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Federal Judge Says President Can Fire NLRB General Counsel

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As we have previously reported, on his first day in office, [President Biden fired former NLRB General Counsel Peter Robb](#) after Robb refused to resign. This controversial move immediately sparked debate over the President's authority to fire Robb, who was serving in the last year of his statutory four-year term when fired.

In response to Robb's abrupt departure, challengers have argued that Robb's replacement, Acting General Counsel Peter Sung Ohr, does not have authority to bring cases before the NLRB because his appointment was invalid. [The NLRB has refused to weigh in on the issue](#), saying that it is a matter for federal courts to decide.

The United States District Court for the District of New Jersey addressed the issue in its recent order in the case [Goonan v. Amerinox Processing](#). U.S. District Judge Noel Hillman granted the NLRB's request for an injunction, despite Amerinox's argument that the NLRB acting general counsel does not have authority to prosecute this matter because of Robb's removal. Judge Hillman stated that federal labor law gives the President authority to fire NLRB general counsels without cause, and that the temporary assignment of an acting general counsel without compliance with the Appointments Clause does not render the NLRB's petition for injunctive relief invalid.

Judge Hillman, however, did not specifically rule on the legality of President Biden's firing of Peter Robb, nor were his comments about firing general

counsels a deciding factor in issuing the injunction. Moreover, Judge Hillman noted that the NLRB's regional director was seeking an injunction on behalf of the Board, not the general counsel.

Given the peripheral nature of Judge Hillman's comments about firing general counsels generally, this case is not likely the end-all, be-all on the matter. Thus, unless the Supreme Court rules squarely on the issue of Robb's firing, challenges will likely still roll in as potential defenses to charges brought by Ohr.