



Could SpaceX Change the Labor Board's Future? Here's What Employers Need to Know

Insights

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SpaceX is challenging whether the National Labor Relations Board should continue to exist as we know it. In two separate lawsuits, the aerospace company has asked a federal court to strike down the agency's structure as unconstitutional. If that happens in either case, there will be massive implications for unionized and non-unionized workplaces across the country. What are these cases about and what could they mean for employers? We'll explain everything you need to know.

What Happened?

In 2022, eight former employees of Space Exploration Technologies Corp. (SpaceX) filed unfair labor practice charges with the NLRB, alleging that the company had fired them for engaging in activities protected under the National Labor Relations Act (NLRA). Earlier this year, the NLRB issued a formal complaint against SpaceX based on those charges, and that case was set to be heard before an NLRB administrative law judge (ALJ). The next day, SpaceX sued the NLRB in a Texas federal court, claiming that the structure of the agency's administrative proceedings is unconstitutional.

What Are SpaceX's Arguments?

SpaceX is arguing that the NLRB's structure violates the U.S. Constitution because:

- the agency's ALJs are "removable only for cause, by officials who themselves are removable only for cause," and these two layers of removal protection are at odds with **the President's removal power under Article II**;
- the agency has recently authorized itself to award expanded remedies that "go far beyond" the equitable backpay remedy permitted by the NLRA, allowing its ALJs to adjudicate private rights in violation of the **right to a jury trial**; and
- NLRB members exercise prosecutorial, legislative, and adjudicatory authority within the same proceedings, in violation of the **separation of powers and right to due process**.

SpaceX asked the court to declare that the NLRB's structure is unconstitutional and halt the agency from subjecting the company to its proceedings.

Where Does This Case Stand?

Well, it's complicated. Here are the key points:

- **Venue Ping-Pong.** The parties have been battling for months over whether the case should stay in Texas or be transferred to a California federal court. As of the date of this article, it is pending in Texas federal court.
- **Second Lawsuit.** In March, the NLRB filed a second administrative complaint against SpaceX, which then filed a second lawsuit against the NLRB in a different Texas federal court. That lawsuit also challenges the constitutionality of the NLRB, but on narrower grounds (based solely on the removal protections shielding NLRB members.)
- **SCOTUS Ruling.** The Supreme Court just affirmed a 5th Circuit ruling that SpaceX relied on in both of its lawsuits against the NLRB. The SCOTUS decision in *SEC v. Jarkesy* – which looked at how the Securities Exchange Commission (SEC) uses ALJs – may support SpaceX's argument that the NLRB's use of ALJs to order civil penalties and other newly expanded remedies violates the Seventh Amendment right to a jury trial. And while SCOTUS did not weigh in on whether the two layers of "for-cause removal" protections violate the separation of powers, SpaceX may continue to rely on the 5th Circuit's holding on that point.
- **NLRB Proceedings Paused.** Both Texas federal courts where SpaceX filed lawsuits granted the company's request to halt the agency's administrative cases against it while the constitutional challenges play out in court.

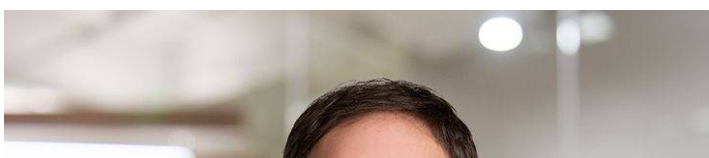
What Does This Mean for Employers?

If the SpaceX lawsuits succeed and the NLRB is dismantled, we will see a total transformation of the way union organizing campaigns, elections, workers' rights, and employer private property disputes are decided. This would greatly reduce the agency's power and curb ALJs from making key rulings that impact unionized and non-unionized workplaces across the country. And this would be on top of the NLRB rules in jeopardy as a result of the recent death of so-called *Chevron* deference, which [you can read more about here](#).

Conclusion

We will continue to monitor developments in these cases, as well as the expected new wave of challenges to the NLRB's rules and positions, so make sure you subscribe to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Labor Relations Practice Group](#).

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