

# Labor Agencies Leadership and Policies During Trump Administration

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## Introduction

The National Labor Relations Board (NLRB) and the Department of Labor (DoL) are the two main levers of power for the executive branch to enact labor policies. The NLRB is responsible for enforcing the National Labor Relations Act, which protects the rights of workers to organize unions and improve working conditions. The DoL is a larger department that oversees a plethora of laws regulating wages, workplace safety, and whistleblowers, among others. These departments work in tandem to manage the balance of power and maintain certain standards in employer-employee relations.

## The Personnel

To head these agencies, Trump largely appointed ex-CEOs and corporate lawyers that worked to tilt the balance of power in favor of employers.

### *Department of Labor*

There were three nominees to head the Department of Labor over the course of Trump's administration. The first choice was [Alexander Pudzer](#), the CEO of a fast-food conglomerate that includes Hardee's and Carl's Jr, two chain restaurants that were regularly fined by the DoL's Wage and Hour division. Pudzer's nomination eventually fell through after a series of scandals including [domestic violence](#) accusations, [employing](#) an undocumented housekeeper, and outsourcing his company's technology jobs to the Philippines.

After Pudzer's nomination fell through, Trump appointed Alexander Acosta as Labor Secretary. Acosta spent most of his career in the public sector, namely as a member of the NLRB and later the US Attorney for the Southern District of Florida under President George W. Bush. In his brief stint at the NLRB, Acosta was part of a conservative majority that endangered workers rights through rulings that [enabled a health care clinic to fire striking nurses](#) and allowed [employers to use state funds](#) to combat unionization efforts. As a US Attorney, Acosta agreed to a [plea deal](#) with Jeffrey Epstein in 2008 that sentenced him to 13 months in prison for [dozens of counts](#) of sexual abuse, including of minors as young as 13. In 2019, [in light of renewed charges](#) against Epstein for conducting a sex trafficking ring, Acosta resigned.

Trump's final Labor Secretary nominee was Eugene Scalia, a BigLaw revolver and son of the late Supreme Court Justice Antonin Scalia. Prior to the DoL, Scalia [worked](#) at

Gibson, Dunn & Crutcher as co-chair of their Administrative Law and Regulatory Practice Group and member of their Labor and Employment Practice Group. His clientele included the Chamber of Commerce in a case against the SEC and SeaWorld in a case against the Occupational Safety and Health Administration, a branch of the Department of Labor.

### ***National Labor Relations Board***

The National Labor Relations Board was led by Peter Robb throughout the Trump administration. Robb previously worked as a [management-side attorney](#) at Proskauer Rose. He was also a federal attorney during the Reagan administration wherein he [successfully led](#) the government's effort to crack down on a strike by the Professional Air Traffic Controllers Organization, resulting in the termination of 11,000 workers.

### **The Policies**

Under Trump, the DoL utilized rulemaking authority to unwind and water down Obama-era gains while the NLRB reversed precedent to the detriment of workers.

### ***Department of Labor***

One of Acosta's early actions was to roll-back a key Obama administration regulation regarding tipped workers. The [Obama policy](#), based on the Fair Labor Standards Act, prevented employers from pooling tips and sharing them with back-of-house employees—cooks and dishwashers—in order to subsidize a minimum wage.

In 2017, Acosta's DoL repealed the Obama rule and instituted its own tip-pooling regulation. The 2017 rule allowed restaurant owners to control the allocation of tip pools, with no limitations on the category of employees that can be beneficiaries of the tip pool. In effect, [the rule](#) allowed managers and owners to get a share of tip pools. Speaking with the *Washington Post*, a worker-side labor lawyer [described](#) the rule as "authorize[d] wage theft."

On top of the tip rule, the DoL diminished a proposed Obama regulation that expanded overtime pay for salaried workers. Under the Obama administration [rule](#), salaried workers who made under \$47,476 would be entitled to overtime pay, regardless of their designations as supervisors or managers. Acosta and the Trump administration [lowered the threshold](#) to just \$35,000 and did not address the widespread misclassification of low salaried workers as supervisors.

After Acosta's resignation, Eugene Scalia continued a pro-business agenda. Scalia particularly targeted independent contractors—broadening the [definition](#) of who qualifies as an independent contractor rather than an employee, [removing](#) their

minimum wage and overtime protections, and making it [more difficult](#) for contractors to bring discrimination claims.

## ***National Labor Relations Board***

Peter Robb's NLRB was similarly pro-business and [reportedly](#) ran a dysfunctional operation at the Labor Board. Robb faced internal pushback to a [proposed restructuring](#) of the agency that would have diminished the authority of regional directors. Former NLRB officials called the restructuring a "[mistake](#)" that could [slow down](#) the Board's internal process.

Robb also [criticized](#) both the NLRB board members themselves and the Inspector General for their rulings regarding the *Hy-Brand Industrial Contractors* case. *Hy-Brand* concerned the joint-employer rule, which determines the circumstances wherein a business is liable for the conduct of its contractors or franchises. The *Hy-Brand* ruling initially limited joint-employer liability in a reversal of Obama-Era precedent set in *Brown-Ferris Industries*, but was later vacated by the Board after the Inspector General determined that a Republican member should have recused from the case. Robb, in what was considered an [unprecedented](#) rebuke, issued an opinion expressly disagreeing with the Inspector General and calling on the Board to reinstate *Hy-Brand*.

Separate from these internal feuds, Robb's leadership skewed in favor of businesses. Robb successfully pursued a different joint-employer case after *Hy-Brand* that [reverted](#) the liability analysis to pre *Brown-Ferris* standard. The Board also [instituted a stricter definition](#) of a bargaining unit, thus making it more difficult for workers to organize a union. This ruling was decided in *PCC Structurals*, a case regarding the unionization effort of 178 workers at a Boeing facility. The Board sided with Boeing in its arguments that the workers did not constitute a proper bargaining unit and therefore could not collectively bargain as one.

## **Conclusion**

Former President Trump leaned heavily into ostensibly pro-labor messaging during his 2016 presidential campaign by [criticizing](#) free-trade deals and the [outsourcing](#) of jobs. This time around, the Trump campaign is once again attempting to strengthen its labor appeal with [messaging on](#) tariffs, manufacturing, and ironically, a [call to eliminate](#) taxes on tips. The record of his first term, however, tells a markedly different story. The personnel that President Trump appointed to key labor positions had long, pro-boss careers that only continued during their time in the administration. Despite campaign rhetoric, these corporate executive friendly leaders enacted rules and judgements that benefitted owners at the expense of organized labor, independent contractors, and workers generally.