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Texas Court Clash: Do Unconstitutional NLRB Removal Protections Pause an Unfair Labor Practice Case?

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A Texas federal district court has split with another Texas district court on a key question: when a court declares the National Labor Relations Board's removal protections unconstitutional, can it sever the offending provisions and allow an unfair labor practice charge to proceed—or must the proceeding be permanently enjoined?

In *Aimbridge Employee Service Corp. v. NLRB*, No. 4:25-cv-1014 (E.D. Tex. July 27, 2026), Judge Amos Mazzant held that the removal protections are severable—mooting the employer's request for a permanent injunction and allowing the underlying unfair labor practice charge to proceed.

That result puts *Aimbridge* squarely at odds with *Aunt Bertha v. NLRB*, No. 4:24-CV-00798-P (N.D. Tex. May 15, 2026), where Judge Mark Pittman held the protections could not be severed and granted a permanent injunction halting the NLRB unfair labor practice proceedings.

Background: The NLRB and its Statutory Removal Protections

The NLRB is governed by a five-member Board whose members may be removed by the President only "for neglect of duty or malfeasance in office." ALJs, who are appointed by the Board and preside over unfair labor practice hearings, are protected by a separate scheme: the NLRB must petition the Merit Systems Protection Board ("MSPB") and establish "good cause" for an ALJ's removal. Because MSPB members themselves enjoy for-cause protection, ALJs are shielded by two layers of for-cause removal protection.

***Aimbridge*'s Constitutional Holding**

The threshold constitutional question—whether removal protections for NLRB Members and ALJs violate Article II—was not seriously contested. The NLRB did not defend the constitutionality of its own removal restrictions. Relying on the Fifth Circuit's decision in *SpaceX v. NLRB* and the Supreme Court's ruling in *Trump v. Slaughter*, the court declared both protections unconstitutional.

The Severability Holding and Split With *Aunt Bertha*

In *Aunt Bertha*, Judge Pittman held that the removal protections "cannot be severed" because the constitutional defect arises from a "stacked" structure spanning multiple statutes. The court concluded that any fix would require "reconstructing or legislating" rather than severing.

Judge Mazzant in *Aimbridge* disagreed, finding the removal restrictions for both NLRB Members and ALJs severable.

- **NLRB Members.** The court found severance straightforward based on: (1) the NLRA's severability clause; (2) *Seila Law LLC v. CFPB*, where the Supreme Court severed a nearly identical removal protection for the CFPB Director; and (3) practical evidence that the NLRA continued functioning after President Trump removed Board Member Gwynne Wilcox without cause and the Supreme Court stayed her reinstatement in *Trump v. Wilcox*.
- **ALJs.** This presented a more complex question. The court identified two severance options: (1) remove ALJs' good-cause protection entirely, making them removable at will by Board Members; or (2) sever MSPB members' removal protections, leaving ALJs with single-layer for-cause protection. The court chose the first option and declared NLRB ALJs "removable at will by the NLRB." Rejecting *Aunt Bertha*'s view that multiple severance options preclude severance, the court cited the Supreme Court's recognition in *Free Enterprise Fund* that courts may sever even when multiple provisions "working together, produce a constitutional violation." The court also noted that before the Administrative Procedure Act was enacted, NLRB hearing examiners had no removal protections—undercutting the argument that severance produces a regime Congress never contemplated.

Having found severance available, Judge Mazzant held that severance moots injunctive relief—departing from *Aunt Bertha*—and ruled that severance remedied the injury "of being overseen by an unconstitutionally structured agency." The court denied the permanent injunction as moot.

Key Takeaways for Employers

- **Winning the constitutional argument may no longer stop your case.** Under *Aimbridge*, an employer can win on the constitutional merits but see NLRB unfair labor practice charges against it proceed—calling into question the viability of structural challenges filed primarily to delay or block agency action.
- **District court split needs resolution.** The divergence between *Aimbridge* and *Aunt Bertha* means employers may receive different remedies depending on which district court hears their challenge. This split could be resolved by the Fifth Circuit, which reserved the severability question in *SpaceX*.

We will continue to monitor developments in this rapidly evolving area of law, including whether the Fifth Circuit takes up the severability question.

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