



the nlrp is back: what a restored quorum and new general counsel mean for employers

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This January, shortly after taking office, President Trump fired National Labor Relations Board ("NLRB") Member Gwynne Wilcox. This termination set off a court challenge regarding the constitutionality of the "for cause" termination provision in the National Labor Relations Act ("NLRA") protecting NLRB Members. That issue is currently before the D.C. Circuit and headed toward the Supreme Court. In the meantime, the NLRB has been unable to issue decisions because it has had fewer than three Members, which is the quorum the agency needs in order to act in an official capacity.

On December 18, 2025, the Senate confirmed Scott Mayer and James Murphy, both Republicans, who will join the single remaining NLRB member, David Prouty, a Democrat. Mayer was most recently chief labor counsel for the Boeing Company and has experience as in-house labor counsel for a number of employers. Murphy is a career NLRB attorney and has served in a number of roles in the agency, including serving as Chief Counsel to NLRB Members. Once Mayer and Murphy are seated, the NLRB will have the three-member quorum needed to once again issue decisions.

While many employers may be encouraged by this news, they shouldn't jump for joy just yet. Under a long-standing NLRB historical practice, the agency will not reverse precedent or set new precedent unless three Members vote to do so. With a 2-1 majority, the votes likely are not there to roll back NLRB rulings on issues such as employee work rules (*Stericycle*), election procedures (*Cemex Construction Materials*), political activism in the workplace (*Home Depot*), severance agreements (*McLaren Macomb*) and others. While the new quorum could depart from this practice (which is just that – a practice, rather than a binding rule), that may be unlikely given that one of the newly appointed Members is a career NLRB attorney.

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What the NLRB will do in the immediate term is decide election objection/challenges cases and unfair labor practice cases that do not require a change in precedent. Over the last year, the agency has amassed a significant backlog of these cases. The new quorum will likely begin working through that backlog so that the agency is positioned to begin tackling some of the "big ticket" items that employers and labor alike are watching, once a third Republican Member is seated.

Also on December 18, Crystal Carey, a partner at Morgan, Lewis & Bockius, was confirmed as the NLRB's General Counsel. Since January 2025, William Cowan has served as the Acting General Counsel. Cowan signaled what might be objectives for Carey's tenure as General Counsel, issuing memoranda reversing policy objectives implemented by Jennifer Abruzzo, the General Counsel from 2021 until she was terminated this January. These objectives included expansion of the definition of "protected, concerted activity," cooperation between the NLRB and EEOC, and expanded remedies for employees who file unfair labor practice charges.

While these confirmations are unlikely to lead to immediate changes in the law, they are important steps in restoring the functionality of the NLRB, which has sat in a partial state of limbo for nearly all of 2025.