

Labor Challenges for Construction Contractors

Presented by:

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- Portland (OR)
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- San Diego
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- Seattle
- St. Louis
- St. Thomas
- Stamford
- Tampa
- Toronto
- Torrance
- Washington, D.C.

Agenda:

I. Trump's NLRB

II. Labor in the Carolinas

III. Unfair Labor Practice Pitfalls

IV. Takeaways

The Current Board



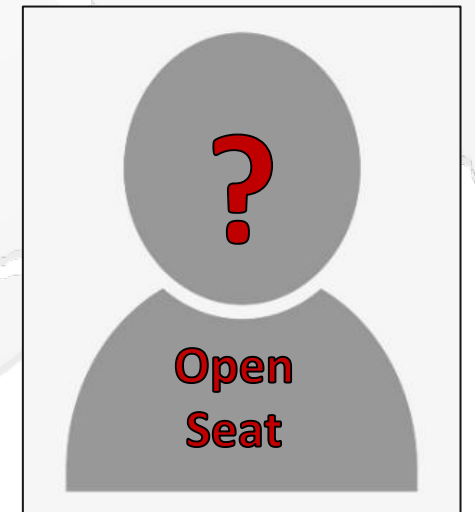
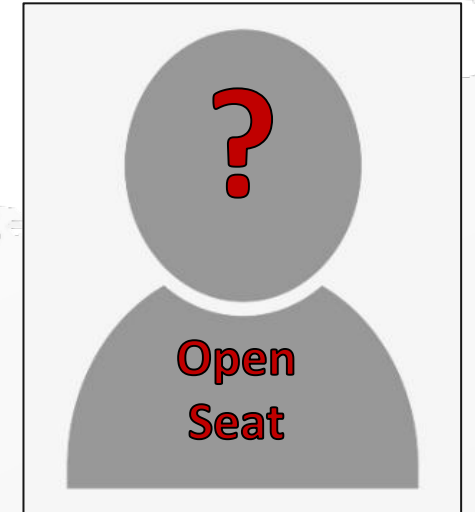
(R)
**Marvin
Kaplan**
(Chairman)
(8/10/17 to 8/27/25)



(D)
**David
Prouty**
(7/28/21 to 8/27/26)



(D)
**Gwynne
Wilcox**
(8/4/21 to 8/27/28)



'A blatant violation of the law': Judge blasts Trump's firing of NLRB member and orders reinstatement

The judge, who reinstated Gwynne Wilcox to the National Labor Relations Board, said Trump's "power to remove federal officers and honest civil servants ... is not absolute."



General Counsels (2025 to Date)



**Former
General Counsel
Jennifer Abruzzo
(7/22/21 to 1/28/25)**



**Former
Acting GC
Jessica Rutter
(1/28/25 to 2/3/25)**



**Current Acting
General Counsel
William Cowen
(Appointed 2/3/25)**

Trump Nominates Crystal Carey for GC

March 25, 2025



The First Act: GC Memo 25-05

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 25-05

February 14, 2025

TO: Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: William B. Cowen, Acting General Counsel

SUBJECT: Rescission of Certain General Counsel Memoranda

Over the past few years, our dedicated and talented staff have worked diligently to process an ever-increasing workload. Notwithstanding these efforts, we have seen our backlog of cases grow to the point where it is no longer sustainable. The unfortunate truth is that if we attempt to accomplish everything, we risk accomplishing nothing.

Since assuming the role of Acting General Counsel, working with experienced field and headquarters professionals, I have conducted a comprehensive review of active General Counsel Memoranda and determined that the following actions are warranted.

What does this mean for Employers?



Labor in the Carolinas



**Southern
Workers
Assembly**

SWA



SWA



What we do

The Southern Workers Assembly (SWA) is a network of local unions, worker organizations, and organizing committees, committed to building rank-and-file democratic social movement unionism (unionism with a social justice agenda, defined by and accountable to the rank-and-file) as a foundation for organizing, uniting and transforming labor power throughout the South.

SWA Core Principles: Rank-and-file democracy; national and international labor solidarity; organizing the unorganized; fighting all forms of discrimination; building a Southern labor congress; and building labor's power for independent political action.

SWA Core Demands: Repeal Taft-Hartley and Right-to-Work laws, and collective bargaining rights for all workers.

This is a big event happening here in Spartanburg! This is a great opportunity to learn organizing experience and connect with workers from Spartanburg and from across the South!

Southern Worker Action Summit

June 13 - 15 Spartanburg, SC

Initiated by:
Southern Workers Assembly

Co-Conveners:
Asheville Food and Beverage Workers United
Black Workers for Justice
Carolina Amazonians United for Solidarity and Empowerment
Charleston Alliance for Fair Employment/Charleston Workers Center
Chester Worker Empowerment Center
El Futuro Es Nuestro/It's Our Future
International Longshormen's Association, Local 1422
National Domestic Workers Alliance/We Dream in Black
Truckers Movement for Justice/TAMEXUN
UE Local 150, NC Public Service Workers Union
Union of Southern Service Workers
Venceremos
Virginia Caucus of Rank and File Educators

More info: southernworker.org/summit

southernworker.org | info@southernworker.org | [@swa_solidarity](https://twitter.com/swa_solidarity)

We Deserve More: Wages, Rights, Dignity, Power on the Job!



Billionaires saw their wealth explode by \$2 trillion last year, while the rest of us struggled to make ends meet as the prices of everything skyrocketed.

We have to choose between paying for medication or keeping the lights on, buying groceries or getting clothes for our kids, **even as the corporations we work for make record profits and we work harder and longer** without much to show for it. Meanwhile, the billionaires are laying off federal workers, including many veterans, and want to cut our Social Security, Medicaid, and more. They profit, we pay.

It doesn't have to be this way. We workers make everything and without us nothing moves – if we come together, we have the power to change our jobs, change the South, and change the nation, and win dignity and respect at work.

These billionaires won't save us, they only want to make themselves richer -- it's up to us. **Workers across Spartanburg, SC are building committees at work and a workers assembly to connect workers together across the city.** Join us to make our jobs and community better.

Get in touch



Workers Meeting
Thurs, March 13 | 6:30pm
269 S. Church St, 3rd Floor
** Free food + drink*
**Join other workers to talk about problems at work and what we can do about it*

Spartanburg Workers Assembly
southernworker.org | spartanburg@southernworker.org | 864-256-1962 | [@spartanburgworkersassembly](https://twitter.com/spartanburgworkersassembly)



CHARLESTON, S.C.



DOCK WORKERS ON STRIKE!



NLRB Activity in the Carolinas

- 2024 to Present
 - 198 ULPs filed against non-union employers in the Carolinas
 - 46 Representation Petitions have been filed
 - 2 Strikes



Unfair Labor Practice Pitfalls



ULPs – Non-Unionized Workplaces

Georgia Carolina Pipe Trade Association – The Playbook

- Have union salts interview at contracting non-union companies
- If hired, try to organize. If not successful, intentionally set up ULPs, including attempts at termination because of PCA or union activity.
- Recoup backpay, in addition to pay already given from the Association for salting

Example –

- NC contractor doing project in Georgia hired two workers, who ended up being salts. After organizing efforts failed, the two workers stood up during a safety committee, yelling things about joining a union and needing protection. Superintendent terminated their employment.
- Company ended up settling the ULP charge, and was required to pay backpay to both individuals, issue letter of apology and notify all employees who had been employed on the project

Example –

- Company in Georgia found to have unlawfully refused to hire two salts because they were known pipefitter organizers. The company tried to argue the two individuals were overqualified. Evidence showed that during the interview process, one candidate stated he was union affiliated and interested in organizing the company – to which the interviewer said, “Oh absolutely not.” The other candidate was directly asked about his union affiliation and was told he could work for the company or the union, but not both.

Takeaways –

- **Protected Concerted Activity**

- Applies to all – regardless of union status
- Application is broad
- Always consider – is this employee speaking about their own terms and conditions or employees' terms collectively?



Takeaways –

- **Salting**

- What to Consider

- Tactics can be overt or covert
- Goal is to (1) organize (2) create ULPs

- What Should You Do?

- Uniform application and hiring policies and practices
- Train recruiters or hiring team on warning signs of salting
 - Know what you can and cannot ask
 - Know how to respond to questions salts use to trap the interviewer

Takeaways –

- **Handbooks**

- Current Law:

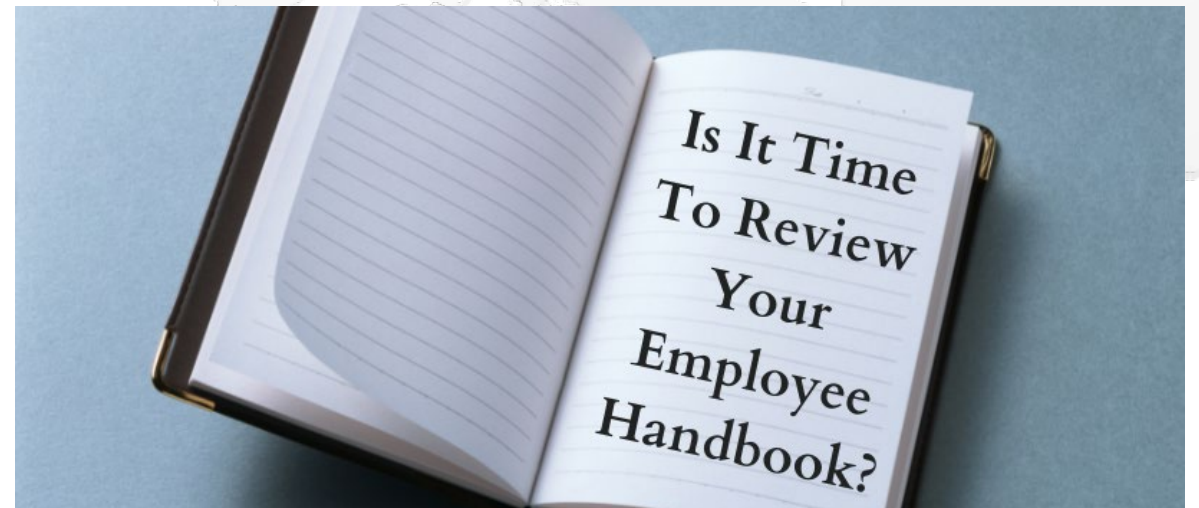
- *Stericycle, Inc.* – whether the work rule could reasonably be interpreted to have a coercive meaning, *even if* a noncoercive meaning is also reasonable
- Rule will be viewed from an employee perspective
- Employer can rebut the presumption that the rule is unlawful BUT must show (1) legitimate and substantial business interest AND (2) company is unable to advance interest with a more narrowly tailored rule

Takeaways –

- **Handbooks**

- What Should You Do?

- Frequent review of handbook + policies, specifically:
 - Code of Conduct or “professional” and “respect” terms
 - Solicitation / Distribution
 - Social Media



Takeaways – Areas of Vulnerability

- **Separation Paperwork:**
 - **Severance Agreements + more**
 - Current Law – *McLaren Macomb*
 - What should you do?
 - Review agreements presented to Section 7 employees
 - Consider separate templates for supervisors and non-supervisors
 - Consider revising and narrowly tailoring non-disparagement and confidentiality language
 - Bolster savings clauses
 - **Restrictive Covenants**
 - Current Law – overly broad noncompete and nonsolicitation provisions violate the Act
 - What should you do?
 - Narrowly tailor restrictive covenants
 - Consider actual use case

Union Organizing – The Law

Cemex

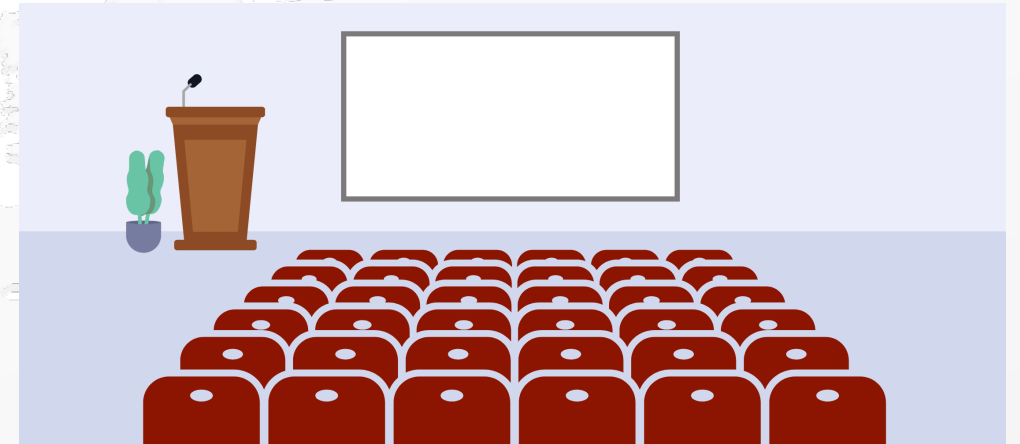
- Possible bargaining obligation without secret ballot election;
- May mandate a bargaining order if Employer commits a ULP during a union campaign.

American Steel

- Return to *Specialty Healthcare* “overwhelming community of interest” standard;
- Burden of proof is on the party that contests whether the petitioned-for unit is appropriate;
- Micro-units presumed appropriate absent overwhelming evidence.

Organizing, the Law, continued:

- **Amazon**
 - Mandatory “captive audience meetings” are unlawful
 - Employees must be informed of purpose & allowed to leave without recourse
- **Starbucks**
 - Board found statements by management regarding changes in employees’ relationship dynamic with management after unionization violated the Act



Considerations for HR

- Vulnerability assessments
 - Consider not only wall to wall units, but micro units – remember, a union only needs 2 people!
- Training for Front Line Management +
 - Soft Skills – active listening, leading by example, perception of having a voice
 - Dos and Don'ts of employee relations
 - Escalation Paths
- Prior to implementing change, consider:
 - How will this impact individual employees
 - How are we communicating effectively
 - Will other changes at the company cause this change to be viewed positively or negatively

Practical Takeaways



Positive Employee Relations – It Starts With You.

- Keep personnel policies in good order.
- Ensure daily practices conform to company policies; avoid perceived favoritism.
- Avoid sudden changes without adequate and timely explanation.
- Squash rumors promptly - don't let them fester.
- Be responsive to suggestions and complaints.

Positive Employee Relations – cont'd

- Ensure effective two-way communication.
- Show interest in employees' personal and job-related problems and concerns.
- Preserve employees' dignity and self-esteem.
- Be sensitive to the attitudes and moods of employees. If they change, find out why.
- Show appreciation for good work.

Positive Employee Relations – cont'd

- Coach the below-average performers.
- Avoid overworking the best people while allowing others to slack off.
- Be prepared to discuss unions with employees.
- Be on the lookout for early warning signs of union activity.
- Above all, maintain the company's credibility.

Thank you!

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