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No Harm, No Foul? – NLRB and DOL Simultaneously Issue Directives to Relax Scrutiny in Certain Agency Investigations

Labor Relations Update on **March 2, 2026**

On February 27, 2026, the National Labor Relations Board's ("NLRB" or the "Board") General Counsel, Crystal Carey, issued General Counsel Memorandum 26-03 ("GC 26-03"), which provides directives to NLRB Regional Offices concerning unfair labor practice ("ULP") case processing. Among other things, GC 26-03 encourages Regional Offices to be less aggressive in policing alleged violations of Board law with respect to workplace rules.

Shortly before Carey issued GC 26-03, the Department of Labor's ("DOL") Solicitor of Labor, Jonathan Berry, issued a memorandum to the DOL's Office of the Solicitor, instructing agency attorneys not to prioritize allegations of labor violations occurring in union workplaces. As reported by Bloomberg Law, the memorandum was issued internally meaning copies of the memorandum have not been made available to the public.

These memoranda signal the early stages of the Trump administration's pursuit of certain policy changes to federal labor and employment law after just over one year in office.

The NLRB's New Approach to Cases Alleging Unlawful Workplace Rules

Of particular significance to employers, Carey instructed Regional Offices to dial back the investigation and prosecution of ULP charges based "solely" on the maintenance of some potentially unlawful workplace rule or policy.

As we reported here, under the Biden administration, the Board established a strict standard for evaluating workplace rules in *Stericycle, Inc.*, 372 NLRB No. 113 (2023). Under *Stericycle*, a workplace rule is presumptively unlawful where it *could* be interpreted to chill the exercise of employee rights protected by Section 7 of the National Labor Relations Act ("NLRA" or the "Act").

GC 26-03 relaxes the NLRB's scrutiny by instructing Regional Offices to prioritize cases where the challenged rule is facially unlawful. As an example of a "clear, facial violation[]," Carey pointed to outright bans on discussing wages among employees – an unquestionable violation of the Act – illustrating that her instructions to the Regional Offices are to focus primarily on the most egregious and overt violations. Regional Offices should refrain from finding a rule unlawful due solely to vagueness or ambiguity and should consider the Charged Party's industry context and business justifications. Where there is no evidence that the challenged rule was ever enforced or had some "actual" impact on employees, Regional Offices should promptly seek settlement requiring only modification or rescission of the rule. Absent settlement, these maintenance-only ULP charges may be dismissed.

NLRB GC Endorses and Expands Upon Prior Guidance

Carey also endorsed prior memoranda issued by former Acting General Counsel William Cowen, including his rescission of certain Biden-era guidance (report here), as well as his guidance on surreptitious recording of bargaining sessions (reported here), salting cases (reported here), and deferrals of ULP cases (reported here).

As we reported here, Cowen relaxed approval requirements for ULP settlement agreements by authorizing Regional Offices to approve settlements with non-admission language, without Charging Party approval, and without the "full" monetary relief previously required under *Thryv, Inc.*, 372 NLRB No. 22 (2022) (reported here). Carey endorsed this guidance and further directed Regional Offices to approve settlements in *all* ULP cases and discouraged "enhanced remedies" such as notice readings and apology letters.

Carey also expanded on ULP case handling procedures promulgated by Cowen late last year, which require Charging Parties to submit factual support within two weeks of a Regional Office request (reported here). Under GC 26-03, request for evidence letters should not be sent to the Charged Party unless the Regional Office first determines that the Charging Party's submission "suggests a prima facie case." Regional Offices should also narrow these requests to "specific" and "relevant" evidence necessary to make a determination on the merits.

Finally, Carey discouraged Regional Offices from seeking either party's position on injunctive relief under Section 10(j) of the Act absent an indication that such relief is necessary. Carey explained that these protocols will allow the NLRB to "concentrate investigative resources where they have the greatest impact."

DOL Encourages Agency to Prioritize Non-Union Workplaces

In an internal memorandum, Bloomberg reported that Berry instructed DOL attorneys to prioritize enforcement of labor and employment laws in non-union workplaces. According to Berry, unions are better positioned to address putative harms to workers in unionized workforces. He noted, however, that this approach should be adopted flexibly, particularly where the union is falling short of its duty of fair representation or where contractual remedies are inadequate.

Berry's memorandum reflects a broader philosophical shift toward limiting federal intervention where private mechanisms—such as collective bargaining agreements and grievance procedures—exist to address workplace disputes. This approach may result in reduced DOL enforcement activity in unionized settings, leaving unions as the primary avenue for workers seeking redress. Employers with unionized workforces may see fewer DOL investigations, but should remain vigilant about compliance, as the memorandum does not eliminate DOL authority in these contexts.

Takeaways

Both agency memoranda indicate a relaxation of investigation and enforcement is on the horizon. Carey's call for restraint—particularly regarding allegations of unlawful workplace rules—is consistent with enforcement approaches under prior Republican administrations. While employers must continue to comply with Board law, Carey's directive to focus resources on more overt violations should reduce the risk of technical violations.

From a practical standpoint, employers should consider the following: First, while the NLRB's enforcement posture is softening, *Stericycle* remains binding precedent, and employers should continue to review workplace policies for compliance. Second, the emphasis on settlement may provide employers facing ULP charges with opportunities to resolve matters quickly and without enhanced remedies. Third, non-union employers should be aware that the DOL may increase its focus on their workplaces as resources shift away from unionized settings. Finally, these memoranda represent agency guidance rather than changes in substantive law, meaning a future administration could reverse course. Employers should take advantage of the current enforcement climate while maintaining compliant policies for the long term.

Related Professionals

- **Daniel H. Dorson**
  Associate
- **Joshua S. Fox**
  Partner
- **Jurate Schwartz**
  Senior Counsel
- **Laura M. Fant**
  Special Employment Law Counsel
- **Michael J. Lebowich**
  Partner
- **Michael S. Kratochvil**
  Associate