

AMAZON LOSES BID TO HAVE THE NATIONAL LABOR REATIONS BOARD DEEMED UNCONSTITUTIONAL

In its seemingly endless battles against Unions and with the National Labor Relations Board (“NLRB”), online retail giant Amazon has hit upon a new tactic, one recently endorsed by numerous other large companies, having the NLRB, the federal government agency charged, since 1935, with enforcing most of the nation’s labor laws and monitoring Union elections, declared unconstitutional. Amazon has used this quixotic defense in both NLRB cases and in the Federal Courts, thus far to no avail.

Most recently, last week the NLRB denied Amazon’s motion to dismiss an Administrative Law Judge’s ruling that Amazon illegally fired a worker who was trying to improve COVID-19 safety protocols at Amazon’s Staten Island warehouse. Aside from arguing on the merits that it did not break the law in firing the worker, a claim which was denied, Amazon added the additional argument that the agency, in existence for ninety (90) years, was unconstitutional because its members and judges were protected under civil service laws from being fired by the President and the fact that the NLRB performs both investigative and adjudicative functions in administering federal labor law, thus violating the company’s due process rights.

In response, the NLRB brushed aside the argument, first writing that the company waived its constitutional arguments because it failed to raise them at the trial of the case. In any event, even if it had followed proper procedure, the claim would fail on the merits, writing that clear United States Supreme Court and Circuit Court of Appeals precedent support the constitutionality of the agency. “As to its claim that the board unconstitutionally exercises both prosecutorial and adjudicative authority, the respondent failed to raise it in its exceptions to the administrative law judge’s original and supplemental decisions,” the panel said. The Board added, in reference to U.S. Supreme Court precedent, that “the combination of investigative and adjudicative functions does not, without more, constitute a due process violation” and that “there is no evidence that the respondent suffered any harm from the board members’ and administrative law judge’s removal protections,” Amazon can renew the argument if it, as expected, appeals the ruling.

Meanwhile, Amazon has had more success on this issue in the Court, previously succeeding in convincing the United States Court of Appeals for the Fifth Circuit to stop an NLRB unfair labor practice matter at least in part based on this theory.

Other companies pursuing this seemingly hopeless argument include Starbucks, SpaceX, and Trader Joe’s. Amazon is unique, however, in bringing the argument both in Court and in the Agency itself. The case is *Amazon.com Services LLC and Gerald Bryson*, case number 29-CA-261755, before the National Labor Relations Board.