

# NLRB Shakeup: Trump Removes Two NLRB Officials

## Labor & Employment Law Update

By Michael Hughes on January 29, 2025

President Trump has ousted National Labor Relations Board (NLRB) General Counsel Jennifer Abruzzo—a move that mirrors former President Biden's unprecedented removal of the board's general counsel four years ago.

Trump also fired NLRB member Gwynne Wilcox, an unprecedented removal that leaves the five-seat board with only two members, depriving it of a quorum and therefore currently unable to decide cases. So, what does this all mean for employers?

### General Counsel's Role and Removal

The NLRB general counsel (GC) sets the agency's enforcement agenda and drives all prosecutions of alleged unfair labor practices (ULPs). Through the agenda set by the GC, often contained in memoranda the GC publishes, the various NLRB regional offices get their marching orders as to what issues to prosecute.

General Counsel Abruzzo was especially active in issuing memoranda seeking to overturn NLRB precedent set under the prior Trump administration, longstanding precedent related to how unions are installed, and the measures that employers lawfully may take to resist union organizing efforts. Abruzzo's enforcement agenda made it easier for unions to gain recognition (even without secret ballot elections) and outlawed certain forms of employer speech and other resistance to union organizing.

Abruzzo also ushered in and increased severe penalties against employers who were alleged to have engaged in ULPs and took a policy stance that settlement of charges (before any ULP had been proven) must contain the maximum penalties against the settling employer.

Some of the precedent pursued and set through Abruzzo's agenda has already been overturned by federal courts as unsupported by the National Labor Relations Act (NLRA), the federal statute under which the NLRB and its general counsel are authorized and empowered to act, but which also sets the boundaries of their lawful remit.

Deputy GC Jessica Rutter now succeeds Abruzzo and will serve as acting GC until a replacement is nominated by Trump and approved by the Senate. We can expect Trump to nominate a new GC relatively soon. We also can expect that the

nominee, once confirmed, will issue memoranda setting an enforcement agenda that undoes many of the changes pushed through by Abruzzo and returns enforcement efforts and the office's policies back to those espoused under the prior Trump administration, as well as back to some of the longstanding rules and guidelines upended during general counsel Abruzzo's term. What remains to be seen, however, is the ways in which a Trump appointee may also attempt to set new policy considerations.

### The Board's Role and the Impact of No Quorum

While the NLRB GC sets an enforcement agenda and prosecutes cases, official agency acts are taken through the five-member Board. The Board hears case appeals from underlying decisions of the NLRB regional offices or trials before the agency's administrative law judges.

The Board can also issue administrative rules and regulations for its procedures and policies, provided they are consistent with the NLRA. Many of the changes to precedent sought by the GC come before the Board for decisions on ULP charges. The Board then issues precedential decisions, either agreeing with the GC's position or the charged party. Precedent is set through these decisions and often hinges on which political party has a majority on the Board.

The Board must have at least three sitting members for a quorum. Until recently, the board had three members: one Republican and two Democrats, one of whom was Wilcox. As a result of Wilcox's dismissal, the Board is down to two members, leaving it without authority to issue any decisions on issues that come before it. All cases that are currently pending before the Board will remain dormant until at least one new Board member is nominated by Trump and approved by the Senate, which is expected to happen quickly.

It should be noted, however, that Wilcox has already issued a statement that she will pursue a legal challenge to her unprecedented firing. Depending on the outcome, a quorum may be re-established in the coming days. If such a challenge were to be successful and Wilcox re-seated, we can expect a flurry of NLRB decisions to come down from the Democratic-led Board before the nomination and confirmation process for the other open seats is completed.

### What Should Employers Do Now?

In the meantime, it may be worthwhile for employers with cases pending before the NLRB, at any level, to:

- Resist capitulating to draconian and punitive settlement terms tendered by the GC or regional offices, and
- Continue defensive litigation efforts, especially of matters related to the current GC office's enforcement agenda.

## NLRB Shakeup: Trump Removes Two NLRB Officials

This holds true at least until a new GC is confirmed and/or a new Board quorum is established with the confirmation of new Board members.

NLRB  
Shakeup:  
Trump  
Removes  
Two NLRB  
Officials