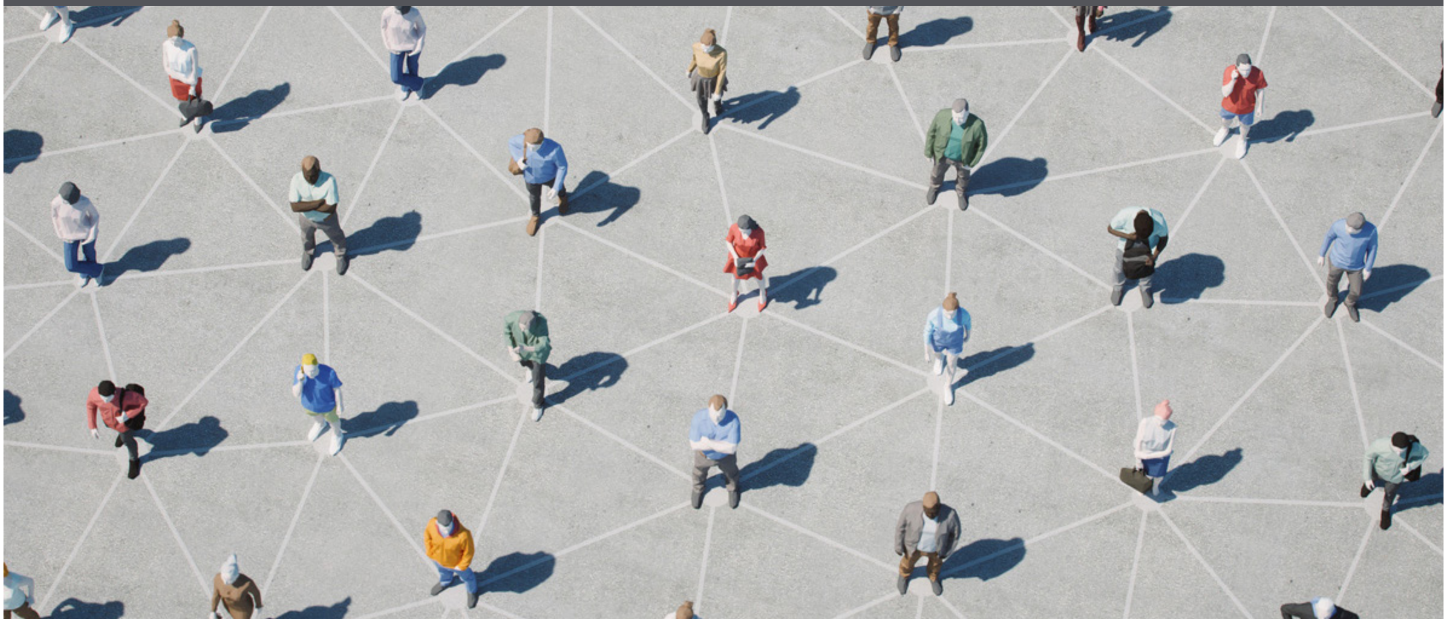

SEPTEMBER 1, 2026

NLRB General Counsel Issues Memorandum Outlining Top Priorities

The National Labor Relations Board's ("NLRB") General Counsel, Crystal Carey, drew applause, as well as some criticism, earlier this year when she departed from her predecessors by declining to issue a "Mandatory Advice Memo"—a memorandum that would have outlined her litigation priorities and identifying caselaw she wished to overturn by instructing the NLRB's regional offices to submit all such cases to the agency's Division of Advice. Instead, in January 2026, she issued a memorandum declaring her top priority as tackling the NLRB's historic case backlog.

Timed to coincide with the recent confirmation of James Macy as the Board's third Republican appointee, it appears that the General Counsel is prepared to declare a victory, of sorts, over the federal watchdog's backlog and to press forward with efforts to overturn Union-friendly precedent—much of which was issued during the latter half of the Biden Administration. Traditionally, the NLRB's five-member quasi-judicial Board overturns prior precedent where it has three votes in favor of doing so. Member Macy's confirmation earlier this month provided the Board with just such a majority.

On August 26, 2026, the General Counsel issued Memorandum GC 26-04 touting the NLRB's impressive progress toward reducing its case backlog. While acknowledging the management-side bar's criticism of her early decision not to make the overturning of precedent her top priority, General Counsel Carey highlighted recent stances she has taken in favor of doing just that. The General Counsel announced that she has already argued in litigation for a return to more employer-friendly precedent in areas such as captive audience meetings, work rules, predictions on the impact of unionization, dress codes, and the standard for finding that a union has waived its right to bargain over certain employer decisions.

In addition, the General Counsel forecasted challenges to even more Biden-era precedents, including:

- *Cemex Construction Materials Pacific, LLC*, 372 NLRB No. 130 (2023) (lowering the threshold for issuing bargaining orders in response to unfair labor practices by an employer during union organizing drives);

- *Wendt Corporation*, 372 NLRB No. 135 (2023) (limiting an employer's ability to take unilateral action consistent with past practice during negotiations for a first collective bargaining agreement ("CBA"));

- *Valley Hospital Medical Center, Inc.*, 371 NLRB No. 160 (2022) (holding that an employer's obligation to check off and remit employee dues to a union survives the expiration of a CBA); and

- *Thryv, Inc.*, 372 NLRB No. 22 (2022) (expanding the type of monetary relief available to employees who are discharged in violation of the National Labor Relations Act).

In an effort clearly aimed at avoiding the creation of a logjam as a result of these initiatives, General Counsel Carey instructed the NLRB's regional offices to continue investigating and prosecuting cases consistent with current Board law and simply notify the Office of the General Counsel of cases that invoke precedent she has expressed an interest in overturning.

KEY TAKEAWAY

General Counsel Carey's memorandum signals that she is interested in returning labor law to the pre-Biden Board era and shifting it further in favor of employers. Now that the Board has three Republican appointees, General Counsel Carey appears interested in presenting them with opportunities to reclaim prior precedent, but she insists that doing so will not come at the expense of her initiative to increase the NLRB's case processing speed and reduce its historic backlog. While not contained in the Memorandum, our experience also suggests a "back to basics" approach that will give priority to the most time-sensitive cases, including unfair labor practice charges that are blocking pending union elections.

For more information or assistance, please contact Daniel J. Sobol, Brandon S. Shemtob, David G. Rodriguez, or another member of Blank Rome's Labor & Employment group.

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