

FEDERAL LABOR UPDATES

NOTABLE NATIONAL LABOR RELATIONS BOARD CASES AND GENERAL COUNSEL MEMORANDA

1. THE BOARD'S 2025 QUORUM GAP AND ITS RESTORATION

Before we dive into the last year's key labor developments, it helps to know some background information about how we got here: specifically, the National Labor Relations Board's (NLRB) quorum gap and its subsequent restoration. The NLRB has five seats, and a President historically could only remove a member for neglect of duty or misconduct, not just because he'd like someone else in the chair (this underlies a larger legal challenge best saved for a Constitutional Law seminar). But the Board also needs at least three sitting members to actually do anything. Drop below three, and the Supreme Court has said the Board simply can't act. See *New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

That rule sounds like a technicality right up until it happens, which brings us to 2025, when it happened. At the time of President Trump's second inauguration, there were only three sitting members: David Prouty, Marvin Kaplan, and Gwynne Wilcox. President Trump removed Member Gwynne Wilcox on January 27, 2025 (see Constitutional Law seminar), and Marvin Kaplan's term ran out in August 2025, leaving the Board with David Prouty as the only member for most of the year, two votes short of a quorum. For nearly twelve months the agency couldn't issue decisions, rule on unfair labor practice complaints, or resolve contested election disputes, and reportedly hundreds of cases sat in a holding pattern. Still, everything else kept running in the meantime: Regional Offices still processed election petitions and investigated charges, and Administrative Law Judges (ALJs) still held hearings and issued decisions. All of this happening while there was (and is) a federal civilian hiring freeze in place, impacting the ability of the Regional offices to conduct the work of the agency.

As those cases processed as far as they could, everyone just had to wait for someone upstairs to sign off. That wait ended on December 18, 2025, when the Senate confirmed James Murphy and Scott Mayer, restoring a quorum for the first time in nearly a year with a 2-1 Republican majority. With three members, the Board still did not change precedent (including many major changes that came from President Biden's Board). The NLRB has a tradition to not make changes to precedent without a strong board (of at least four members). As such, the new majority largely stuck to processing non-controversial cases. That means Biden-era rulings like *Cemex* are still the law for now, whatever the current majority makes of them. This could be subject to change soon, as James Macy became the fourth member on August 17, 2026, making it a 3-1 Republican majority.



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Notably, the people who have served as NLRB Acting General Counsel and General Counsel have clearly signaled in interest in changing the Biden Board's legal approaches, revoking guidance memoranda, prosecutorial guidelines, and calling for cases that will challenge many of decisions that Board issued. Due to the backlog of cases at the NLRB and the current long processing times for new matters, it is unlikely these changes will be coming in the immediate future.

With this background in place, two important considerations follow:

- Quorum-based challenges to 2025 regional action likely won't work. The Trump 2 Board read Section 3(b) to let Regional Directors continue exercising their delegated authority even when the Board itself lacks a quorum, and the courts have agreed. The Board said as much this January in *Satellite Healthcare (Santa Rosa) & Serv. Emps. Int'l Union, United Healthcare Workers-W.*, 374 NLRB No. 25 (Jan. 15, 2026), turning away an employer's argument that a Regional Director couldn't rule on election objections or certify results while the Board was short-handed, and separately rejecting the theory that the Supreme Court's *Loper Bright* decision quietly undid the prior approval of that delegation.
- There's a smaller, lingering risk worth flagging too: if Wilcox's removal is ultimately found unlawful, decisions where her replacement took part could turn out to be vulnerable down the road. Both the litigation relating to her removal and the broader question of when a President can remove a Board member at all are still live issues.

KEY TAKEAWAYS

- Treat existing Board precedent as good law until the reconstituted Board actually changes it. While the NLRB's General Counsel(s) have worked to pave the way for precedent changes, that is not the same thing as changing the underlying law, however much it might feel that way.
- If you're sitting on a 2025 regional decision or certification you didn't love, a bare "there was no quorum" objection won't get you anywhere. Preserve the rest of your record instead.

2. NLRB DECISIONS: WHAT THE BOARD ACTUALLY DECIDED ONCE IT GOT MOVING AGAIN

Discipline, discrimination, and protected activity

***The Boeing Company and Society of Professional Engineering Employees in Aerospace, Affiliated with Int'l Fed'n of Pro. & Tech. Eng'rs, Local 2001*, 374 NLRB No. 20 (Jan. 27, 2025)**

Boeing laid off seven instructor pilots and outsourced their work not long after they voted against decertifying their union. That timing alone would make most labor lawyers nervous. But the Board reversed the ALJ and found no violation, because Boeing could point to actual paperwork from before the vote showing the move was coming regardless of how the election turned out.

KEY TAKEAWAYS

- Bad timing isn't fatal if you can prove the decision predates the protected activity. A same-decision defense under *Wright Line* still works when you've got the paper trail to back it up.
- Write down your business reasons before you act, not after, especially when the employees affected happen to be known union supporters. Contemporaneous documentation is what carried the day here.

St. Anthony Community Hospital and 1199 SEIU United Healthcare Workers East, 374 NLRB No. 77 (Mar. 26, 2026)

A hospital fired a union organizer for violating the Health Insurance Portability and Accountability Act (HIPAA) by looking into and disclosing patient information. A Board majority sided with the hospital, holding that *Wright Line* only requires a reasonable belief the employee did what she's accused of, not certainty. Her status as the union's lead organizer didn't buy her extra protection. The Board did draw one line, though: interrogating another employee about who the union "ringleader" was still violated Section 8(a)(1), regardless of how the discharge came out.

KEY TAKEAWAYS

- A well-documented misconduct case can beat a discrimination claim, even when the employee fired happens to be the union's most visible organizer.
- Ensure that your managers aren't asking others about who's really behind the union drive. That kind of interrogation is its own violation, separate from whatever else may be going on.

Floss N Gloss PA d/b/a Aqua Dental & Sandra Yvette Estrada, 374 NLRB No. 122 (June 1, 2026)

An employee sent an anonymous email in October 2022 raising concerns about working conditions. Ten days later, in a separate conversation, she also asked about bonuses. Four days after that, she was disciplined and fired, with the employer's story for why shifting along the way. The Board found that shifting story telling was enough on its own to establish an 8(a)(1) violation tied to the working-conditions email, and didn't need to decide whether the bonus conversation was protected too, though Member Prouty would have gone there. Being a difficult employee doesn't strip away the protection.

KEY TAKEAWAYS

- Before signing off on discipline, ask whether the employee's complaint might be protected concerted activity.
- If your story for why you disciplined someone changes over time, expect the Board to notice, and to read that shift as evidence you're covering for something else. Pick a reason, document it, and stick with it.

Lion Elastomers LLC and United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 228, 375 NLRB No. 41 (Sept. 23, 2026)

This one has been bouncing between the Board and the Fifth Circuit for years, and it just landed back on employers' side. Back in 2023, the Board used this case to overrule *General Motors* and revive the older, setting-specific *Atlantic Steel* test for deciding when abusive conduct during otherwise-protected activity loses the Act's protection. The Fifth Circuit vacated, finding the Board had gone beyond what the court's remand actually asked for and denied the employer a fair chance to weigh in before the standard changed. Back before the Board a second time, a three-member majority stopped short of overruling *Lion Elastomers* itself. They said the court's ruling means *General Motors* is the standard again, at least for deciding this kind of case. Member Prouty disagreed, arguing the court's decision only affects this one case and shouldn't be read as bringing back *General Motors* across the board. Either way, the underlying merits (i.e., whether the employer unlawfully threatened, disciplined, and fired a union activist) head back to the ALJ to be decided under *General Motors*.

KEY TAKEAWAYS

- *Wright Line* is the Board's usual test for whether discipline was motivated by protected activity, or whether you'd have taken the same action regardless. For years, though, misconduct that happened **during** protected activity (like a heated moment at the bargaining table or some choice words on the picket line) got pulled out and judged under a separate, setting-specific test instead, which weighed things like where the outburst happened, what it was about, how bad it actually was, and whether the employer provoked it. *General Motors* does away with that separate analysis: misconduct during protected activity is now just one more fact in the ordinary *Wright Line* motive question, not a freestanding test of its own.
- *General Motors*, and the *Wright Line* framework that comes with it (i.e., was the employee disciplined because of the protected activity, or would you have done the same thing anyway?) is the standard to plan around for now, not the more employee-friendly *Atlantic Steel* setting-specific test. That tracks how the Board has already been deciding cases like *Boeing* and *St. Anthony*, above.
- This case isn't fully settled. Only three members read it as broadly reviving *General Motors*, whereas Member Prouty would limit it to this one case, and the underlying merits still have to be decided by the ALJ. Don't be surprised if this standard gets relitigated again in the future.

Unilateral changes and the duty to bargain

GE Appliances, a Haier Company & Int'l Union of Elec., Elec., Salaried, Mach. & Furniture Workers Afl-Cio (Iue) Commc'ns Workers of Am., Afl-Cio (Cwa), Iue/cwa, Loc. 83761, 374 NLRB No. 47 (Feb. 24, 2026)

GE Appliances gave certain employees a pay bump without asking the union first. Despite being a benefit to the employees receiving the raise, legally speaking, it's a unilateral change and a midterm contract modification rolled into one, and the Board found both violated Section 8(a)(5). The company also sat on an information request for about a

month, which was its own separate violation. The Board declined the union's request to extend the raise to everyone in the unit, which would have been a genuinely novel remedy.

KEY TAKEAWAYS

- Section 8(d) doesn't care how generous the change is. Raising pay outside what the Collective Bargaining Agreement (CBA) allows, without notice and opportunity to bargain with the union, is still an unlawful midterm modification, business justification or not.
- Answer information requests promptly, communicate with the union on what time you will need, be reasonable in how long it takes depending on the complexity of the Requests for Information (RFI).

Starbucks Corporation & Workers United Labor Union Int'l, 374 NLRB No. 130 (June 5, 2026)

Starbucks started enforcing its existing dress code more strictly, without bargaining first, and then wrote up an employee under that stricter version. A divided Board found that conduct violated Section 8(a)(5). Starbucks tried to lean on Care One, which says an employer doesn't have to bargain over discipline issued under an already-established policy, but the Board wasn't buying it here: the established practice had been a quiet word, not a written warning, so ratcheting up to formal discipline under the case's facts was itself the unbargained change, under the general unilateral-change rule of *NLRB v. Katz*.

KEY TAKEAWAYS

- Enforcing a policy more strictly than you have in the past can create a bargaining obligation on its own, even if the policy's written language never changed.
- Consistent past practice is key. Know your own enforcement history before you lean on "past practice" as a defense. It has to align with what you did before.

Kroger Texas L.P. & United Food and Commercial Workers Local Union No. 455, AFL-CIO, 374 NLRB No. 113 (May 20, 2026)

When its CBAs expired, Kroger stopped collecting and remitting union dues under the dues-checkoff provisions those contracts contained. The Board said that violated Section 8(a)(5): a contract running out doesn't automatically end the dues obligation.

KEY TAKEAWAYS

- Contract expiration alone doesn't get you out of dues-checkoff. Don't assume it does.
- Before you stop deducting dues, check the actual CBA language and current Board law, and put dues-checkoff on your checklist for every bargaining hiatus or successor situation.

Anheuser-Busch, LLC, & Int'l Brotherhood of Teamsters Local 947, 374 NLRB No. 133 (June 12, 2026)

On remand from the Eleventh Circuit, the Board found an 8(a)(5) violation after Anheuser-Busch tried to force a represented employee into arbitration under a company dispute-resolution program that, by its own terms, excluded anyone covered by a CBA. Applying that program to a union employee was itself an unlawful unilateral change, so the Board made the company withdraw the arbitration motion, reimburse the employee's legal expenses with interest, and post a notice. The Eleventh Circuit had earlier tossed the Board's First Amendment reasoning and sent the case back.

KEY TAKEAWAYS

- Read your own dispute-resolution programs before you invoke them. If the fine print excludes bargaining-unit employees, applying it to one anyway is a unilateral change, not a technicality.
- Even a "procedural" change to how disputes get resolved can trigger a Section 8(a)(5) problem.

Information requests

Gretna Racing, LLC d/b/a Magic City Casino, & Unite Here Local 355, AFL-CIO, 374 NLRB No. 106 (May 7, 2026)

A union asked to see video of an incident that had led to discipline and a grievance. The employer said no, first on relevancy grounds on the basis that it had not relied on the video when deciding to impose discipline, and only raised a conclusory confidentiality objection months later without specifically establishing that the video was actually confidential and why. The Board called that an 8(a)(5) violation and wasn't persuaded by the argument that the request was moot just because the grievance was technically still pending.

KEY TAKEAWAYS

- If you don't have a real legal objection, ensure that you produce or address information tied to discipline and grievances promptly.
- If you think a request is irrelevant, overbroad, or confidential, say so and talk to the union about alternatives instead of just going quiet.

Stericycle, Inc., & Teamsters Union Local No. 628, 374 NLRB No. 121 (June 1, 2026)

The union asked for Stericycle's own bargaining-session notes on how to administer attendance discipline after a company representative claimed the notes backed the company's reading of a disputed contract provision. In a supplemental decision, the majority left *Stericycle I*, 370 NLRB No. 89 (2021), alone and affirmed dismissal of the allegation over bargaining notes. Member Prouty would have gone further and applied the ordinary information-request standard instead of treating bargaining notes as categorically privileged.

KEY TAKEAWAYS

- Bargaining notes stay generally privileged under current Board law. That's the majority's position, not Member Prouty's case-by-case alternative, so don't mix the two up.
- While Prouty is a Democratic member, and will stay in the minority under a Republican administration, consider his dissent a preview, not a footnote. Expect this issue to come back around.

Recognition, decertification, and successorship

Century Linen & Uniform, Inc., & Rochester Regional Joint Board, Local 368, 374 NLRB No. 91 (Apr. 7, 2026)

This one reads like a greatest-hits compilation of decertification mistakes. The employer helped a supervisor solicit signatures for a decertification petition, then used that tainted petition to withdraw recognition. Add in the following additional allegations supporting the Board's decision: improper restricted union access, a unilateral wage increase, an unlawful interrogation, telling employees the union was "gone," and retaliating against an employee for testifying under a Board subpoena. Altogether, you get a long list of violations out of a fairly compressed timeline.

KEY TAKEAWAYS

- Don't draft, circulate, solicit signatures for, or otherwise meaningfully help employees in a decertification petition process. Full stop.
- Route any withdrawal of recognition questions through labor counsel first. A handful of individually defensible-seeming decisions, made during an active campaign, can add up to serious liability once a judge looks at them together.

ADT, LLC, & International Brotherhood of Electrical Workers, Local Union No. 369, AFL-CIO, 374 NLRB No. 104 (May 5, 2026)

This is *Century Linen's* cousin, and arguably worse: unlawful withdrawal of recognition, a laundry list of unilateral changes (wages, overtime, job titles, pay periods, leave, attendance, benefits), decertification assistance, promised benefit improvements, direct dealing, failing to deduct and remit dues both during and after the CBA's term, and information-request failures.

KEY TAKEAWAYS

- Getting involved in a decertification effort is one of the fastest ways to rack up 8(a)(1) and (5) exposure. Employers carry great risk moving through these processes.
- Review every change you're planning both before and after a union loses recognition as a package—not just policy by policy. What looks minor in isolation can look coordinated in hindsight.

Parking Systems Plus, Inc., & Local 1102, Retail Wholesale and Department Store Union, United Food and Commercial Workers, 374 NLRB No. 123 (June 9, 2026)

The Board found the employer was a Burns successor, which means it took over the predecessor's operations in substantially the same form and hired most of its workforce from the predecessor's employees. Under *NLRB v. Burns Int'l Security Services, Inc.*, 406 U.S. 272 (1972), that status creates a duty to recognize and bargain with the incumbent union, even though a successor isn't automatically bound by the predecessor's contract terms. Here, the Board held that the new employer told the predecessor's employees they wouldn't be hired because they were unionized, then refused to hire them for exactly that reason. On top of that, it refused to recognize and bargain with the union and rolled out different starting terms than the predecessor had used.

KEY TAKEAWAYS

- Do your successorship analysis before you take over operations, not after someone asks why the old union isn't at the table.
- Screen your hiring decisions during a transition for anything that looks union-related. Discriminatory hiring here can trigger both a bargaining obligation and a monetary remedy.

JSK Parsippany/Fairfield Inn & Suites by Marriott & Fairfield Parsippany, LLC d/b/a Fairfield Inn & Suites by Marriott As Its Successor & Hotel & Gaming Trades Council, Afl-Cio & Eric Vasquez, 374 NLRB No. 124 (June 4, 2026)

Same successorship playbook as above, dialed up: the Board found the new employer refused to hire six union supporters from the former employer specifically to dodge successorship, fired others once they'd been on the job, refused to recognize and bargain with the union, and changing mandatory terms unilaterally. The Board made the successor make the union whole for the dues it never deducted.

KEY TAKEAWAYS

- Address successorship questions before you close a deal or take over operations and get labor counsel and transactional counsel talking to each other early.
- Successor liability doesn't stop at recognition and bargaining. Discriminatory hiring decisions can result in painful remedies.

Solicitation, surveillance, workplace rules, and union activity

Amazon.com Services Inc., & Connor Vincent Spence Amazon.com Servs. Inc. & Natalie Monarrez Amazon.com Servs. Inc. & Derrick Palmer Amazon.com Servs. Inc. & Amazon Lab. Union, 374 NLRB No. 138 (July 2, 2026)

Amazon's written policy actually allowed union literature to be handed out during nonwork time in nonwork areas. Despite this, contracted security guards, found by the Board to be acting as Amazon's agents, barred an employee from doing exactly that, watched and photographed the union activity, and confiscated literature, creating a textbook impression of surveillance along the way. Managers and HR later imposed their own restrictions, and the Board found Section 8(a)(1) violations across the board.

KEY TAKEAWAYS

- You can be on the hook for what agents and employees do relating to union activity. Brief everyone, security and other agents included, before an organizing campaign heats up.
- Having a lawful policy on paper doesn't help if the people enforcing it on the floor haven't gotten the memo. The liability here came from deviating from a good policy, not from applying a bad one inconsistently.

Whole Foods Market, Inc., & Savannah Kinzer, Suverino Frith, Lylah Styles, Abdulai Barry, Kirby Burt, Lylah Styles, Abdulai Barry, Kirby Burt, Kayleb Candrilli, Leea Mary Kelly, Truman Read, Haley Evans, Justine Oneill, Jolina Christie, Sarita Wilson, Camille Tucker-Tolbert, Cassidy Visco, Yuri London, Ana Belen Del Rio Ramirez, & Christopher Michno, 375 NLRB No. 20 (July 31, 2026)

Whole Foods barred employees from wearing "Black Lives Matter" or "BLM" apparel during working time, and the Board unanimously found no 8(a)(1) violation there, reasoning that the display didn't connect closely enough to the employees' actual terms and conditions of employment to count as protected. A separate piece of the case went the other way for the employer, though only on a technicality: the Board reversed, 2-1, the ALJ's finding that the underlying dress-code rule itself was unlawful, because a prior settlement agreement already barred relitigating that question. Member Prouty dissented on that point.

KEY TAKEAWAYS

- In a move away from recent case law on this point, the Board is articulating that not every social or political message an employee wears to work is protected. There is nuance here, however, and employers should walk carefully if social or political messaging is connected to union logos and/or actions while the case law remains split.
- Ask whether it actually connects to working conditions or union activity before you discipline over it.
- A prior settlement covering the same rule can block a do-over on the same merits later. If you've settled a similar charge before, dig up that settlement before assuming you're starting from scratch.

Ralphs Grocery Company, & Terri Brown, 375 NLRB No. 25 (Aug. 10, 2026)

Ralphs' mandatory arbitration policy told employees they could keep the content and outcome of any arbitration confidential, which the Board said was fine. What wasn't fine: the policy also stopped employees from saying an arbitration had happened at all. On remand from the Ninth Circuit, the Board found that broader gag unlawful, while crediting the policy's savings clause with adequately preserving employees' access to the Board.

KEY TAKEAWAYS

- Keep arbitration confidentiality provisions narrow. Barring employees from confirming that an arbitration even occurred, separate from what was said in it, is where this one crosses the line.
- A clear, prominent savings clause pulls a lot of weight. It's what kept employees from reading this policy as blocking them from going to the NLRB.

Representation and bargaining after certification

***Asante d/b/a Asante Rogue Regional Medical Center, & Oregon Nurses Association*, 374 NLRB No. 127 (June 3, 2026)**

A straightforward test-of-certification case: the Board found an 8(a)(5) violation for refusing to recognize the union or bargain, noting the employer's certification arguments had already been raised and rejected, or could have been raised, back in the representation proceeding, with nothing newly discovered to justify a second look.

***Walgreens Company, & the Pharmacy Guild Affiliated with Int'l Association of Machinists and Aerospace Workers*, AFL-CIO, 375 NLRB No. 14 (July 27, 2026)**

Same story, different employer: summary judgment against Walgreens on an 8(a)(5) violation, with the Board waving off its supervisory-taint and captive-audience arguments as issues that were, or could have been, litigated during the representation proceeding.

KEY TAKEAWAYS FOR BOTH CASES

- If you've got objections to an election or a certification, raise them and litigate them during the representation case itself. A later unfair labor practice proceeding almost never gives you a second bite at the apple.
- Treat the representation case as your one real shot at fighting the election outcome. Everything else is playing catch-up.

3. FEDERAL APPELLATE REVIEW: WHAT THE COURTS HAD TO SAY

The fate of *Cemex* and the successor bar

With the Board mostly sidelined since inauguration, the real action on the merits came from the courts of appeals, several of which took a fresh look at Board doctrine using the de novo review that *Loper Bright* now requires.

***Brown-Forman Corp. v. NLRB*, 169 F.4th 646 (6th Cir. Mar. 6, 2026)**

The Sixth Circuit became the first court of appeals to take a swing at the Board's *Cemex* bargaining-order framework, and it landed one. The court agreed the underlying unfair labor practices were supported by substantial evidence, but held that "the *Cemex* standard was created through an improper exercise of the Board's adjudicatory authority" and so couldn't support a bargaining order. The court granted review, denied enforcement, and sent the case back.

KEY TAKEAWAYS

- *Cemex* is still standing everywhere else for now. Separately, in *St. John's College*, 374 NLRB No. 72 (Mar. 25, 2026), the Board clarified that *Cemex's* timeliness rule (file "promptly," meaning roughly two weeks, not the 14 business days one Regional Director mistakenly applied) only determines whether a prompt Representation Petition (RM) petition shields an employer from 8(a)(5) liability. It doesn't require dismissing an otherwise proper RM petition just because it came in later. With a board of only three members at the time, Members Murphy and Mayer were careful not to weigh in on whether *Cemex* itself was rightly decided.
- If a union demands recognition, you should still move quickly on whether to recognize it or file an RM petition. But know that the *Cemex* bargaining-order default is now genuinely contested: rejected in the Sixth Circuit, currently untouched everywhere else.

***Hospital Menonita de Guayama, Inc. v. NLRB*, 183 F.4th 745 (D.C. Cir. July 21, 2026)**

On remand from a Supreme Court GVR (short for "grant, vacate, and remand," which is the Court's way of sending a case back for another look in light of a new decision) after *Loper Bright*, the D.C. Circuit struck down the Board's "successor bar," the rule that had forced a new business owner to recognize and bargain with an incumbent union for up to a year, whether or not that union still had majority support. Reviewing the statute with no deference to the Board, the court held the bar violates Sections 7 and 9 by putting employees' freedom of choice on hold. The court denied enforcement.

KEY TAKEAWAYS

- A successor employer can now contest an incumbent union's majority status. The automatic one-year successor bar is dead, at least in the D.C. Circuit. However, the Board hasn't given up yet: it has petitioned for rehearing en banc, arguing *Loper Bright* doesn't strip the Board of its authority to fill gaps in the statute. This is worth keeping an eye on before you rely on this too heavily.
- Courts are using *Loper Bright's* fresh-eyes review to revisit doctrine the Board has relied on for years. If you've got a statutory-authority argument sitting in your back pocket, this is the moment to preserve it for appeal.

4. GENERAL COUNSEL GUIDANCE AND RULEMAKING

Rescission of Biden-era guidance and enforcement priorities

GC 25-05 (Feb. 14, 2025)

On February 14, 2025, then NLRB Acting General Counsel William B. Cowen wiped out nearly all of the Biden-era's GC prosecutorial memos in one swing, covering severance non-disparagement and confidentiality clauses, expanded consequential damages, non-competes, "stay-or-pay" and non-solicit provisions, and electronic monitoring. All Biden-era case law, including *McLaren Macomb*, 372 NLRB No. 58 (2023), and *Stericycle*, 372 NLRB No. 113 (2023), are still binding Board law.

GC 26-03 (Feb. 27, 2026)

General Counsel Crystal Carey's approach is noticeably friendlier to employers: settle rather than litigate where you can, save "enhanced remedies" like notice readings, apology letters, and nationwide postings for genuinely egregious or repeat offenders, and go after only the clear, facial rule violations, like an outright ban on discussing wages, rather than every borderline policy. Carey also confirmed her office won't push to overturn *Ex-Cell-O Corp.* (no financial make-whole for pre-certification refusals to bargain), *Care One at New Milford* (discretionary discipline before a first contract), or *Caesars Entertainment* (employer email and IT restrictions).

Captive-audience meetings

Late in 2024, the Biden Board overruled *Babcock & Wilcox* and held that mandatory anti-union meetings violate Section 8(a)(1), while still allowing genuinely voluntary meetings with advance "safe harbor" assurances (*Amazon.com Services LLC*, 373 NLRB No. 136 (Nov. 13, 2024)). That holding only applies going forward, and it remains Board law, though it's a candidate for reconsideration if the Board's composition shifts again.

Reinstated 2020 joint-employer standard (effective Feb. 27, 2026)

After a federal court vacated the 2023 joint-employer rule, the Board went back to the 2020 standard at 29 C.F.R. § 103.40: an entity is a joint employer only if it actually possesses and exercises "substantial direct and immediate control" over at least one essential term of employment, things like wages, benefits, hours, hiring, discharge, discipline, supervision, and direction. The Service Employees International Union (SEIU) is separately challenging the 2020 rule in the D.C. Circuit, so don't get too comfortable with the change.

Division of Advice memoranda narrowing *McLaren Macomb* (June 26, 2026)

Three Division of Advice memos point the same direction: a narrower view of what Section 7 actually reaches. In *BAYADA Home Health Care* (No. 27-CA-341402), a post-employment non-solicitation clause and a standard cooperation clause were both found lawful, largely because they only kicked in after employment ended. In *Biotricity* (Cases 08-CA-326334, et al.), a non-compete survived because the General Counsel's office doesn't think non-competes generally touch Section 7 rights at all, following the rescission of GC 23-08. And in *Sutherland Global Services*, secretly recording a meeting wasn't automatically protected on its own; the recording itself still has to further some group action or mutual aid to count.

Early post-quorum Board signal

In *Longmont United Hospital*, 374 NLRB No. 52 (Feb. 26, 2026), the freshly reconstituted Board declined to overrule *Ex-Cell-O* and turned down the General Counsel's request for an expanded "lost bargaining opportunity" make-whole remedy in a test-of-certification refusal-to-bargain case. The reasoning: compensatory damages would make it too costly for an employer to exercise its one real path to judicial review of a certification, and Section 8(d) doesn't let the Board force parties into an agreement.

KEY TAKEAWAYS

- Federal exposure for separation agreements, non-solicits, and non-competes has eased up at the enforcement level, but the underlying law hasn't moved. *McLaren Macomb* and *Stericycle* are still good Board law, and states like California may restrict these provisions regardless of what the NLRB is doing.
- Going back to the 2020 joint-employer test gives franchise and staffing relationships more breathing room, at least until the D.C. Circuit rules on the pending challenge.
- If the prior administration was pushing for enhanced remedies against you, check whether those requests are actually being withdrawn under GC 26-03. Don't just assume it.

LOOKING AHEAD

None of this is static. The Board is back to a quorum but still short a full slate, the General Counsel's priorities can shift again with the next administration, and at least two courts of appeals are now openly questioning doctrine the Board has leaned on for years. Accordingly, it's important to pay close attention to labor updates in the months ahead.

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