies, have repeatedly been struck down by the courts.

While this is not all inclusive of my positions, current or future, my hope is that by providing this guidance in a condensed format, cases involving these issues will be identified, and resolved, more quickly.

/s/
C.S.C