



FORDHARRISON

Loudon Monroe Seminar 2025

NLRB Update

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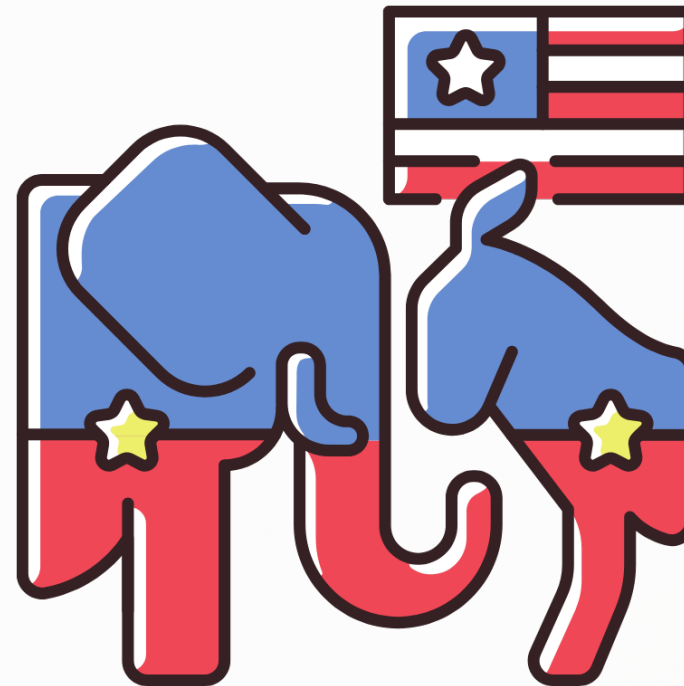
NLRB Update

- » National Labor Relations Board
- » Five member Board that sits in Washington.
- » Issue regulations.
- » Decide cases.



NLRB Update

Historically, eventual majority of same party as President.



NLRB Update

Humphrey's Executor



» President Hoover appointed, and the Senate confirmed, Humphrey as a commissioner of the Federal Trade Commission (FTC). In 1933, President Roosevelt asked for Humphrey's resignation since the latter was a conservative and had jurisdiction over many of Roosevelt's New Deal policies. When Humphrey refused to resign, Roosevelt fired him because of his policy positions.



NLRB Update

However, the FTC Act only allowed a president to remove a commissioner for "inefficiency, neglect of duty, or malfeasance in office." Since Humphrey died shortly after being dismissed, his executor sued to recover Humphrey's lost salary.

NLRB Update

Did section 1 of the Federal Trade Commission Act unconstitutionally interfere with the executive power of the President?





NLRB Update

The unanimous Court found that the FTC Act was constitutional and that Humphrey's dismissal on policy grounds was unjustified. The Court reasoned that the Constitution had never given "illimitable power of removal" to the president.



NLRB Update

Justice Sutherland dismissed the government's main line of defense in this case which relied heavily on the Court's decision in *Myers v. United States* (1926). In that case the Court upheld the president's right to remove officers who were "units of the executive department." The FTC was different, argued Sutherland, because it was a body created by Congress to perform quasi-legislative and judicial functions. The *Myers* precedent, therefore, did not apply in this situation.



NLRB Update

- » President Trump removed NLRB member Gwynne Wilcox.
- » Said he did not think she would give employers a fair shake.

NLRB Update

- » On March 6, 2025, U.S. District Court for D.C. judge ordered Wilcox reinstated.
- » Held President did not have the power to remove an NLRB member without cause.
- » On March 28, divided D.C. Circuit Court of Appeals removed court injunction, holding President likely has power to remove without cause.
- » Supreme Court decision is likely.





NLRB Update

» Some things do not change.

» Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities.



NLRB Update

Current General Counsel Rescinded GC Memos Of Predecessor

- » Remedies
- » Electronic Monitoring
- » Severance Agreements
- » Noncompete Agreements
- » Guidance on Cemex

Thank you!



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