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BREAKING: District Court Restores Status Quo Ante At NLRB

Labor Relations Update on **March 6, 2025**

On March 6, 2025, a D.C. federal judge reinstated former National Labor Relations Board ("NLRB" or "Board") Member Gwynne A. Wilcox, restoring the Board to a quorum, which under the National Labor Relations Act ("NLRA" or the "Act") requires at least three members. *See New Process Steel, L.P. v. NLRB*, 560 U.S. 674 (2010).

In doing so, Judge Beryl Howell found that President Trump violated Section 3(a) of the Act, which stipulates that, "Any 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." 29 U.S.C. 153(a).

Wilcox was fired by President Trump on January 27, 2025, prior to which no president had ever terminated a Board member before the end of their five-year term, as we reported here. Wilcox now returns to the Board alongside Chair Marvin E. Kaplan and Member David M. Prouty.

The Trump administration will likely appeal Wilcox's reinstatement based on oral arguments, where it indicated that it views Section 3(a)'s removal protections as conflicting with *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020) and *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), the 90-year-old Supreme Court precedent affirming Congress' power to limit the president's ability to remove officers of independent administrative agencies created by legislation, as we reported here.

During oral arguments, the Trump administration argued that the Act's removal protections are 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. Judge Howell spent much of her time during oral arguments asking both parties for their interpretations of *Humphrey's Executor*, which was reflected in her decision's focus on the case.

Employers have made similar arguments that the Act's removal protections for members (and administrative law judges ["ALJs"]) are unconstitutional, as we reported here, here, and here.

In the short term, now that the Board has regained a quorum, it can resume ruling on pending appeals from ALJ decisions and address requests for review regarding, for example, regional director decisions on union elections.

However, in the long term, the Trump administration will likely appeal this decision to the Supreme Court and seek to use it as a vehicle to overturn *Humphrey's Executor*.

We will continue to monitor future developments, and, as always, will cover noteworthy updates on our blog, Labor Relations Update.

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