

LABOR UPDATES

NOTABLE NATIONAL LABOR RELATIONS BOARD CASES AND GENERAL COUNSEL MEMORANDA

NATIONAL LABOR RELATIONS BOARD CASES

EMPLOYER SPEECH

Amazon.com Services LLC, 373 NLRB No. 136 (Nov. 13, 2024)

During a union organizing campaign, Amazon required employees to attend a series of mandatory meetings on paid time where management presented arguments against union representation. Employees who skipped the meetings were subject to discipline. The company also solicited employee complaints and implied that grievances would be remedied if employees chose not to unionize. The Board overruled *Babcock & Wilcox Co.*, 77 NLRB 577 (1948), and held that requiring employees to attend employer-led anti-union meetings is a per se violation of Section 8(a)(1). The Board reasoned that compulsion, backed by the threat of discipline or discharge, inherently interferes with employees' Section 7 rights and falls outside Section 8(c)'s protection for employer expression. The Board clarified that employers may still conduct voluntary meetings if employees are (1) informed in advance of the meeting's subject matter, (2) expressly told they may decline to attend without consequence, and (3) not tracked, disciplined, or otherwise coerced to attend. The Board further held that soliciting grievances with implied promises to fix them and discriminating against pro-union postings independently violated Section 8(a)(1).

Siren Retail Corp. d/b/a Starbucks, 373 NLRB No. 135 (Nov. 8, 2024)

During a union campaign, Starbucks issued communications warning that unionization could harm the "direct relationship" between employees and management. The Board overruled *Tri-Cast, Inc.*, 274 NLRB 377 (1985), which had permitted such statements if fact-based and nonthreatening, and announced a new framework for employer speech. The Board held that statements predicting adverse changes to the employment relationship are unlawful under Section 8(a)(1) unless they are carefully phrased based on objective fact and convey the employer's belief as to "demonstrably probable consequences" apart from the employer's control. This ruling heightens the risk for employers making campaign-related statements about how unionization could alter workplace dynamics. The Board confirmed that this standard will be applied prospectively.



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CONSTRUCTIVE DISCHARGE

United States Postal Service, 373 NLRB No. 138 (Nov. 27, 2024)

Letter carrier Nicolas Montross invoked his contractual right under the collective bargaining agreement (CBA) not to work more than 60 hours per week. Subsequently, his supervisor called him into a pre-disciplinary interview, questioned whether his loyalty lay with the union or the United States Postal Service (USPS), threatened him with discipline and criminal prosecution, and interrogated him about who had informed him of his contractual rights. The supervisor conducted a similar interview with a former union steward. Believing he faced arrest if he returned, Montross resigned after USPS sent him a resignation form alongside a new interview notice. The Board found that USPS violated Section 8(a)(1) during the pre-disciplinary interviews by threatening, interrogating, and equating union loyalty to disloyalty to the employer. The Board further held Montross was constructively discharged, as a person in Montross' position would reasonably believe that he would be discharged if he did not forgo his protected activities. The Board applied *Thryv, Inc.*, 372 NLRB No. 22 (2023), requiring compensation for direct and foreseeable pecuniary harms, in addition to reinstatement, backpay, and notice posting.

PROTECTED CONCERTED ACTIVITY

Dumbo 301 LLC d/b/a Magic Tavern, 374 NLRB No. 22 (Mar. 21, 2025)

An adult entertainment club discharged an employee after he raised safety and workflow concerns with coworkers. Around the same time, the company threatened its employees with discipline or discharge if they made critical statements about the employer or its employees. Shortly thereafter, the club owner surveilled picketers in front of the facility and physically interfered with employees engaged in that picketing. The Board entered default judgment against the employer and held the discharge was unlawful retaliation in violation of Section 8(a)(3) and (1), the employer's rules prohibiting criticism unlawfully chilled Section 7 activity, and the employer's surveillance and physical obstruction of picketers violated Section 8(a)(1). The Board ordered reinstatement with backpay, make-whole relief for direct and foreseeable pecuniary harms, rescission of the unlawful rules, and cease-and-desist relief with notice posting and mailing.

UNILATERAL CHANGES

***Endurance Environmental Solutions, LLC*, 373 NLRB No. 141 (Dec. 10, 2024)**

The Board addressed the standard applicable to evaluating a union's waiver of the right to bargain over changes to working conditions in the context of an employer's unilateral installation of cameras on trucks used by bargaining unit employees. Overruling *MV Transportation, Inc.*, 368 NLRB No. 66 (2019), the Board abandoned the "contract coverage" test—which allowed employers to act unilaterally if the subject fell within the scope of broadly worded contract provisions—and reinstated the stricter "clear and unmistakable waiver" standard. Under this test, a union must explicitly waive its right to bargain over the subject in question; general management-rights clauses or broad contract language are insufficient. Applying the standard, the Board held that Endurance violated Section 8(a)(5) because its CBA did not clearly authorize the camera installation. The decision significantly raises the bar for employers seeking to rely on contract language for midterm changes and restores greater bargaining leverage to unions.

GENERAL COUNSEL MEMORANDA

GC 25-05 (Feb. 14, 2025): Sweeping Rescission of Biden-era Memoranda

Acting General Counsel Cowen rescinded a broad set of Biden-era memoranda that had expanded worker protections and remedial tools. Regions are instructed to return to traditional remedies such as backpay, reinstatement, and cease-and-desist orders, and not to press for novel or expansive relief unless clearly authorized by Board precedent. The rescissions reduce pressure on employers by eliminating aggressive settlement demands targeting confidentiality and non-disparagement clauses, noncompete agreements, and electronic surveillance and AI management tool policies. Worker coverage is narrowed, with student-athletes, immigrant workers, and employees bound by noncompetes less likely to receive protections. The memo also streamlines case intake by reducing mandatory referrals to Advice and granting more discretion to Regional Directors.

GC 25-07 (June 25, 2025): Surreptitious Recordings of Bargaining Sessions

The GC established that secretly recording collective bargaining sessions is a per se violation of Section 8(a)(5) or 8(b)(3). The GC reasoned that surreptitious recordings undermine the trust and openness necessary for good-faith bargaining. The rule applies equally to employers and unions: either side that secretly records bargaining sessions without the other's knowledge or consent acts unlawfully. For practitioners, this bright-line rule provides clarity but also increases risk if negotiators are unaware of the prohibition or rely on AI-enabled transcription tools.

GC 25-08 (July 24, 2025): Salting Cases and Bona Fide Employment Interest

This memo clarifies that in refusal-to-hire salting cases, the General Counsel must prove by a preponderance of the evidence that the applicant had a bona fide interest in employment. The four-part showing now requires evidence that: (1) the employer was hiring or had concrete plans to hire; (2) the applicant had relevant qualifications or the employer's requirements were not uniformly applied; (3) anti-union animus contributed to the refusal to hire; and (4) the applicant genuinely sought employment. Employers benefit from a strong defense if they can show insincerity based upon the application or the applicant's conduct; unions must prepare a detailed evidentiary record to support their salts' claims and are responsible for providing evidence in the first instance.

GC 25-11 (Sept. 5, 2025): Section 10(j) Injunctions After *Starbucks v. McKinney*

GC 25-11 reaffirms the importance of Section 10(j) injunctions while instructing Regions to apply the Supreme Court's four-factor preliminary injunction standard articulated in *Starbucks v. McKinney*, 602 U.S. 339 (2024), to determine whether relief is appropriate. Injunctive relief is warranted where there is a likelihood of success on the merits, likelihood of irreparable harm absent relief, the balance of equities favors an injunction, and relief is in the public interest. The memo encourages Regions to promptly investigate and determine whether an injunction is warranted in cases that pose a high risk of remedial failure, such as discharges during organizing, first-contract bargaining violations, withdrawals of recognition, and successor refusals to bargain.

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