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Saga Continues: Legal Spat Over Labor Board's Top Lawyer Heads To Fifth Circuit

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One of President Biden's first moves [when he took office was to fire](#) Peter Robb, then-National Labor Relations Board (NLRB) general counsel. It is still up in the air as to whether the president exceeded his authority, but we may have some clarity soon – as we await the oral argument set for April 7 in the U.S. Court of Appeals for the Fifth Circuit.

According to a [Bloomberg article](#):

“President Joe Biden’s unprecedented Inauguration Day firing of the federal labor board’s top lawyer during the Trump administration is teed up for judicial review at a Republican-dominated U.S. appeals court in New Orleans. [A company] has told the U.S. Court of Appeals for the Fifth Circuit that Biden lacked the legal authority to remove former National Labor Relations Board General Counsel Peter Robb. The unlawful termination made the actions of Robb’s replacement—including issuing an unfair labor practice complaint that led to an NLRB ruling against [the Company]—legally invalid, the company argued in court filings. The Fifth Circuit is set to be the first court to rule directly on the legality of Robb’s ouster, an issue with long-term implications for future presidents’ sway over the NLRB and the agency’s independence from the White House.”

The legal dispute revolves around whether the National Labor Relations Act (NLRA) permits a new president to remove the agency’s top lawyer at his or her discretion. Depending on how the Fifth Circuit rules, it could invalidate at

least some of the actions taken by the NLRB after Robb was terminated.

The agency's new general counsel, Jennifer Abruzzo, has been very active and taken various positions contrary to those of Robb. Indeed, Abruzzo has indicated she wants to [make changes in labor law on various fronts](#), including the use of permanent replacements in strikes, employer communications during union campaigns, and much more. She also has altered how [regional NLRB offices approach settlement](#) of cases – insisting on more onerous terms – and expanded the [types of penalties](#) her office may seek when prosecuting violations of the NLRA.

Any employers with pending cases before the NLRB should monitor how this issue plays out to see if the ultimate outcome may affect their cases. We will all stay tuned.