



NINTH CIRCUIT COURT OF APPEALS UPHOLDS BIDEN'S REMOVAL OF NLRB GENERAL COUNSEL

On January 27, 2023, the United States Court of Appeals for the Ninth Circuit issued a decision in *Aakash Inc., DBA Park Central Care and Rehabilitation Center v. NLRB* rejecting an employer, Aakash's argument that President Biden's removal of former NLRB General Counsel Peter Robb was improper.

The NLRB previously issued an order against Aakash which held that it had violated the National Labor Relations Act ("NLRA") by refusing to bargain with SEIU Local 215. Aakash sought review from the court, arguing that Robb's successor as NLRB General Counsel, Jennifer Abruzzo, lacked authority to prosecute the underlying unfair labor practice charge, because Robb's removal in January 2021 was improper.

Aakash argued that President Biden did not have the power to remove Robb without cause in the middle of his four-year term. Therefore, it argued, General Counsel Abruzzo's actions were *ultra vires* and void. The court disagreed, however, ruling that "the President may remove the Board's General Counsel at any time and for any reason." The court found that the President's removal power derives from Article II of the U.S. Constitution, and that the NLRA does not limit this power with respect to the NLRB General Counsel.

This is not the first time that a court has tackled the issue of Robb's removal. In April 2022, the Fifth Circuit Court of Appeals heard the same argument in *Exela Enterprise Solutions, Inc. v. NLRB*, and similarly concluded that the removal was valid. The court in *Aakash* addressed this previous case, with its opinion stating that it found "no reason to part ways with our sister circuit's persuasive discussion."

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