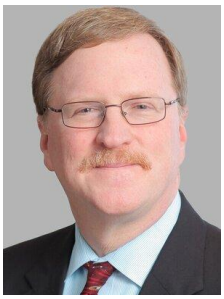
Trump NLRB Picks May Usher In Employer-Friendly Precedent

By **Patrick Muldowney, Christian White and Gabriel Trujillo-Lederer** (September 4, 2025)



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On July 17, President Donald Trump **nominated** to the National Labor Relations Board Boeing's chief labor counsel, Scott Mayer, and longtime NLRB attorney James Murphy.[1]

To be seated as board members, a simple majority of the U.S. Senate must confirm Mayer and Murphy.

If both of Trump's nominees are confirmed, the board will regain a quorum with a majority-Republican makeup, most likely resulting in the reversal of a number of controversial and union-friendly decisions that were issued by the board while it consisted of a Democratic majority.

Each nominee brings a unique perspective as to how the board should operate and administer the act, and how labor law should develop — one has an outsider perspective, while the other has an insider perspective.

Background

Section 3 of the National Labor Relations Act establishes a five-member board to administer the act. The board must have a quorum to function, meaning that at least three of its five seats must be filled.

The board has lacked a quorum since Jan. 27, when Trump **removed** Democratic member Gwynne Wilcox, leaving only two members — Republican Chairperson Marvin Kaplan and Democratic member David Prouty.

Without a quorum, the board has been unable to conduct business or issue decisions regarding both union election petitions and unfair labor practice charges.

The Outsider Nominee

Mayer, a Philadelphia-based lawyer who currently serves as Boeing's chief labor counsel, brings the outsider perspective.

He developed a strong management background while representing several hospitality and food service companies, and he worked at a number of management-side law firms prior to his current role at Boeing.

Mayer has defended employers from unlawful labor practice allegations under the NLRA,[2] including several actions involving MGM Grand Detroit.[3]

Given his history of representing management, employers can infer that he will likely work to move the board

in a more business-friendly direction, potentially reversing recent union-friendly decisions and reinforcing the board's role as a neutral arbiter, rather than a proponent of experimental precedents that attempt to stretch the board's power beyond its statutory mandate.

However, given Mayer's adversarial relationship with unions, he may face pushback from pro-union allies among Democrats and populist Republicans.

The Insider Nominee

Murphy, on the other hand, has been a long-standing institutional insider at the board, beginning his career there as a student law clerk in 1974.

A native of Severna Park, Maryland, Murphy earned his law degree from American University Washington College of Law in 1976, laying the foundation for a career that has been deeply embedded in the workings of the board.

Over the decades, Murphy has served as chief counsel to a number of board members, including Republicans Harry Johnson III, Brian Hayes and Peter Schaumber. Most recently, he held the position of chief counsel to Kaplan.

While Murphy has maintained a relatively low public profile and has not been outspoken about his personal views, his consistent alignment with Republican board members suggests a pro-employer leaning.

This pattern of appointments and affiliations indicates that Murphy is likely to continue advocating for positions that favor management interests.

His deep institutional knowledge and long-standing relationships within the NLRB will likely make him a less contentious pick, while still upholding employer-friendly doctrine.

Wilcox's Legal Fight

Given the current makeup of the Senate and Trump's success in confirming many of his nominees, it is likely, though by no means certain, that both of Trump's NLRB nominees will receive Senate approval.[4]

If and when he secures a majority on the board, Trump could settle with Wilcox, who is currently **challenging** the legality of her removal in the courts, and reinstate her as the second member of a Democratic minority.

After multiple rounds of decisions in Wilcox v. Trump, which alternatively ordered Wilcox's reinstatement and upheld her dismissal, the U.S. District Court for the District of Columbia **ordered** her reinstated on March 6.[5]

However, on April 9, U.S. Supreme Court Chief Justice John Roberts **granted** the Trump administration's requested short-term administrative stay of the March 6 order, keeping Wilcox's removal in place until the Supreme Court rules on the matter.[6]

On May 22, the full Supreme Court formally **granted** the stay request, meaning that Wilcox will remain off the board while the matter is litigated.[7]

What happens next remains to be seen. Aside from potentially settling with Wilcox, it also is possible that Trump may break from long-standing tradition by seeking a fourth Republican board member.

In the meantime, Kaplan's term expired on Aug. 27. Trump may decide to renominate him to cement a majority of a fully constituted board for the foreseeable future.

Overturning Controversial Biden-Era Decisions

Even if Wilcox is reinstated, a Republican majority would be in a strong position to reverse or reshape many of the labor-friendly precedents that were established during President Joe Biden's administration.

This could include decisions banning captive audience meetings, restricting the standard for evaluating workplace and handbook rules, prohibiting broad confidentiality and nondisparagement provisions in settlement agreements, and permitting union representation without a secret-ballot election.

In Amazon.com Services LLC in 2024, the board **ruled** that employers could not require employees to attend mandatory captive audience meetings that aim to discourage unionization.[8] This decision marked a significant departure from decades of precedent that treated such meetings as lawful expressions of employer free speech.

In Stericycle Inc. in 2023, the board **adopted** a new standard for evaluating workplace rules, requiring policies to be interpreted from the perspective of a reasonable employee and assessed as to whether a particular rule could potentially chill protected activity.[9]

This replaced the more employer-friendly balancing test that was **established** in 2017 by The Boeing Co., which weighs potential interference with an employee exercising their rights against the business justifications for the rule.[10]

In McLaren Macomb in 2023, the NLRB **reversed** several Trump-era rulings and found that the "mere proffer" of a severance agreement containing a confidentiality or nondisparagement provision is unlawful where the clause is drafted too broadly and would have a reasonable tendency to obstruct an employee's ability to exercise their NLRA Section 7 rights.[11]

Finally, in Cemex Construction Materials Pacific LLC in 2023, the board **overturned** decades of precedent by establishing a new process and procedures for union recognition, holding, among other things, that if an employer commits even a relatively minor unfair labor practice during a union organizing campaign, the union may be recognized without a formal secret-ballot election.[12] As a result, unions can effectively win a representation election without needing employees' votes.

A Republican-majority board with a quorum can reverse these decisions, reestablishing employers' right to speak to employees about unionization, returning to the Boeing business justification test in interpreting

handbook rules, restoring employers' right to proffer severance agreements to employees containing broad confidentiality and nondisparagement provisions, and requiring secret-ballot elections for union recognition in most circumstances.

In short, Trump may settle the Wilcox dispute once a Republican majority is secured. However, he could still achieve the overarching goal of restoring a more conservative and business-oriented approach to labor law.

To that end, Trump has also nominated Crystal Carey, a partner at Morgan Lewis & Bockius LLP, to serve as the NLRB's general counsel.

With both the agency's prosecutorial and adjudicative arms poised to adopt more business-friendly positions, these developments represent a significant shift in U.S. labor policy.

Conclusion

Trump's nomination of Mayer and Murphy to the NLRB marks a pivotal moment in his term. If confirmed, their appointments would restore the board's quorum, shift its ideological balance toward a Republican majority and enable the board to resume regular operations.

Observers should watch these nominees closely, as their confirmation could trigger significant changes in labor policy and establish a more conservative and employer-oriented approach to labor law.

Correction: An earlier version of this article misstated the number of nominee confirmations required for the NLRB to regain a quorum. The error has been corrected.

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[1] https://www.whitehouse.gov/presidential-actions/2025/07/nominations-sent-to-the-senate-d743/.

[2] MGM Grand Detroit, Case 07-CA-230961 (N.L.R.B. 2018); MGM Grand Detroit, LLC, Case 07-CA-232518 (N.L.R.B 2018); MGM Grand Detroit Casino, Case 07-CA-239078 (N.L.R.B 2019).

[3] UAW, AFL-CIO Local 160, Case 07-CB-216393 (N.L.R.B 2018).

[4] https://ourpublicservice.org/performance-measures/political-appointee-tracker/.

[5] https://1.next.westlaw.com/Document/I12c578a0fb0e11efa0e0f9c5557e8cda/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default).

[6] https://1.next.westlaw.com/Document/I94550650158111f0b9dbbbb552210fe4/View/FullText.html?originationContext=typeAhead&transitionType=Default&contextData=(sc.Default).

[7] https://www.supremecourt.gov/opinions/24pdf/24a966_1b8e.pdf.

[8] https://apps.nlrb.gov/link/document.aspx/09031d4583e96e24.

[9] https://apps.nlrb.gov/link/document.aspx/09031d4583af43bd.

[10] https://apps.nlrb.gov/link/document.aspx/09031d458263fae2.

[11] https://apps.nlrb.gov/link/document.aspx/09031d45839af64d.

[12] https://apps.nlrb.gov/link/document.aspx/09031d4583b21d51.