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UPDATED – Breaking: In a Novel Move, President Trump Fires National Labor Relations Board Member and, following Biden precedent, the NLRB General Counsel

Labor Relations Update on **January 28, 2025**

On January 27, 2025, President Trump fired National Labor Relations Board ("NLRB" or "Board") Member Gwynne A. Wilcox, marking the first time that a president has ever attempted to remove a Board member prior to the end of their five-year term. The move – if it withstands court scrutiny – leaves the Board with only two (2) remaining members: Chair Marvin E. Kaplan and Member David M. Prouty and without a quorum to rule on matters, as covered here. *See New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010). Chair Kaplan's term lasts through August 27, 2025, and Member Prouty's term lasts through August 27, 2026.

This came soon after President Trump fired NLRB General Counsel Jennifer A. Abruzzo. As reported here, the firing of GC Abruzzo was expected and has been held to be lawful in various Circuit Courts. However, the firing of Board Member Wilcox sets up a constitutional fight regarding President Trump's removal power.

Section 3(a) of the NLRA states that "[a]ny member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause," which has led prior presidents to refrain from firing sitting Board members. It is expected that the administration will argue that this removal requirement is unconstitutional under Article II, which requires that the president "shall take Care that the Laws be faithfully executed," meaning the president cannot be prohibited from hiring and firing certain administrative officials, such as Board members, at will. Employers have made similar arguments as to the alleged unconstitutional nature of the NLRA's removal requirements, as previously reported here, here, and here.

President Trump will likely appoint an Acting General Counsel in the near future and nominate a new General Counsel soon after, subject to Senate approval. It is less certain what President Trump will do concerning the three (3) vacant seats on the Board, who also would need to be nominated subject to Senate approval. Historically, the administration's party has had three (3) of the five (5) seats. If President Trump does choose to appoint new members, there is an obvious question of whether he will continue this precedent or rather appoint only Republican members to the seats.

While in the short term, some parties with matters pending before the Board may have some relief, the longer term implications of a complete standstill at the Board and the resulting uncertainty can actually be very difficult for organizations looking to move forward and make decisions on both day-to-day employment matters and large scale initiatives.

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