



Ava Lombardi

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Former US NLRB chair Marvin Kaplan spoke with Lexology PRO about leading the agency without a quorum and his decision to move from public service to private practice.



Credit: Courtesy photo



Kaplan served on the US National Labor Relations Board (NLRB) from 10 August 2017 to 27 August 2025 and US President Donald Trump named him chair in January 2025. Following the end of his term, Kaplan joined Jackson Lewis in its New York City office and is now serving as a principal and member of the firm's labour relations group.

Kaplan led the NLRB during unprecedented times: Trump terminated former Democratic board member Gwynne Wilcox in January, leaving the agency without a quorum and unable to issue decisions. Wilcox is challenging her removal, which the US Supreme Court upheld in May 2025 pending appeal. Kaplan's exit leaves David Prouty, a Democrat, as the only sitting board member, though Trump nominated Scott Mayer and James Murphy to fill two vacancies in July 2025.

Below, Kaplan reflects on the NLRB's efforts to navigate a challenging year and shares his perspectives on emerging labour policy issues.

This interview has been edited for clarity.

What are you most proud of from your time at the NLRB, and as chair?

The thing I'm most proud of as a board member and also as chairman is our productivity. When we were in the majority, we dropped the backlog and the number of long-term cases to probably the lowest level that anyone has seen in a while. As chairman, even when we lost the quorum, David Prouty and I worked tirelessly to keep cases moving so that once a quorum was re-established, we would have an opportunity to get those cases out the door.

The NLRB has not been operating under normal circumstances this year. What challenges did you face while leading the agency, and how did you approach them?

There were a couple of challenges. We were dealing with Gwynne Wilcox's discharge, and there were differing opinions as to the legality of it. Even within the Board, we were dealing with a new administration that had new goals with regard to accountability and government spending. We were dealing with the lack of a quorum and all the delegations that go along with that. It was an interesting time.

And with these things in the background, we were also continuing to process cases. We didn't know when we would have new members, but our hope was that we would get them as soon as possible. David and I continued to work on cases to make sure they were teed up in the event that we had a quorum, and that was a lot of work.

I think that every administration brings new challenges, and ours was trying to find the best path forward for the agency. And I think in most respects, we did do that. But finding your stride in a new administration where your budget is being addressed is always a new event and can take a lot of time.

How has the lack of a quorum affected the Board's unfair labour practice caseload, and where were you focusing your time and resources while unable to issue decisions?

The Board only works with cases once they have been appealed. Once they were before the Board, we kept the process going even though we didn't have a quorum and basically drafted our own materials and opinions. The idea was that once new members came on, they could look at David's approach and my approach and decide which one they wanted to join, or if they didn't agree with either of us. I'm hoping that someone reads everything I had been doing, but nothing ensures that.

These cases just pile up until the Board can issue a decision, so with everything that comes in, the backlog grows. And with the growth of the backlog also comes the growth of the oldest cases list, or cases that have been pending at the Board for more than 18 months. Justice delayed is justice denied, and the Board is going to have a bigger backlog to deal with when Trump's nominees are confirmed. But I'm hoping that we've left them with the tools to deal with it expeditiously. There are hard questions in these cases, but I think the Board's goal will be to get a lot of decisions out as quickly as possible.

What do you make of recent state efforts to regulate private-sector labour relations? Do you think these efforts are necessary, and is there a way to square them with the National Labor Relations Act 1935 (NLRA)?

I don't believe that they are necessary. A properly functioning Board, which I believe we're going to see once Mayer and Murphy get confirmed, will have enough expertise to deal with these issues quickly and properly.

These state institutions, to the extent that they adopt or look at NLRB precedent, are not as involved in the day-to-day of addressing that precedent as the Board is. I think there is a reason the Board has taken a position of non-acquiescence, and that applies just as equally here. You want the Board making decisions because they are the subject matter experts and are best suited to make them.

To make it simple, Congress was pretty specific and unequivocal in its desire to have the Board be the adjudicator of labour issues. I really do believe in the Board and the idea of commissions with expertise, and I think Mayer and Murphy are the type of people you want to fill these positions.

What factors led to your decision to leave the NLRB for private practice?

I'm a really big believer in turnover in the government. I think it's good, particularly at the highest levels, to bring people in so that you get new perspectives and thoughts.

When I joined Jackson Lewis, people asked me if I would want some of my opinions to be turned into majority decisions. My opinions about the topics that the Board will cover in the future are pretty well-baked, but they're not necessarily the only positions that make sense. The point of having new people come in is so they can be thoughtful about these decisions and then apply their own expertise.

How are you now leveraging your public service experience – at the NLRB, as well as at the US Occupational Safety and Health Administration and the US Department of Labor – to advise clients in the private sector?

I can offer clients insight into how to approach labour law. I participated in around 900 decisions while at the NLRB. When you participate in that many decisions, you start developing a sense of what works and what doesn't. There are a lot of policies employers need to consider, and I look forward to working with them to hammer those out.

What trends or challenges in labour law do you think employers should watch closely in the coming months and years?

There are any number of things employers should start considering. They should make an effort to be as versed as possible on their obligations if they're presented with union cards or requests for recognition. They should start considering expansions on protected activity under the NLRA, and captive audience meetings are going to continue to be a topic of conversation. There's a lot that employers need to be prepared for, and hopefully I'll be able to help.



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