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Latest NLRB Pick Could Put 4 Key Rulings On Chopping Block

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On April 13, President Donald Trump nominated James Macy to fill the third vacant Republican seat on the National Labor Relations Board and renominated current Democratic NLRB member David Prouty to serve a second term.

Last year, it took the Senate roughly five months to confirm Trump's Republican NLRB nominees, James Murphy and Scott Mayer, but the dual split-party nominations — a common political maneuver — may expedite confirmation for both nominees.

The Nominees

Macy currently serves as the director of the U.S. Department of Labor's Office of Workers' Compensation Programs. He also briefly served as the interim head of the DOL's Wage and Hour Division last fall, pending confirmation of the nominee for wage and hour administrator.

Macy joined the DOL after more than 40 years in private practice. He worked for several law firms in Wisconsin, most recently including von Briesen & Roper SC, a Milwaukee-based firm with approximately 200 attorneys and professionals. Macy represented public and private employers in labor and employment matters, including wage and hour disputes, leave entitlement matters, workers' compensation, unemployment, and labor relations.

Although few details are known about Macy's substantive legal views, his career as a management-side attorney and his service in the current administration suggest — like many predecessor Republican members — that his interpretations of federal labor law will favor employers.

Prouty, who is currently the NLRB's lone Democrat, was initially nominated by President Joe Biden and confirmed by the Senate in 2021. Prior to his appointment as a board member, Prouty was the general counsel for the Service Employees International Union, Local 32BJ, the country's largest property service workers union, with the local representing more than 185,000 workers.

His current term is slated to end in August, but if his reappointment is confirmed, he will serve an additional five years until August 2031.

If confirmed, employers can expect Prouty to maintain his union-friendly approach to federal labor law. As the lone Democrat, Prouty may author dissents that are consistent with the concepts and ideas underlying many Biden-era decisions, much like those authored by former Democrat member Lauren McFerran during the first Trump administration.

Returning to a Three-Member Majority

The confirmation of Macy and Prouty would result in four NLRB members and preserve the board's three-member quorum, avoiding another period of inactivity.

The board lacked a quorum for much of last year after Trump, in an unprecedented move, fired former Democrat-member Gwynne Wilcox in January 2025, leaving only two seated members — Prouty and Republican Marvin Kaplan.

Although Wilcox challenged the legality of her termination, the U.S. Supreme Court ultimately denied her interim reinstatement while her challenge progressed through the courts.[1]

In August, Kaplan's term expired, leaving Prouty as the NLRB's sole seated member. But the board regained a quorum in December when the Senate confirmed Murphy and Mayer.

However, with two Republicans and one Democrat, the sitting members have adhered to the long-standing NLRB tradition of declining to overturn existing precedent without a three-member majority. If confirmed, Macy would provide the critical third Republican vote and position the board to begin effectuating the administration's federal labor policy.

The political composition of the board regularly shifts with changing administrations. Because changes to national labor policy are commonly effectuated through NLRB decision-making, incoming presidents seek to confirm new board members as promptly as possible.

Assuming Macy and Prouty are confirmed, the NLRB's three-member Republican majority would likely begin revisiting Biden-era decisions — however, NLRB general counsel Crystal Carey has yet to announce a substantive prosecutorial agenda, which typically affects the types of cases the NLRB pursues.

Potential Changes in NLRB Precedent

Given the board's lack of quorum for much of 2025, there have been few, if any, changes to NLRB precedent under the current Trump administration, but Macy's confirmation could change that.

With less than a full presidential term to reconsider Biden-era precedent, the board's Republican majority is likely to prioritize the following decisions.

Cemex Construction Materials Pacific LLC

In the 2023 decision in Cemex Construction Materials Pacific LLC, the board overhauled the procedures governing union recognition demands. Under the new framework, an employer confronted with a recognition demand must, within two weeks, either accept and commence bargaining or file an election petition.

The board also replaced a long-standing remedial standard. Following Cemex, an employer that commits an unfair labor practice — including failure to timely respond — may be ordered to bargain even if the union has not prevailed in an election. Cemex upended 50 years of precedent and has been challenged by numerous employers, though no court has overturned it.

Notably, on March 6, the U.S. Court of Appeals for the Sixth Circuit rejected Cemex in part in Brown-Forman Corp. v. NLRB, finding such a monumental change to the election framework should have been implemented through rulemaking, and remanded the case to the NLRB.[2]

However, the U.S. Court of Appeals for the Ninth Circuit reached a different result in Cemex v. NLRB on April 21, finding that the bargaining order in Cemex was warranted under the prior standard, making review of the new standard unnecessary.[3]

While not yet a circuit split, these cases indicate that one may be on the horizon. The Cemex framework shifts the burden to employers to act quickly or face a bargaining order, reducing the obstacles for unions seeking to organize.

On March 25, the three-member board declined to overturn Cemex absent a political majority in St. John's College, but many anticipate it will be revisited and potentially overturned to some extent once Macy and Prouty are confirmed.

Stericycle Inc.

The board's 2023 decision in Stericycle Inc. replaced the first Trump administration's standard for evaluating workplace rules with a stricter test. Where the prior framework asked whether a reasonable employee would interpret a rule as coercive and provided a safe harbor for certain categories of presumptively lawful rules, Stericycle asks whether a reasonable employee could interpret the rule as coercive — eliminating the categorical safe harbor.

The Stericycle standard significantly lowered the threshold for finding a workplace rule unlawful, creating uncertainty for employers. Because the board adopted the prior standard during Trump's first term, many expect this to be an early priority for a new Republican majority.

A return to the first Trump-era standard or some iteration thereof, would provide employers with leeway to craft and implement facially lawful workplace policies and rules by removing the uncertainty of employee subjectivity that is incorporated into the current standard.

Thryv Inc.

In 2022, the board expanded remedies for unfair labor practices in Thryv Inc., allowing affected employees to recover "all direct or foreseeable pecuniary harm" — including out-of-pocket medical expenses, credit card debt and other costs — beyond the traditional back pay and reinstatement.

Thryv has produced a circuit split: The Ninth Circuit upheld the expanded remedies, while the Third, Fifth and Sixth Circuits rejected them.[4] But rather than allow the issue to reach the Supreme Court, the board is likely to revisit the decision and restore the prior remedial framework. If Thryv is overturned, the potential liability for employers faced with unfair labor practice charges would be significantly lower.

McLaren Macomb

In 2023, the board held in McLaren Macomb that employers violate Section 8(a)(1) of the National Labor Relations Act by proffering severance agreements containing broad confidentiality and nondisparagement provisions that could chill employees' exercise of their Section 7 rights.

McLaren Macomb effectively curtailed employers' ability to include standard confidentiality and nondisparagement clauses in severance agreements. However, a Republican-majority board is widely expected to reverse or narrow this holding, restoring employers' latitude to include such provisions.

Conclusion

Macy's and Prouty's nominations will next be reviewed by the Senate Committee on Health, Education, Labor and Pensions, which will determine whether the nominations proceed to a confirmation vote. If confirmed, the board could begin acting on these priority cases within weeks of Macy's swearing in.

Although the speed of decisions and priority of cases remains to be seen, employers can expect an increasingly favorable national labor policy agenda if a Republican board majority is established, with NLRB precedent likely reverting to the standards established by the board during the first Trump administration.

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[1] Trump v. Wilcox, 605 U.S. _ (2025).

[2] Brown-Forman v. N.L.R.B., Nos. 24-2107/25-1060 (6th Cir. 2026).

[3] Cemex Construction Materials Pacific, LLC N.L.R.B., Case No. 23-2302 (9th Cir. 2026).

[4] Compare N.L.R.B. v. Macy's Inc., 23-188 (9th Cir. 2025) with NLRB v. Starbucks Corp., Nos. 23-1953, 12-2241 (3d 2024) and Hiran Mgmt., Inc. v. N.L.R.B., No. 24-60608 (5th Cir. 2025) and N.L.R.B. v. Starbucks Corp., No. 23-1767 (6th Cir. 2025).

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