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What's Next After NLRB Dismissal Of SpaceX Suit

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On Feb. 9, the National Labor Relations Board dismissed its long-running unfair labor practice complaint against Space Exploration Technologies Corp. that alleged the company unlawfully terminated certain engineers.

The board's dismissal letter stated that the NLRB lacks jurisdiction over SpaceX, citing a January opinion issued by the National Mediation Board.

Below is a factual background of the underlying dispute, discussion of the jurisdictional argument and NMB opinion, and practical takeaways from the dismissal. While the dismissal temporarily resolves the circuit split on injunctions, constitutional challenges to the NLRB remain, new questions have been raised for classification of transportation companies and employers facing NLRB proceedings should stay apprised of ongoing developments.

Background

The dispute traces back to the summer of 2022, when a group of SpaceX employees drafted and circulated a companywide open letter sharply criticizing the public statements and social media activity of SpaceX's CEO, Elon Musk.

The letter described Musk's conduct as a source of distraction and embarrassment for the company and its workforce. It urged SpaceX to publicly distance the company from Musk's personal online commentary and to reaffirm its internal policies on workplace harassment and professional conduct.

Shortly after the letter circulated, SpaceX terminated eight of the employees involved in drafting and disseminating it.

In response to the terminations, the employees filed unfair labor practice charges with the NLRB. In January 2024, Region 19 of the NLRB — under the supervision of the NLRB's then-general counsel Jennifer Abruzzo — issued an administrative complaint against SpaceX, alleging that the terminations constituted unlawful retaliation for engaging in protected concerted activity under Section 7 of the National Labor Relations Act.

Under NLRB procedure, an administrative complaint is issued only after a preliminary investigation reveals that there is merit to the allegations contained in the underlying unfair labor practice charge.

Section 7 protects employees' right to engage in collective action for mutual aid and protection, including criticizing employer policies and advocating for workplace improvements. The NLRB's complaint alleged that the open letter fell squarely within the scope of such protected activity.

SpaceX contested the charges, maintaining that the employees were discharged for violating company policies rather than for engaging in any activity protected by the NLRA. SpaceX also mounted an aggressive constitutional challenge to the board's structure itself.

In the U.S. District Court for the Southern District of Texas, and subsequently in the U.S. Court of Appeals for the Fifth Circuit, in SpaceX v. NLRB, SpaceX argued that the NLRB's structure violates Article 2 of the U.S. Constitution because statutory for-cause removal protections applicable to the board's administrative law judges and board members impermissibly restrict the president's authority to remove executive officers.

SpaceX further contended that the agency's combination of investigative, rulemaking and adjudicative functions impermissibly grants board members the authority to exercise executive, legislative and judicial power within the same administrative proceeding, violating fundamental separation-of-powers principles.

In August 2025, the Fifth Circuit affirmed preliminary injunctions that halted the NLRB's proceedings against SpaceX, holding that the NLRB's removal protections for ALJs and board members were likely unconstitutional.

Relying on precedent such as the U.S. Supreme Court's 2024 ruling in Jarkesy v. U.S. Securities and Exchange Commission, the Fifth Circuit panel concluded that multiple layers of removal protections for "inferior officers," such as NLRB ALJs, are likely unconstitutional, and that the protections for board members likewise probably exceed what the Constitution permits.

The court determined that being subjected to proceedings before an unconstitutionally structured agency constitutes irreparable harm, and that the balance of equities and public interest support maintaining the injunctions while the constitutional issues are fully resolved. [1]

The NLRB also faces constitutional challenges in other courts, including the U.S. Courts of Appeals for the Third and Ninth Circuits, as discussed below. Critically, however, unlike the Fifth Circuit, neither the Third nor the Ninth Circuits enjoined the underlying administrative proceedings while those challenges continue.

The Jurisdictional Argument and NMB Opinion

In addition to its constitutional arguments, SpaceX raised a separate jurisdictional defense, arguing that the NLRB lacked jurisdiction over it because SpaceX should be treated as a transportation company governed by the Railway Labor Act rather than the NLRA. Companies covered by the RLA — primarily railroads and airlines — fall under the jurisdiction of the NMB rather than the NLRB.

Abruzzo rejected this jurisdictional argument. Following her removal in January 2025, however, the subsequently appointed acting general counsel, William Cowen, sought input from the NMB in May 2025.

On Jan. 14, 2026, the NMB issued an opinion stating that SpaceX should be covered by the RLA because "space transport includes air travel."[2]

The terminated SpaceX engineers opposed this characterization, arguing that SpaceX does not belong under the NMB's jurisdiction because Congress never expressly granted the agency authority over commercial space transportation. They further argued that, unlike airlines serving the general public, SpaceX offers rides only to "hand-picked customers." The NMB rejected these arguments.

In dismissing the pending unfair labor practice complaint on Feb. 9, the NLRB's regional director for Region 31 cited to that NMB determination and reasoned that the board lacks jurisdiction over SpaceX. The dismissal brought an end to more than three years of administrative and judicial proceedings.

Takeaways

Constitutional challenges to the NLRB remain, but the circuit split on injunctions is temporarily resolved.

The dismissal likely signals the end of SpaceX's constitutional challenge to the NLRB in the Fifth Circuit. However, as described above, the NLRB still faces constitutional challenges in the Third and Ninth Circuits.

In the U.S. Court of Appeals for the Third Circuit, in Spring Creek Rehabilitation and Nursing Center LLC v. NLRB, Spring Creek in 2024 challenged the NLRB's structure in the context of an ongoing refusal-to-bargain unfair labor practice case. Like SpaceX, Spring Creek alleged that the ALJs and board members are unconstitutionally insulated from presidential removal in violation of Article 2.[3]

Similarly, in the U.S. Court of Appeals for the Ninth Circuit, in Amazon.com Services LLC v. Teamsters Amazon National Negotiating Committee, Amazon asserted last March that the NLRB's structure is unconstitutional in its objections to an unfair labor practice complaint stemming from Amazon's alleged refusal to recognize and negotiate with the Teamsters.

Amazon likewise argued that statutory restrictions on the removal of ALJs and board members impermissibly limit presidential control, and that the board's adjudicative framework concentrates executive and judicial authority in a single body, raising separation-of-powers concerns.[4]

Because neither the Third nor Ninth Circuits affirmed preliminary injunctions to halt the litigation of the underlying unfair labor practice allegations, in each case, the administrative proceedings remain ongoing in parallel to the constitutional challenges.

The resolution of the SpaceX matter in the Fifth Circuit may temporarily resolve the circuit split concerning injunctions under the Norris-LaGuardia Act, which restricts federal courts from issuing injunctions in labor disputes.

In the absence of a circuit split in these cases, the remaining constitutional challenges likely will not reach the Supreme Court until decided on the merits and appealed through the lower courts. Only after a court of appeals addresses the constitutional claims in a final judgment, or if meaningful disagreement among circuits reemerges in the interim, will the issue be postured in a way that makes Supreme Court review more probable.

Questions arise for transportation company categorization.

The NLRB's decision to relinquish jurisdiction over SpaceX also raises important questions about how nontraditional transportation companies may be categorized by federal agencies as technological and transportation industries continue to evolve.

For companies operating at the intersection of innovative technologies and transportation, jurisdictional classification can determine whether they fall under the NLRA or the RLA. That distinction is significant because the RLA is administered primarily by the NMB, not the NLRB.

For employers, the choice of statute and forum can be highly consequential. The NLRA is generally viewed as more protective of employee organizing and concerted activity, with broader unfair labor practice standards and more frequent litigation before the board. By contrast, the RLA imposes different bargaining and dispute resolution frameworks, including mediation requirements and more structured processes before strikes or lockouts may occur.

The dismissal has implications for employers facing NLRB proceedings.

The SpaceX dismissal carries several important implications for employers currently engaged in or anticipating NLRB proceedings.

First, structural constitutional challenges to the NLRB will not provide an immediate off-ramp from ongoing unfair labor practice proceedings. Companies will likely be required to litigate through the administrative process and preserve their constitutional objections for appeal rather than obtaining early judicial intervention. Employers should not expect preliminary injunctions to halt board proceedings outside of the Fifth Circuit, at least in the near term.

Second, because the constitutional questions remain unresolved on the merits, employers facing board proceedings should continue to raise and preserve separation-of-powers arguments in anticipation of eventual appellate review. Failing to preserve these objections could foreclose the ability to challenge the board's structure on appeal should the Supreme Court ultimately address these issues.

Employers should monitor developments in the Third and Ninth Circuits, as well as any future Supreme Court action on these issues. A definitive ruling on the NLRB's constitutional structure could significantly reshape the labor relations landscape, and companies should be prepared to adapt their compliance strategies accordingly.

Third, the jurisdictional ruling regarding the NMB may invite other transportation-adjacent companies to explore whether they qualify for RLA coverage rather than NLRA coverage. This could become a viable strategy for certain employers operating in emerging transportation sectors, though the boundaries of NMB jurisdiction over space-related enterprises remain untested.

Conclusion

Although the dismissal temporarily resolves the circuit split over injunctions, constitutional challenges to the NLRB remain pending, additional questions have arisen regarding the classification of transportation companies and employers facing NLRB proceedings are well advised to stay abreast of further developments.

The NLRB's jurisdictional decision underscores the unsettled boundary between NLRA and RLA coverage for emerging transportation-adjacent companies.

Challenges to the board's structure continue in the Third and Ninth Circuits, and are unlikely to reach the Supreme Court unless decided on the merits.

In the meantime, employers should be prepared to litigate board proceedings through the administrative process while preserving constitutional arguments for appellate review.

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[1] Space Exploration Corp. v. NLRB, 151 F.4th 761 (5th Cir. 2025); Jarkesy v. SEC, 51 F.4th 644 (5th Cir. 2022).

[2] Space Exploration Technologies , 53 NMB No. 8 (Jan. 14, 2026).

[3] Spring Creek and Nursing Ctr. LLC v. NLRB, 160 F.4th 380 (3d Cir. 2025).

[4] Amazon.com Serv. LLC v. Teamsters Amazon Nat'l Negotiating Comm., 163 F.4th 624 (9th Cir. 2025)

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