



## Acting NLRB General Counsel Rescinds 10 Trump-Era Guidance Memos

February 16, 2021 | [Labor And Employment, National Labor Relations Board](#)

The Biden administration has officially begun to undo Trump-era labor relations policy. Peter Ohr, acting general counsel of the National Labor Relations Board (NLRB), withdrew 10 guidance memos that were issued by President Trump's General Counsel Peter Robb. The following guidance memos were rescinded on Feb. 1, 2021.

### **GC 18-04, *Guidance on Handbook Rules Post-Boeing* (June 6, 2018)**

Instructed regions on the placement of various types of employer rules into the three categories set out in the then-recent Board decision in [The Boeing Company](#). This guidance memo was rescinded because it was no longer necessary, given the number of Board cases interpreting *Boeing* that have since issued.

### **GC 18-06, *Responding to Motions to Intervene by Decertification Petitioners and Employees* (Aug. 1, 2018)**

Required regions to no longer oppose intervention in unfair labor practice hearings by proposed intervenors, such as individuals who have filed a decertification petition or circulated a document upon which the employer has unlawfully withdrawn recognition of the collective bargaining representative. The approach reflected in GC 18-06 is inconsistent with prior practice.

### **GC 19-01, *General Counsel's Instructions Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges* (Oct. 24, 2018)**

#### RELATED PRACTICE AREAS

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NLRB General Counsel

Sought change in Board law to require unions raising a “mere negligence” defense to a duty of fair representation allegation concerning a union’s grievance handling to establish the existence of two established, reasonable procedures or systems in place to track grievances; classifying a union’s failure to communicate grievance decisions or respond to a grievant’s inquiries as arbitrary conduct rather than “mere negligence.”

### **GC 19-03, *Deferral under Dubo Manufacturing Company* (Dec. 28, 2018)**

Instructed regions to defer under [Dubo](#), or consider deferral thereunder, of all Section 8(a)(1), (3), (5) and 8(b)(1)(A), and (3) cases in which a grievance was filed and not to apply [Babcock & Wilcox Construction Co.](#) to cases that could be deferred under Dubo. Since *Babcock* was overruled by [United Parcel Service](#) in December 2019, GC 19-03 is outdated. To the extent the guidance memo made changes to case handling procedures relating to the deferral of cases under *Dubo*, regions should follow Section 10118.1(c) of the Unfair Labor Practice Casehandling Manual and the memoranda cited therein.

### **GC 19-04, *Unions’ Duty to Properly Notify Employees of Their General Motors/Beck Rights and to Accept Dues Checkoff Revocations after Contract Expiration* (Feb. 22, 2019)**

Required regions to urge the Board to overturn [Food & Commercial Workers Local 700 \(Kroger Limited Partnership\)](#), and to adopt the D.C. Circuit’s holding in [Penrod v. NLRB](#), which required unions to provide the reduced amount of dues and fees for dues objectors in the initial Beck notice. The guidance memo also required regions to urge the Board to overturn [Frito-Lay](#) and limit dues authorization window periods; found unions’ certified mail requirements unlawful; and mandated certain union communications with employees concerning untimely revocation requests.

### **GC 19-05, *General Counsel’s Clarification Regarding Section 8(b)(1)(A) Duty of Fair Representation Charges* (Mar. 26, 2019)**

A clarification regarding the previously issued guidance memo GC 19-01.

### **GC 19-06, *Beck Case Handling and Chargeability Issues in Light of United Nurses & Allied Professionals (Kent Hospital)* (Apr. 29, 2019)**

Instructed regions investigating agency fee objector cases to require unions to provide detailed explanations of the union’s chargeability decisions for each major category of expenses and the method used to determine the portion of expenses chargeable in mixed expenditure categories instead of requiring objectors to explain why an expenditure is nonchargeable. The guidance memo also required unions to categorize lobbying expenses as nonchargeable and to account for any other secondary costs used to support its lobbying activities; finding no amount de minimis.

## **GC 20-08, *Changes to Investigative Practices* (June 17, 2020)**

Instructed regions on how to proceed during investigations in connection with securing the testimony of former supervisors and former agents, and how audio records should be dealt with during investigations. This memorandum is being rescinded because portions are inconsistent with prior practices. Regions should continue to not accept recordings that violate the Federal Wiretap Act and to apprise individuals who proffer recorded evidence when it may violate state law.

## **GC 20-09, *Guidance Memorandum on Make Whole Remedies in Duty of Fair Representation Cases* (June 26, 2020)**

Instructed regions to urge the Board to overrule Ironworkers [Local Union 377 \(Alamillo Steel\)](#), and adopt an “arguable merit” standard that reverses the burdens of proof and imposes full liability on a union for its grievance-handling absent the union establishing that the grievance lacked merit.

## **GC 20-13, *Guidance Memorandum on Employer Assistance in Union Organizing* (Sept. 4, 2020)**

Required regions to urge the Board in charges involving union neutrality agreements to adopt the “more than ministerial aid” standard used in union decertification cases.

General Counsel Ohr also stated that he will issue other memos setting forth new policies in the near future. These moves indicate the Biden administration is beginning to undo several Trump-era policies and will be swinging labor relations policy towards a more pro-union stance. Employers need to stay tuned to see what new policies are implemented in the near future and how they will affect the workplace.