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NLRB Pulls a U-Turn on Remedial Relief in Settlement Agreements: New GC Issues Guidance Encouraging Efforts at Settlement

Labor Relations Update on **May 22, 2025**

On May 16, 2025, the National Labor Relations Board's ("NLRB") Acting General Counsel, William B. Cowen, issued Memorandum GC 25-06, titled "Seeking Remedial Relief in Settlement Agreements," that significantly loosens the requirements before NLRB Regions to approve settlements of unfair labor practice charges.

The Memorandum comes on the heels of Cowen's February 14, 2025, Memorandum GC 25-05 which rescinded dozens of memos issued by his predecessor, former General Counsel Jennifer Abruzzo, including four memos requiring Regions to seek "full remedies" in settlement agreements. Former General Counsel Abruzzo indicated that this "full remedy" could include back pay, front pay, consequential damages "attributable" to the unfair labor practice, limitations on non-admission clauses, and extensive notice postings. For more information on these former settlement priorities, please see our prior blog post.

Acting GC Cowen's guidance is a sharp departure from prior mandate to seek "full remedies." GC 25-06 cautions that "if [the Board] attempt[s] to accomplish everything, we risk accomplishing nothing," and reiterates to Regions that "diligent settlement efforts should be exerted in all…cases." This is particularly important because, as the memo highlights, since 2019 anywhere from 96% to 100% of unfair labor practice charges were resolved through settlement.

To this end, GC 25-06 provides the following guidance to Regions – and parties – interested in drafting and entering settlement agreements to resolve pending unfair labor practice charges:

- Default Language: The Memo limits the need to include default language regarding a parties' failure to comply with the agreement to only those cases where such language is appropriate, such as when dealing with a recidivist violator, installment

arrangement, or liquidated damages.

- Non-Admission Clauses: Except for recidivist violators, the Memo expands the ability for the parties to include non-admission of liability clauses in settlement agreements, particularly before a Region has engaged in substantial trial preparation.
- Unilateral Settlements: Regions may again use their discretion to approve unilateral settlements – i.e., settlements where the charging party does not consent. Previously, Regions needed to solicit the NLRB Division of Advice's recommendation prior to approving such settlements.
- Make-Whole Relief: While the Memo recognizes that Regions should continue to attempt to secure a full remedy for individuals, Regional Directors now have the discretion to approve settlements that provide for less than 100 percent of the total amount that could be recovered if the Region fully prevailed in litigation. Settlements that provide for less than 80 percent of the "relief reasonably anticipated to be recoverable" after litigation – a standard that is not further defined in the Memo – must be authorized by the NLRB Division of Operations-Management.

Acting GC Cowen also used the Memo to explain his interpretation of the Board's decision in *Thryv, Inc*., 372 NLRB No. 22 (2022) (previously discussed here), which expanded the scope of remedies for ULPs by concluding that in all cases where make-whole relief is included as a remedy, the Board will order that "respondent compensate affected employees for all direct and foreseeable pecuniary harms."

The Memo notes that the *Thryv* majority opinion did not address what a "direct or foreseeable pecuniary harm" is, expressly disclaiming a comparison to remedies awarded in tort cases. Cowen expressed his reliance on the dissent's standard that foreseeable harms are those "where the causal link between the loss and the unfair labor practice is sufficiently clear." Though not binding on the Board in future cases, this narrower formulation helps Regions and parties understand the standard that Regions will likely use to assess if the settlement proposed can be approved under the Acting GC's new guidance.

Takeaways

This Memo represents an expected about-face from former General Counsel's Abruzzo prior focus on securing complete make-whole relief in settlement discussions for alleged employer violations of the Act. The Memo takes a far broader view of the importance of seeking settlements in order to permit the NLRB to utilize its limited resources, by loosening the prior requirements that made it more difficult for employers to settle ULP charges.

Although Acting GC Cowen may soon be replaced at the Board as President Trump has nominated Crystal Carey to serve as the next NLRB GC, we expect this policy shift will remain in effect to some degree during the next GC's tenure.

Finally, it is always important to remember that, unlike NLRB precedent or rulemaking, GC Memoranda—like the one discussed here—do not have the effect of changing the law, and, therefore, the Acting GC's interpretation of *Thryv, Inc.* is not binding on the Board or courts. However, the GC Memoranda still provide important insight into the GC's policy agenda and guidance on the manner in which Regions will review, draft and approve settlements.

We will continue to monitor developments at the NLRB.

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