

# Electronic Alert

Volume 26, Issue 40

November 16, 2023

---

## NLRB General Counsel Issues Guidance on Post-*Cemex* World of Union Recognition

By Nicole Elgin & Joshua Waugh

The National Labor Relations Board's (NLRB) General Counsel issued guidance on November 2, 2023, regarding the new standards for employer conduct when a union makes a demand for recognition. The General Counsel's Memorandum GC 24-01 sets out substantial policy changes that all employers, currently unionized or not, should pay attention to in the aftermath of the Board's momentous decision in *Cemex Construction Materials Pacific, LLC*. The sweeping changes also modify how initial demands for recognition must be made as well as the employer obligations that follow.

Just a few takeaways from the memo include:

1. The initial procedure for a union demand for recognition includes informal, oral demands for recognition to anyone acting as an agent of the employer. These oral demands trigger National Labor Relations Act rules and procedure, even if delivered to a lower-level manager without any duties or knowledge in labor management. If the employer does not file an RM petition within two weeks of receiving the demand for recognition, the union can seek a bargaining order from the NLRB.
2. The *Cemex* Board has widened the scope of employer behavior that will be scrutinized when determining whether an election was invalidated, and therefore must be remedied by a forced bargaining order.
3. Employer unfair labor practices during the "critical period" for an election, beginning on the date of the demand and running through the election itself, can trigger a remedial bargaining order even if there was only one minor violation. This means that rather than the NLRB ordering a new election, the NLRB will order the employer to bargain with the union.
4. The threshold for filing an employer RM petition to oppose the validity of a bargaining unit has increased, and employers must now carry the burden of not only identifying why the proposed unit is flawed, but also specifying the correct unit with an explanation.

In the post-*Cemex* world, the NLRB is strictly scrutinizing employer behavior as it relates to elections and demands for recognition. Employers need to act promptly if any agent of the employer receives a demand for union recognition.

*Employers with questions about compliance with the NLRB's updated standards should contact Nicole Elgin at 503-276-2109 or [nelgin@barran.com](mailto:nelgin@barran.com), or Joshua Waugh at 503-276-2138 or [jwaugh@barran.com](mailto:jwaugh@barran.com).*