



# Pennsylvania Conference of Teamsters

## Strength in Numbers 95,000

# LEGISLATIVE ACTION ALERT

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## SUPREME COURT STAYS ORDER OF LOWER COURT ENJOINING REMOVAL OF NLRB MEMBER WILCOX

The Supreme Court granted the Government a stay of a District Court order that had enjoined the President’s removal of member Gwynne Wilcox from the National Labor Relations Board. It did so pursuant to what has been termed its “shadow docket,” in which it issues orders that are supposed to be limited to emergency situations that warrant bypassing, at least temporarily, the review of a court of appeals. As a result of this order, the NLRB now has only two members, which means that it lacks a quorum and, therefore, cannot issue orders.

Although the Board members are protected by law from removal except for neglect of duty or malfeasance in office, and there is a 90-year Supreme Court decision upholding Congress’s right to enact such limitations, the Court stated that because the Constitution vests the executive power in the President, he may remove without cause executive officers who exercise that power on his behalf. In its decision, the Court stated, “The stay

reflects our judgment that the Government is likely to show that...the NLRB exercise[s] considerable executive power.” It cautioned, however, that “we do not ultimately decide in this posture whether the NLRB...falls within such a recognized exception; that question is better left for resolution after full briefing and argument.” Given the normal course of appellate litigation, it will certainly takes months for this case to wind its way up to the Supreme Court for an ultimate decision. And while no one can be certain of that Court’s final decision, given its approach to staying the District Court’s finding that Wilcox was entitled to reinstatement, there is little hope for a favorable outcome.

In the meantime, Trump has the option of appointing at least one member to the NLRB in order to restore a quorum or simply letting things stay as they are, thus rendering the Board incapable of functioning beyond the level of its Regional offices.

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