

EMPLOYER LAW BLOG

NLRB Alert: Structure of NLRB Likely Unconstitutional per Federal Judge

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On July 23, 2024, the United States District Court Judge Alan D. Albright of the Western District of Texas issued an order stopping the National Labor Relations Board (“NLRB”) from pursuing certain unfair labor practice charges against SpaceX on the basis of its preliminary finding that the structure of the NLRB is itself unconstitutional.

SpaceX’s challenge is focused on the scope of presidential powers and whether administrative law judges and NLRB members are unconstitutionally protected from removal by the President of the United States: “Congress clearly intended to protect the NLRB from the volatility of the political machine and allow consistent adjudication of employee rights provided by the NLRA. However, Congress is not permitted to ‘interfere with the President’s exercise of the executive power and his constitutionally appointed duty to take care that the laws be faithfully executed under Article II.”

Based on its preliminary analysis, the District Court concluded that, “[u]nder binding precedent, this Court is satisfied that SpaceX has demonstrated a substantial likelihood of success on its claims that Congress has impermissibly protected both the NLRB Members and the NLRB ALJs from the President’s Article II power of removal.”

This is a significant setback for the NLRB, which—like many other federal agencies—has been facing an increasing number of challenges to the nature and scope of its authority. Only time will tell how this fight shakes out, but one thing is clear: it is not over. Stay tuned for further developments in this space.