Trump Names New Labor Board Nominees: The 5 Cases That Could Soon Reshape the Law

Insights
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After several months without a functioning quorum, President Trump nominated James Murphy and Scott Mayer to fill vacant seats on the National Labor Relations Board late last week, signaling the potential for a significant course correction of the nation's labor law landscape. Once confirmed as expected, these nominees could quickly reshape things for employers across the country, especially as many continue to grapple with aggressive union activity, a backlog of Board decisions, and sweeping changes to precedent issued under the prior administration. With the pendulum poised to swing back, employers should start preparing now for what could be a more management-friendly Board. Here is a quick recap and a list of the five most significant cases you should keep your eye on.

Trump's Picks and a Path Back to Quorum

On July 17, President Trump announced the nominations of two new Board members to fill two of the vacant seats on the NLRB:

- Scott Mayer, chief labor counsel at a global aerospace company
- James Murphy, a longtime NLRB attorney who previously served as Chief Counsel to multiple Board Members

If confirmed by the Senate, these nominees would restore a quorum to the five-member Board. The NLRB has been hamstrung since the Supreme Court's May ruling blocking the reinstatement of Democratic Board Member Gwynne Wilcox and leaving the Board with just two active members – Chairman Marvin Kaplan and David Prouty – and unable to issue decisions.

The Board's inability to function at full capacity has stalled the adjudication of dozens of pending cases and created uncertainty for employers navigating an increasingly complex labor relations environment. Since President Trump's inauguration, the Board has issued just six published decisions.

Critical GC Role Could Also Soon Be Filled

Meanwhile, Crystal Carey, President Trump's nominee for NLRB General Counsel, just testified before a Senate committee earlier last week in advance of an anticipated full Senate vote. Her confirmation would fill the vacant General Counsel position left by Jennifer Abruzzo, who was fired

by the President in February. Her tenure was marked by sweeping and often controversial policy changes, some of which have started to be rolled back by the Acting General Counsel.

Together, these nominations could the stage for a fundamentally different NLRB heading into the latter half of 2025 and beyond.

What's Next?

The nominations will be sent to the Senate Health, Education, Labor, and Pensions (HELP) Committee for review. That Committee will hold hearings on the nominees and vote on advancing them to the full Senate for approval. We expect that a full Senate vote could follow within weeks, but political dynamics or procedural blocks could lengthen the process depending on whether political opponents want to throw roadblocks in the way. We'll keep you posted as the news unfolds.

5 Most Significant Biden-Era Decisions Likely on the Chopping Block

With a Republican majority potentially just weeks away, employers should take stock of the major legal shifts that occurred under the Biden Board – and begin planning for how those doctrines will hopefully be revisited and reversed. Here are the five most significant cases we're expecting to be addressed in the near future.

Confidentiality and Non-Disparagement Provisions **(McLaren Macomb)**

Perhaps one of the most disruptive decisions for employers, *McLaren* held that severance agreements containing confidentiality and non-disparagement provisions unlawfully restrict Section 7 rights – even if signed voluntarily and with consideration. The ruling applied retroactively and sparked confusion and litigation around severance practices nationwide.

A Republican Board could overturn *McLaren* and reinstate the principle that post-employment restrictions do not interfere with NLRA rights, especially when not tied to ongoing employment or rehire conditions. This would restore critical flexibility for employers in resolving disputes and managing terminations.

Work Rules and Policies **(Stericycle, Inc.)**

The *Stericycle* decision overturned the existing framework for evaluating work rules and replaced it with a more employee-friendly analysis that presumes certain rules, such as confidentiality or civility policies, are unlawful if they could be conceivably interpreted as restricting NLRA-protected activity. The burden then shifts to the employer to prove the rule serves a legitimate and narrowly tailored business interest.

This stricter approach has created uncertainty for employers. Many policies that employers would consider rather typical, including commonplace rules addressing workplace conduct or social

media use, are presumed unlawful unless clearly and specifically justified.

A Republican-controlled Board is likely to revive the prior standard, which balanced the employer's justification against the rule's impact on protected activity without the initial presumption of unlawfulness. Such a shift would make it easier for employers to maintain facially neutral policies without second-guessing their legality under an expansive reading of employee rights.

***Union Recognition* (Cemex Construction Materials Pacific, LLC)**

In *Cemex*, the Board dramatically altered the process for union recognition, requiring employers to either voluntarily recognize a union based on a card check or promptly file an RM petition to trigger a secret-ballot election. Also, if an employer commits *any* unfair labor practices during the period leading up to the election, the Board may issue a bargaining order compelling recognition – regardless of the vote outcome. (We recently reviewed two years' worth of post-*Cemex* decisions so employers can understand the lay of the land.)

A Republican-majority Board could seek to reverse *Cemex* and return to the *Linden Lumber* standard, which permitted employers to reject card-based demands for recognition and insist on an election without facing the near-automatic penalty of bargaining orders for even minor missteps. Employers may see a renewed emphasis on employee free choice and the preference for secret-ballot elections.

***Remedies Available to Workers* (Thryv, Inc.)**

In *Thryv*, the Board held that employers found to have committed certain unfair labor practices must compensate affected workers for all "foreseeable" pecuniary harms, including out-of-pocket medical expenses, late credit card fees and rent payments, or even the loss of a home or a car. This significantly broadened the scope of monetary relief beyond traditional backpay and reinstatement.

Under a Republican majority, we should expect a return to the more predictable and limited remedies traditionally available under the Act. This would reduce exposure for employers and constrain the Board's discretion in imposing penalties for violations.

***"Captive Audience" Meetings* (Amazon.com Services LLC)**

The Board's decision in *Amazon* outlawed so-called "captive audience" meetings, where employers express their views on unionization during work time. The decision rejected more than 75 years of precedent by framing such meetings as inherently coercive, despite the employer's free speech rights under Section 8(c) of the NLRA.

A new Board is likely to restore the legality of captive audience meetings, reaffirming the employer's right to communicate its position on unionization in a lawful, non-coercive manner. (Note that several states have taken to prohibiting the meetings as well.)

What Employers Should Do Now

While a new majority may offer relief, employers should not wait for reversals to occur before taking action. Here are four best practices to consider today:

1. Stay the Course on Compliance: Until these rulings are formally overturned, they remain binding law. Employers should continue to operate in full compliance, especially when managing union activity, severance agreements, or workplace policies.

2. Audit Handbooks Proactively: Use this transition period to identify and revise any policies that may be viewed as overbroad under *Stericycle*. Preparing compliant versions now will ease future updates and reduce the risk of unfair labor practice charges.

3. Prepare for Organizing Campaigns: *Cemex* has fundamentally changed the early stages of union recognition. Employers should train supervisors, update communication protocols, and develop quick-response strategies to union organizing activity.

4. Engage Experienced Counsel: With the NLRB's direction in flux, legal guidance is essential. Employers should work with labor counsel to monitor developments, assess risk, and adapt strategies in real time.

Conclusion

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