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NLRB Stalemate Continues: Supreme Court Keeps Wilcox Sidelined For Now

Labor Relations Update on **May 27, 2025**

On May 22, 2025, the U.S. Supreme Court issued a decision granting President Trump's emergency application to stay D.C. Circuit Court orders that reinstated National Labor Relations Board ("NLRB" or the "Board") member Gwynne A. Wilcox and Merit Systems Protection Board ("MSPB") member Cathy A. Harris. This stay will remain in effect while the D.C. Circuit Court continues to review whether their removals were lawful.

Earlier this year (as previously reported), Trump's controversial firing of Wilcox sparked legal battles. Wilcox sued, arguing that her dismissal violated federal law that only permits removal of Board members for "neglect of duty or malfeasance." The D.C. Circuit Court reinstated Wilcox, restoring the Board to a quorum of at least three members. However, on April 9, 2025, the Supreme Court temporarily blocked her return, foreshadowing its latest decision.

The Supreme Court's ruling underscores the President's power to remove executive officials at will, drawing a sharp distinction between independent federal agencies and the Federal Reserve. While the Court allowed Trump to remove officials from the NLRB and MSPB, it made clear that this authority does not extend to the Federal Reserve, which it described as a "uniquely structured, quasi-private entity" warranting special independence.

In a forceful dissent, Justice Kagan – joined by Justices Sotomayor and Jackson – argued that the ruling undermines the long-standing precedent set by *Humphrey's Executor v. United States*, 295 U.S. 602 (1935), which protected members of bipartisan, expert-led agencies like the NLRB from at-will dismissal by the President.

The Supreme Court’s decision on Wilcox’s reinstatement highlights the shifting balance of power between the executive branch and independent agencies. The D.C. Circuit will weigh the merits of the legality of these removals, with a forthcoming appeal to the Supreme Court likely to follow. The outcome could reshape the legal framework governing administrative agencies for years to come. For now, the NLRB remains without a quorum, which will continue to logjam federal labor law proceedings until a third NLRB member is appointed and confirmed.

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