NLRB Firing Decision Stayed; Board to Stay Without a Quorum

Labor Relations Update on **March 29, 2025**

On March 28, 2025, the United States District Court of Appeals for the D.C. Circuit stayed the District Court's order reinstating former National Labor Relations Board ("NLRB" or "Board") Member Gwynne A. Wilcox. The Board is *again* left without 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).

As reported here, on March 6, 2025, a D.C. federal judge had reinstated Member Wilcox, finding that President Trump's unprecedented firing violated Section 3(a) of the NLRA, which 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." 29 U.S.C. 153(a).

The D.C. Circuit did not include a majority opinion with its order, which simply indicated that "the emergency motions for stay be granted." Instead, the Court attached two concurring opinions (by Judge Justin Walker and Judge Karen Henderson, respectively) and one dissenting opinion (by Judge Patricia Millett).

The opinions focused on the constitutionality of Section 3(a)'s removal protections, grappling with *Seila Law LLC v. Consumer Financial Protection Bureau*, 591 U.S. 197 (2020), *Collins v. Yellen*, 594 U.S. 220 (2021), and *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), to determine whether the NLRB exercises sufficient "executive power," such that it might not be covered by the *Humphrey's Executor* exception to presidential removal. As referenced here, that decision affirmed Congress' power to limit the president's ability to remove officers of independent administrative agencies created by legislation.

As Judge Henderson indicated in her concurrence, the "continuing vitality" of *Humphrey's Executor* might be in doubt after *Seila* and *Collins*, and the Trump administration will likely seek to overturn the decision through the Wilcox appeal. In the interim, and possibly until the Supreme Court rules on this issue, the Board will remain without a quorum. As reported here, while the NLRB indicated that it will function to the extent possible absent a quorum, employers can expect Board processes to move slowly and resolution of matters pending to be delayed.

We will continue to track the Wilcox litigation and its impact upon the NLRB.

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