

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

POWER UP ELECTRICAL CONTRACTORS, LLC

Employer

and

Case 14-RC-318552

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL NOS. 1 AND 124, AFL-CIO, AFFILIATED
WITH INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS

Petitioner

and

MID-AMERICA CARPENTERS REGIONAL COUNCIL

Intervenor

and

ASSOCIATED ELECTRICAL CONTRACTORS OF ST. LOUIS

Party in Interest

HABCO PARTNERSHIP, INC.

Employer

and

Case 14-RC-318586

INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS, LOCAL NO. 1, AFL-CIO, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

Petitioner

and

MID-AMERICA CARPENTERS REGIONAL COUNCIL

Intervenor

and

ASSOCIATED ELECTRICAL CONTRACTORS OF ST. LOUIS

Party in Interest

ORDER¹

The motions for reconsideration filed by the Employers, the Mid-America Carpenters Regional Council, and the Associated Electrical Contractors of St. Louis (“nonpetitioning parties”) are denied.²

Contrary to the nonpetitioning parties, former Chairman McFerran’s term expired at 11:59 p.m. on December 16, 2024, not at 12:00 a.m. on that date. Board Members are appointed by the President to 5-year terms, with the term of one Member expiring each year. During her tenure as Chairman, McFerran held the “Gray Seat,” in which the term of the Board Member expires on December 16 of years ending in 9 and 4.³ Had former Chairman McFerran’s term expired at the beginning of December 16, rather than at the end, she would not have served a full 5-year term, but rather 4 years and 364 days.

Moreover, the Board Members’ commissions, provided by the White House, state the expiry date for the Board Members’ terms, e.g., X is a Board Member “for a term of five years expiring XX date.” In *EEOC v. Sears, Roebuck & Co.*, 504 F. Supp. 241, 276 (N.D. Ill. 1980), *enfd.* 839 F.2d 302 (7th Cir. 1988), the court defined the term “expires” in relation to an EEOC Commissioner’s term:

First, we observe that the plain meaning of the phrase “expiring July 1, 1973” indicates that Brown’s regular term of office extended to and included that date. “Expiration” means “coming to an end,

¹ Chairman Kaplan notes that, on January 27, 2025, President Trump removed Member Wilcox from her position. On March 6, 2025, the United States District Court for the District of Columbia held that Member Wilcox’s removal violated Section 3(a) of the Act, declared her removal “null and void,” and enjoined Chairman Kaplan from, *inter alia*, “in any way treating plaintiff as having been removed from office.” *Wilcox v. Trump*, Case 1:25-cv-00334-BAH (Mar. 6, 2025) (dkt #34). On March 7, 2025, the Department of Justice appealed the district court’s order to the United States Court of Appeals for the D.C. Circuit and, thereafter, filed a request for an immediate stay. See *Emergency Motion for Stay Pending Appeal, Wilcox v. Trump*, No. 25-5057 (D.C. Cir. filed Mar. 10, 2025). That request is pending as of the issuance of this decision.

² The Party-In-Interest has filed a motion entitled “Special Motion to Enforce NLRB Rules and Regulations,” which we have construed as a reply to the opposition.

In the underlying Decision on Review and Order, Chairman Kaplan joined in granting the Petitioners’ request for review, but he disagreed with outright reinstating the petitions and, instead, would have remanded the consolidated case for the Regional Director to reopen the hearing and issue a supplemental decision. Although Chairman Kaplan remains of that view, he joins his colleagues in denying the instant motions for reconsideration. He agrees that the non-petitioning parties’ motions do not raise any issues on the merits of the petitions not already considered in the underlying decision, and thereby they fail to establish extraordinary circumstances warranting reconsideration.

³ For a list of all of the Board Members and the seat that each held, see [www.nlr.gov](https://www.nlr.gov/members) - [Members of the NLRB since 1935 | National Labor Relations Board](#).

termination, close” *Perruccio v. Allen*, 156 Conn. 282, 240 A.2d 912, 914 (1968); “coming to a close,” *Clevenger v. Kern*, 100 Ind.App. 581, 197 N.E. 731, 737 (1935); “cessation, close, end, conclusion, or termination” *Southern Bell Telephone and Telegraph Co. v. Department of Industrial Relations*, 42 Ala.App. 351, 165 So.2d 128, 132 (1964);

Based on the court’s finding above, and the plain meaning of the term “expires” as set forth in that case, former Chairman McFerran’s term included the date of December 16, 2024, and ended at 11:59 p.m. on that date.

The nonpetitioning parties further contend that the Board’s decision is invalid because it was not served on the parties until after former Chairman McFerran’s term had expired. The decision here was served on the parties on December 19, 2024, and then an errata issued and was served on the parties on December 23, 2024 because Member Prouty’s name was erroneously listed on the panel rather than Member Kaplan’s. The Board has already addressed, and disposed of, this argument in an order denying motion for reconsideration in *New Vista Nursing and Rehabilitation, LLC*, Case 22-CA-029988 (2011) (not reported in Board volumes), enf’d. *1199 SEIU United Healthcare Workers East, N.J. v. New Vista Nursing & Rehabilitation*, 870 F.3d 113, 128-129 (3d Cir. 2017). In response to the respondent’s argument that the Board issued the Order one day after then-Member Liebman’s term expired, the Board stated:

There is no dispute that the Board dated the above-referenced Decision and Order August 26, 2011. Consistent with Board practice, the date of the Decision and Order reflects the date on which all members had voted on the final draft. At that point, the Decision and Order was ready for issuance to the public and service on the parties. The reproduction, mailing, and uploading of the decision to the Board’s website are purely ministerial functions that did not affect the date certain on which the Decision and Order issued. Such an approach has found approval in the courts. See, e.g., *Braniff Airways, Inc. v. C.A.B.*, 379 F.2d 453, 459 (D.C. Cir. 1967) (“[T]he crucial time for testing the validity of an order to be the time when it is adopted and entered, and not when it comes into the hands of the parties. This approach seems entirely reasonable.”) (internal footnote omitted). Thus, the Respondent’s allusion to the dates of ministerial functions is irrelevant with respect to when final action was taken in this proceeding. August 26, 2011 is the date on which final action was taken by the Board, and that is the date on which the Board’s Decision and Order became effective.

Id. The Third Circuit affirmed this Order and further added that “later ministerial acts are irrelevant to the question of the order’s validity.” 870 F.3d at 128. In the circumstances of this case, the decision was voted (and noted by the nonparticipating Member) on or prior to December 16, 2024. The decision was then conformed and sent to the editors for formatting for publication purposes. By the time the decision was reviewed, formatted, and ready for issuance

and service to the parties, the date was December 19, 2024. These “ministerial acts” do not invalidate the Board decision because the decision itself was voted on prior to Chairman McFerran’s term expiring.⁴

Finally, the nonpetitioning parties assert that the decision is invalid because it was amended after former Chairman McFerran’s term had expired. After the decision had issued, it was brought to the Board’s attention that Member Prouty was erroneously (and inadvertently) listed on the panel rather than Member Kaplan. This was an editorial error and nothing more. The Office of the Executive Secretary issued an Errata and an Amended Decision with the correct panel members listed on December 23, 2024. The date of the Amended Decision remained December 16, 2024. No substantive changes were made to the decision. The Errata merely corrected the panel, and can be classified as a ministerial act which did not alter the decision in any way.

MARVIN E. KAPLAN,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
GWYNNE A. WILCOX,	MEMBER

Dated, Washington, D.C., March 11, 2025.

⁴ A total of 16 Board decisions were dated December 16, 2024 but served on the parties after that date due to the ministerial functions involved in issuing a published decision.