

Immigration Judges Continue Push For Union Recognition

By **Alyssa Aquino**

Law360 (July 21, 2022, 9:26 PM EDT) -- The nation's immigration judges called on the Federal Labor Relations Authority on Thursday to restore their collective bargaining rights and recognize their union, which was decertified after a protracted legal battle over a Trump-era decision stripping the judges of their eligibility to organize.

The National Association of Immigration Judges, or NAIJ, submitted its petition seeking union recognition in spite of the FLRA's **November 2020** ruling that immigration judges are union-ineligible managers, which the agency **stood by** in January, one year after President Joe Biden took office.

Months after that ruling went into effect and the union was decertified, NAIJ petitioned the Federal Labor Relations Authority to recognize the association as a collective bargaining unit for the nation's approximately 500 immigration judges, "as if we've never been in existence before," in a last-ditch effort to restore its union powers after experiencing what NAIJ President Mimi Tsankov, called a politically motivated attack.

"We've been an extremely effective organization that has testified before Congress, advocated for an independent immigrant court and spoken truth to power," Judge Tsankov told Law360 in an interview. "We paid for it. We were targeted by the last administration."

NAIJ had publicly quarreled with the Trump administration over a series of immigration court policies, including a quota system requiring judges to complete 700 immigration cases annually.

In 2019, the U.S. Department of Justice, which oversees immigration courts, petitioned to decertify the union. The FLRA later granted the petition, with a deeply divided panel ruling that immigration judges qualified as union-ineligible managers because their decisions set policy for the Executive Office for Immigration Review.

Although that ruling is still on the books, Judge Tsankov was hopeful that the recertification petition would still be approved, saying that there have been changes within the immigration courts over the past three years that would justify recognizing NAIJ now.

The Biden administration may also be supportive of the renewed effort, Judge Tsankov said, noting that the White House had attempted to walk back the FLRA ruling, including by moving to withdraw the underlying, Trump-era decertification petition.

Judge Tsankov said that the recertification petition accounted for only one prong of NAIJ's two-sided effort for union recognition. The organization is currently contesting the FLRA ruling in the D.C. Circuit, she said.

Although NAIJ is hoping to regain its status through either avenue, Judge Tsankov acknowledged that an appellate victory may be more useful in the long run.

"Having that decision hanging around is troublesome," she said. "We view it as lawless. ... It basically puts politics over the application of fact. ... If you allow the FLRA to make that kind of political decision making against us, they can do it to any federal labor union."

EOIR spokesperson Kathryn Mattingly said that while the DOJ is supportive of employees' organizing rights, it "is bound by orders issued by agencies and courts."

--Editing by Jill Coffey.