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Immigration judges union to fight decertification

The Federal Labor Relations Authority ruled 2-1 that immigration judges are management officials who influence policy and therefore are excluded from collective bargaining.

The president of the National Association of Immigration Judges has vowed to fight a decision by a federal agency to decertify the union.

The divided ruling by the Federal Labor Relations Authority, with two appointees of President Donald Trump comprising the majority, faces an uncertain future if Joe Biden becomes president.

The authority ruled Nov. 2 that immigration judges, referred to in the decision as IJs, are management officials who influence policy and therefore are excluded from collective bargaining.

The Department of Justice hailed the ruling. "The department is pleased that the ... landmark decision ... recognizes immigration judges as independent and professional adjudicators who make tremendous contributions to the development of our nation's immigration laws," said DOJ spokeswoman Alexa Vance in a statement.

Ashley Tabaddor, a Los Angeles immigration judge who is president of the union, said it would ask the panel to reconsider its decision.

"This is uncharted territory," Tabaddor said in a telephone interview Friday. "This is an unprecedented, coordinated attack on the National Association of Immigration Judges."

Tabaddor said the union, which represents about 470 immigration judges across the nation, may go to court to seek a motion to stay the authority's order.

It is unclear whether the authority's decision can be challenged in court or if a Biden administration could act immediately to support the union upon taking office, assuming officials decide to do so.

Immigration judges are employees of the U.S. Department of Justice, and the union has clashed with the Trump administration over its demand that immigration judges clear more than 700 cases per year.

The majority ruled immigration judges play the same role as members of the Board of Immigration Appeals. U.S. Department of Justice Executive Office for Immigration Review and National Association of Immigration Judges International Federal of Professional and Technical Engineers Judicial Council 2, WA-RP-19-0067 (FLRA, filed Nov. 2, 2020).

"Arguing that IJs' decisions do not influence agency policy while board member decisions do is akin to arguing that district court decisions do not shape the law while appellate court decisions do," the panel majority wrote.

"Such a distinction, based on what appears to be solely the reviewability of decisions, is nonsensical," authority chairman Colleen Duffy Kiko and member James T. Abbott wrote.

Ernest DuBester, a President Barack Obama appointee on the authority, blasted the majority decision as sophistry.

"This is the antithesis of reasoned decision making," he wrote. "Based upon the conclusory nature of the majority's analysis, along with the facetious manner in which it reconciles its decision with authority precedent precluding collateral attacks on unit certifications, it is abundantly clear that the majority's sole objective is to divest the IJs of their statutory rights."

Tabaddor called the ruling a "nuclear option" that is a "road map for going after other unions," noting Trump's executive order last month creating a category of federal employees who would not have civil service protections.

#360412

Craig Anderson

Daily Journal Staff Writer
craig_anderson@dailyjournal.com

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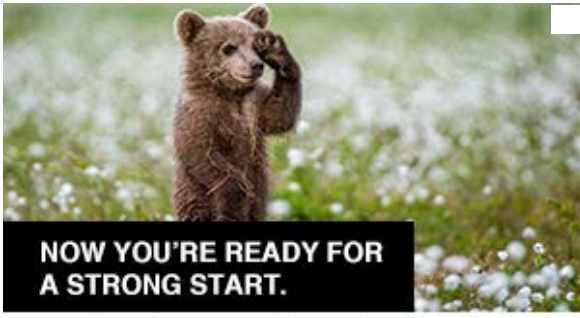
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