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Launching into New Territory (Continued): SpaceX Wins Temporary Relief at Fifth Circuit

Labor Relations Update on **May 6, 2024**

On May 2, 2024, the U.S. Court of Appeals for the Fifth Circuit, in *Space Exploration Technologies Corp., v. NLRB*, No. 24-40315 (5th Cir. 2024), granted SpaceX's Emergency Motion for Injunction Pending Appeal, essentially halting National Labor Relations Board ("NLRB") proceedings pending the company's appeal of a lower court's "effective denial" of its request for preliminary injunction.

Background

As we previously reported, SpaceX commenced suit in January 2024 in the District Court for the Southern District of Texas in response to NLRB Regional Office 31's administrative complaint filed against the company.

The NLRB complaint alleged that the company unlawfully fired eight employees after they circulated an open letter to all employees critical of the company and the company's CEO. SpaceX asked the district court to stay or enjoin the NLRB's administrative complaint and to declare that (1) the NLRB's structure is unconstitutional because it not only limits the removal of Administrative Law Judges ("ALJ") and Board Members, but it also permits Board Members to exercise executive, legislative, and judicial power in the same administrative proceeding; and (2) the Board's new expanded remedies violate the employer's constitutional right to trial-by-jury.

The district court granted the NLRB's motion to transfer venue to the District Court for the Central District of California, finding that the case "concerns a California administrative proceeding regarding the actions of a California company and its California employees in California." On appeal of that decision, a split Fifth Circuit panel upheld the district court order. A full Fifth Circuit would not hear the issue after an 8-8 deadlock on the company's *en banc* rehearing petition.

On April 17, 2024, SpaceX then filed a motion for reconsideration on the district court's previous decision to transfer the case, or alternatively a request for ruling on its motion for preliminary injunction in District Court for the Southern District of Texas. After what SpaceX called a *de facto* denial due to the district court's failure to swiftly act on its motion, on May 1, 2024, the company filed a Notice of Appeal and an Emergency Motion for Injunction Pending Appeal at the Fifth Circuit.

In its Emergency Motion for Injunction Pending Appeal, SpaceX argued that it would suffer irreparable harm without emergency relief before Thursday, May 2, 2024—the day on which the ALJ was to conduct a hearing on discovery issues. The company reiterated its two original arguments and claimed that it would succeed under the Fifth Circuit's previous ruling in *Jarkesy v. SEC*, No. 20-61007 (5th Cir. 2020), a case currently under review at the United States Supreme Court, which similarly assesses the SEC's powers in enforcing securities law.

In its opposition, the NLRB argued that SpaceX's participation in an administrative proceeding teleconference on discovery issues does not meet the standard for irreparable harm, noting that the company "previously participated in two such teleconferences with the ALJ acting as a special master, and it points to no injury, much less an irreparable one, arising from them."

The Fifth Circuit's Ruling

In a one-sentence order, the Fifth Circuit granted the company's motion for injunction pending appeal.

Takeaways

SpaceX treaded new ground in arguing that NLRB proceedings violate the U.S. Constitution, and their arguments have since been adopted by other employers in recent pending NLRB cases. While the Fifth Circuit originally upheld the district court's ruling that the case should be transferred to the California federal court, the Fifth Circuit has now paused the NLRB litigation for the time being, breathing new life into SpaceX's hopes to evade scrutiny from the NLRB and potentially upending the entire administrative review process. The final outcome of the SpaceX case very well may depend on the U.S. Supreme Court's decision in *Jarkesy*, which was argued on November 29, 2023, and should be issued before the term ends in June 2024.

View original.

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