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Course Change: NLRB Asks Federal Court to Strike Removal Protections

Labor Relations Update on **April 2, 2026**

On March 23, 2026, the National Labor Relations Board ("NLRB") asked a federal court to declare unconstitutional and sever the provisions in the National Labor Relations Act (the "Act") that restrict the President's ability to remove NLRB Board Members and administrative law judges ("ALJs"). The filing comes in the case *Energy Transfer LP v. NLRB*, No. 3:24-cv-00198, pending in the Southern District of Texas, and is a remarkable step by the Board to attempt to weaken its own administrative independence.

The NLRB's New Position in *Energy Transfer*

An employee of a subsidiary of Energy Transfer LP, an energy company, brought an unfair labor practice charge against the company alleging that he had been unlawfully terminated in retaliation for making complaints. After Region 16 of the Board, based in Fort Worth, Texas, issued a complaint, the company sought a permanent injunction in federal court alleging, among other things, that the Board proceeding could not go forward because the NLRB's removal protections for its Board Members and ALJs are unconstitutional.

After a long procedural history, the NLRB cross-moved for summary judgment on March 23rd. In its filing, the Board asked the court to sever the provisions limiting the President's ability to remove Board Members and ALJs and rule them unconstitutional.

The NLRB's filing argues that severing those restrictions would eliminate the constitutional defect and allow the agency's unfair labor practice complaint against the company to continue. The Board argued that this result aligns most closely with the principle that the Board is subject to close presidential supervision, arguing that "if the president wanted the adjudication against La Grange to go forward — and La Grange cites no evidence suggesting otherwise — a permanent injunction ending the proceeding would frustrate the president's will…Clearly, that cannot be the correct result."

Takeaways

The Board's change in position is not entirely unexpected. Just last year, as we covered here, the Board dropped its opposition to a party's constitutionality arguments in a case before the Fifth Circuit. Further, this concession comes during a wave of challenges to the Board's constitutional structure – as we have covered throughout the year (see here, here, and here.)

Still, the filing reflects a remarkable step by the Board to stop defending its own independence. We await to see the court's ultimate ruling on the issue. The case is before Judge Jeffrey V. Brown, who was appointed by President Trump in 2019.

The filing also reflects the Board's current focus on clearing its large backlog, as we have previously discussed. The Board's motion seeks to regain the ability to process the underlying unfair labor practice charge – and likely other currently-challenged charges pending within the Fifth Circuit's jurisdiction.

We will monitor this issue for any updates.

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