

Rescinded Guidance: Unpacking NLRB Acting General Counsel Cowen's Policy Overhaul

Article By:

Thomas M. Stanek

Zachary V. Zagger

In one of his first acts in his new role, National Labor Relations Board (NLRB) Acting General Counsel William B. Cowen rescinded dozens of general counsel memoranda issued by his predecessor, former General Counsel Jennifer Abruzzo, as part of a reshaping of policy priorities at the NLRB under the Trump administration. Here is a comprehensive breakdown of all of the rescinded memoranda and their impact.

Quick Hits

- The new NLRB acting general counsel tapped by President Donald Trump rescinded twenty-nine prior general counsel memoranda, most of which were issued by his predecessor who served during the Biden administration.
- The rescinded memoranda included guidance on major labor issues, such as remedies, the legality of noncompete agreements and other restrictive covenants, mandatory employer meetings, and the status of college athletes.

In [Memorandum GC 25-05](#), issued on February 14, 2025, Acting General Counsel Cowen rescinded twenty-nine prior general counsel memoranda (GC memos) and tabbed some for review and potential rescission. The memorandum further outlined his commitment to supporting NLRB regional offices by providing further guidance on the optimal allocation of NLRB resources.

In a statement announcing GC 25-05, the acting general counsel acknowledged the increasing backlog of cases, noting that it has reached an unsustainable level: "The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing," he said.

Here is a list of the rescinded general counsel memoranda with a summary of the topics covered.

Rescinded Memoranda

GC 21-02 "Rescission of Certain General Counsel Memoranda"

GC 21-02 set forth the rescission of multiple GC memos issued by former General Counsel Peter Robb that were allegedly inconsistent with current policies and Board law or no longer necessary. The rescinded GC memos include guidance on handbook rules, motions to intervene by decertification petitioners, duty of fair representation charges, and deferral under *Dubo Manufacturing Company*.

GC 21–03 “Effectuation of the National Labor Relations Act Through Vigorous Enforcement of the Mutual Aid or Protection and Inherently Concerted Doctrines”

GC 21-03 expanded the scope of protected concerted activity (PCA), considering actions, even if taken by a single employee, as protected if they were clearly related to broader workplace concerns and representative of a collective interest. The memorandum took the position that concerted discussions about workplace conditions, wages, job security, health and safety, and racial discrimination, are inherently PCA, even if these activities are not explicitly connected to immediate workplace concerns, involve only initial conversations among employees, or involve only one person speaking, and others merely listening.

GC 21–04 “Mandatory Submissions to Advice”

GC 21-04 was the first issued by former General Counsel Abruzzo and served as a roadmap for her intent to depart from her predecessor’s priorities and target cases and initiatives from the NLRB under President Trump’s first term, which overruled NLRB precedent during the Obama administration.

GC 21–08 “Statutory Rights of Players at Academic Institutions (Student–Athletes) Under the National Labor Relations Act”

GC 21-08 argued that the term “student–athlete” is misleading and should be replaced with “players at academic institutions” because college athletes meet the definition of “employee” under the NLRA.

GC 22–06 “Update on Efforts to Secure Full Remedies in Settlements (Revised Attachment)”

[GC 22-06](#) authorized and encouraged the NLRB regional offices to seek judgments to force employers to comply with the specific terms of settlement agreements in unfair labor practice (ULP) cases.

GC 23–02 “Electronic Monitoring and Algorithmic Management of Employees Interfering with the Exercise of Section 7 Rights”

[GC 23-02](#) addressed electronic monitoring, including tracking movements, recording conversations, and monitoring computer activity. The memorandum contended such activities could deter employees from engaging in protected concerted activities. The memorandum also addressed concerns about algorithmic management systems that could be used to unfairly discipline or disadvantage employees based on data collected through monitoring, potentially impacting their ability to exercise their rights under Section 7 of the National Labor Relations Act (NLRA).

GC 23–04 “Status Update on Advice Submissions Pursuant to GC Memo 21–04”

In GC 23-04, former General Counsel Abruzzo outlined fifteen issues that she wanted the NLRB

regional offices to submit to Advice, including the scope of PCA, strikes, remedies, information requests, and expanding the NLRA's coverage.

GC 23–05 “Guidance in Response to Inquiries about the McLaren Macomb Decision”

[GC 23-05](#) attempted to clarify the Board's February 2023 [McLaren Macomb](#) decision, which found that nondisparagement and confidentiality provisions in severance agreements were unlawful, interpreting the decision to apply retroactively to agreements already signed and to mean that claims would not be time-barred as long as an employer maintains or enforces such terms.

GC 23–08 “Non–Compete Agreements that Violate the National Labor Relations Act”

[GC 23-08](#) declared that the “proffer, maintenance, and enforcement” of noncompete agreements and other restrictive covenants in employment contracts and severance agreements violate the NLRA. The memorandum explained the former general counsel's position that noncompete agreements are overbroad in violation of Section 8(a)(1) to the extent they “reasonably tend to chill employees” from engaging in protected NLRA Section 7 activity.

GC 24–04 “Securing Full Remedies for All Victims of Unlawful Conduct”

GC 24-04 directed regions to “seek full make-whole remedies for all employees harmed as a result of an unlawful work rule or contract term,” not just those explicitly named in a ULP charge. The memorandum explained the former general counsel's position that the NLRB should not only require employers to remove unlawful work rules and contract terms but also seek to address the lingering effects of the rule or term in the workplace.

GC 24–05 “Section 10(j) Injunctive Relief”

GC 24-05 outlined the implications of a 2024 Supreme Court of the United States decision that established a uniform standard for seeking Section 10(j) injunctions. The memorandum also stated the former general counsel's intent to seek injunctive relief.

GC 24–06 “Clarifying Universities’ and Colleges’ Disclosure Obligations under the National Labor Relations Act and the Family Educational Rights and Privacy Act” (and Attachment)

GC 24-06 addressed how educational institutions could provide necessary information to unions representing student workers while still protecting student privacy. It also included a template consent form corresponding to the NLRB's initiatives outlined in GC 24–06.

GC 25–01 “Remedying the Harmful Effects of Non–Compete and ‘Stay–or–Pay’ Provisions that Violate the National Labor Relations Act.”

[GC 25-01](#) identified “stay-or-pay” provisions that require employees to remain with their employer for a specific period of time or repay certain costs as potentially unlawful. The memorandum further set forth the former general counsel's framework for assessing the lawfulness of such provisions.

GC 25–02 “Ensuring Settlement Agreements Adequately Address the Public Rights at Issue in the Underlying Unfair Labor Practice Allegations”

GC 25-02 set forth the importance of ensuring that settlement agreements in ULP matters adequately

address public rights and provide effective relief for victims. It emphasized the former general counsel's commitment to rejecting private settlements that fail to address the financial and coercive effects of ULPs on noncharging parties and the workforce as a whole. The memorandum also encouraged the regional offices to vigorously object to allegedly inadequate private settlements.

Rescinded Memoranda Pending Further Guidance

GC 21–05 “Utilization of Section 10(j) Proceedings”

GC 21-05 addressed the utilization of Section 10(j) injunctions to protect employee rights during union activities and prevent remedial failure in ULP cases. It outlined the procedures for seeking injunctions and emphasized the need for timely action to preserve the status quo and the efficacy of Board orders, particularly in cases involving discharges during organizing campaigns, violations during certification periods, and other critical situations.

GC 21–06 “Seeking Full Remedies”

GC 21-06 instructed the regional offices to seek “the full panoply of remedies available” in ULP cases.

GC 21–07 “Full Remedies in Settlement Agreements”

GC 21-07 directed the regional offices to craft settlement agreements that “ensure the most full and effective relief” available.

GC 22–01 “Ensuring Rights and Remedies for Immigrant Workers Under the NLRA” (English and Spanish)

GC 22-01 set forth the policies and procedures to protect the rights of immigrant workers under the NLRA. The memorandum emphasized the need for safe engagement with the NLRB, the provision of immigration relief for witnesses, and robust remedies against employer abuses, including seeking Section 10(j) injunctive relief in cases involving immigration-related threats or retaliation. It also highlighted the importance of interagency collaboration with the U.S. Department of Homeland Security (DHS) to strengthen deconfliction procedures and relief for witnesses and victims of ULPs.

GC 22–02 “Seeking 10(j) Injunctions in Response to Unlawful Threats or Other Coercion During Union Organizing Campaigns”

This memorandum directed regional offices to seek Section 10(j) injunctive relief to prevent irreparable harm to employees during union organizing campaigns. The former general counsel also directed regions to take prompt action against unlawful threats or coercion by employers to protect Section 7 rights.

GC 22–03 “Inter–agency Coordination”

This memorandum focused on strengthening collaboration between the NLRB and other federal agencies, such as the U.S. Department of Labor (DOL), U.S. Equal Employment Opportunity Commission (EEOC), and DHS, to improve enforcement of worker protections under the NLRA.

GC 22–05 “Goals for Initial Unfair Labor Practice Investigations”

GC 22-05 set forth new goals and procedures for the timely processing of initial ULP investigations. The memorandum set a goal of reducing the average case processing time to ninety-one days or fewer and introduced a revised Impact Analysis system to manage case investigations, with specific target times for distinct categories of cases. It also highlighted the importance of maintaining high-quality investigations while ensuring timely resolution of cases. Additionally, it outlined the circumstances under which cases could be placed in abeyance and the documentation required for such decisions.

GC 23-01 “Settling the Section 10(j) Aspect of Cases Warranting Interim Relief”

GC 23-01 outlined the approach for securing interim settlements in Section 10(j) cases to enhance the effectiveness of remedies for violations of employee rights. The memorandum encouraged regional offices to seek interim settlements promptly and reduce the need for district court litigation. The memorandum further highlighted the importance of securing interim relief, such as reinstating alleged victims of discrimination or agreeing to bargain, pending the final resolution of the administrative case by the NLRB.

GC 23-07 “Procedures for Seeking Compliance with and Enforcement of Board Orders”

GC 23-07 set forth procedures for the regional offices to seek compliance with and enforce Board orders. The memorandum called for the regional offices to timely communicate with respondents regarding their compliance intentions and outlined steps to be taken in the absence of compliance.

GC 24-01 (Revised) “Guidance in Response to Inquiries about the Board’s Decision”

GC 24-01 provided guidance in response to inquiries about the [NLRB’s 2023 decision adopting a new union-friendly recognition standard and bargaining orders](#). The new standard requires employers to either recognize a union that demonstrated majority support, file a petition for election (RM petition) to test the union’s majority support, or await the processing of a petition for a representation election (RC petition). The memorandum further highlighted the importance of prompt resolution of representation questions and outlined the procedures for handling ULP charges related to an employer’s refusal to recognize and bargain with a union. Additionally, it highlighted the effects of ULPs during the critical period, which could lead to the dismissal of election petitions and the issuance of remedial bargaining orders.

GC 25-03 “New Processes for More Efficient, Effective, Accessible and Transparent Casehandling”

GC 25-03 outlined new procedures aimed at improving the overall case management process. The procedures focused on making the process faster, more productive, readily available to all parties involved, and more transparent in how cases are managed.

[GC 25-04](#) *“Harmonization of the NLRA and EEO Laws”*

Former General Counsel Abruzzo issued GC 25-04 days before President Donald Trump took office and tapped a new general counsel. The memorandum addressed potential employer concerns with complying with both equal employment opportunity (EEO) laws prohibiting discrimination and harassment in the workplace and the NLRA’s protection for employees engaging in PCA, despite potential conflicts between the two. Specifically, the memorandum focused on potential conflicts in the context of (1) employer civility rules, (2) investigation confidentiality, and (3) offensive language and conduct. Despite these potential conflicts, the former general counsel argued that the NLRA and

EEO laws are “complementary” and that “both can and should be given full effect.”

Rescinded Memoranda as No Longer Relevant

GC 22–04 “The Right to Refrain from Captive Audience and other Mandatory Meetings”

GC 22-04 asked the Board to find mandatory meetings where employees are forced to listen to employer speech concerning their statutory labor rights, or so-called “captive audience meetings,” are a violation of the NLRA. The memorandum explained the former general counsel’s position that compelling employees to attend such meetings under threat of discipline discouraged them from exercising their right to refrain from listening, which is unlawful. The memorandum further urged the Board to adopt assurances that make clear attendance at such meetings is voluntary to protect both employer free speech rights and employee rights to refrain from listening. In November 2024, the NLRB followed through on GC 22-04, [issuing a decision that banned](#) such mandatory employer meetings.

Rescinded to Restore Guidance in GC 18-01

GC 23–03 “Delegation to Regional Directors of Section 102.118 Authorization Regarding Record Requests from Federal, State, and Local Worker and Consumer Protection Agencies”

GC 23-03 provided guidance to the regional offices on a change in procedure to increase the NLRB’s sharing of information in response to records requests from federal, state, and local worker and consumer protection agencies pursuant to Section 102.118 of the NLRB regulations. Section 102.118 governs the disclosure of internal NLRB records, including limitations on what information can be shared and under what circumstances. In GC 23-02, the former general counsel gave regional directors discretion to answer information requests. Instead, GC 18–01 delegates such authority to the associate general counsel for the Division of Legal Counsel and allows for expedited handling of requests for disclosure of information and testimony in ongoing litigation.

Rescinded Due to COVID-19 No Longer Being a Public Health Emergency

GC 21–01 “Guidance on Propriety of Mail Ballot Elections, under Aspirus Keweenaw, 370 NLRB No. 45 (2020)”

Former NLRB General Counsel Peter Robb, who served during President Trump’s first term, issued GC 21-01 to provide guidance on the circumstances under which a mail-ballot election can occur due to the COVID-19 pandemic. The memorandum outlined specific circumstances under which mail-ballot elections were justified, such as mandatory telework status, rising COVID–19 cases, compliance with safety protocols, and other compelling considerations related to the pandemic. However, the Federal Public Health Emergency (PHE) for COVID-19 expired on May 11, 2023.

© 2025, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

National Law Review, Volume XV, Number 76

Source URL: <https://natlawreview.com/article/rescinded-guidance-unpacking-nlr-acting-general-counsel-cowens-policy-overhaul>

