



# INTERNATIONAL FEDERATION OF PROFESSIONAL & TECHNICAL ENGINEERS AFL-CIO & CLC

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**FOR IMMEDIATE RELEASE**

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## **Anti-Union Majority on Federal Labor Board Throws a Wrench in the Gears of Justice**

**The Fractured FLRA has Ruled Against the Union Rights of  
Immigration Judges—Contrary to the Position of Judges, the Justice  
Department, and the Biden Administration**

*IFPTE President Matt Biggs calls the FLRA decision  
a rogue action at odds with long-standing labor law and  
the best interests of the immigration courts*

WASHINGTON – In a cynical attempt to bust the union that has represented and given voice to the nation’s immigration judges for nearly half a century, two anti-union board members of the three-member Federal Labor Relations Authority (FLRA) have voted to strip collective bargaining rights from judges and their union. The two anti-union members issued the lawless decision against the wishes of both parties to the action.

Last year, the U.S. Department of Justice reversed course and dropped legal efforts begun by the Trump administration to decertify the National Association of Immigration Judges, Judicial Council 2 of the International Federation of Professional and Technical Engineers.

“This is a poorly reasoned decision and overrules the will of the parties,” said NAIJ President Mimi Tsankov, an immigration judge in New York. “It is rooted in the majority FLRA board members’ anti-union bent and reflects a deep desire to silence immigration judges.”

Ernest DuBester, chair of the FLRA board, pointed out in a dissenting opinion that “the *very petition* that provided the vehicle for the majority to issue its underlying decision” had been withdrawn by the DOJ. Nevertheless, the decision “should come as no surprise.”

“...[O]ver the last four years, they [board members Colleen Duffy Kiko and James Abbott] have repeatedly taken action without regard for – or, indeed, even contrary to – the parties’ positions or arguments,” he wrote.

In addition to actions by the Justice Department’s Executive Office for Immigration Review (EOIR) indicating that it wanted to continue recognition of the union, the Biden White House also has been very clear that federal workers – including immigration judges and other professionals – should have a right to union representation.

An outraged Matt Biggs, IFPTE’s president, said that an agency as important to federal workers as the FLRA has no excuse for continuing to maintain an anti-union majority more than a year into the Biden presidency.

"Make no mistake about it, this draconian and ideologically fueled action taken by the FLRA would have been avoided if the Senate had moved President Biden’s FLRA nominees last year,” Biggs said. “Our members are paying a terrible price, and the Senate must immediately prioritize this when it returns from recess."

Two years ago the DOJ petitioned the FLRA to decertify the union in an effort to silence immigration judges and the union from speaking out about issues that related to due process, judicial independence, a lack of resources, a case backlog (now at an all-time high of 1.6 million cases) and other issues.

The DOJ, led at the time by Attorney General William Barr, claimed judges were managers. NAIJ leaders noted then that “immigration judges don’t even have the authority to order pencils.”

In July 2020, FLRA Regional Director Jessica Bartlett determined immigration judges within the department were in fact not “management officials,” and

therefore, could participate in a union under the Federal Service Labor-Management Relations Statute.

On the eve of Election Day, November 2, 2020, the FLRA board, voting along party lines, overturned Bartlett’s decision. In 2021, the collective bargaining rights of the judges continued to ping pong as the DOJ withdrew its petition and the EOIR again began holding meetings with union representatives on issues of concern to judges.

“The timing of this month’s decision, coming only hours after a Congressional committee hearing on the need for an independent Article I immigration court, further highlights the stakes for fairness and the rule of law,” Tsankov said.

The need for immigration judges to have union representation is greater than ever and this fight is far from over, representatives of both NAIJ and IFPTE said. NAIJ and its legal team are planning a legal challenge.

The FLRA decision denying immigration judges their rights issued this month can be found here:

[U.S. DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW \(Agency\) and NATIONAL ASSOCIATION OF IMMIGRATION JUDGES INTERNATIONAL FEDERATION OF PROFESSIONAL AND TECHNICAL ENGINEERS JUDICIAL COUNCIL 2 \(Union\) W A-RP-19-0067 \(71 FLRA 1046 \(2020\)\) ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION FOR STAY, January 21, 2022](#)

**Across the United States and Canada, IFPTE represents 90,000 highly-skilled workers in both the public and private sectors. The union is an affiliate of the AFL-CIO and the CLC. More information can be found at [www.IFPTE.org](http://www.IFPTE.org).**