



United States Government
NATIONAL LABOR RELATIONS BOARD
Office of the General Counsel

WASHINGTON, D.C. 20570

February 3, 2025

BY CM/ECF TO ALL PARTIES

Lyle W. Cayce, Clerk of Court
United States Court of Appeals for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: *Space Exploration Technologies Corp. v. NLRB*,
Consolidated Case No. 24-50627, et al.

Dear Mr. Cayce:

We write to inform the court of relevant factual developments in these consolidated cases. Last week, the President removed Gwynne A. Wilcox from her position as Member of the National Labor Relations Board. The attached letter from the President communicating the removal states that Board members may be removed “with or without statutory cause,” notwithstanding the limits set forth in Section 3(a) of the National Labor Relations Act.

In addition to its effect on former Member Wilcox’s personal participation in Board decisionmaking, this removal also had the effect of causing the number of sitting Board Members to fall from three to two. *See* <https://www.nlr.gov/about-nlr/who-we-are/the-board> (last visited Feb. 3, 2025). Pursuant to Section 3(b) of the Act, the Board now lacks a quorum of members to review ALJ-recommended findings and orders in the underlying unfair-labor-practice proceedings at issue in these consolidated cases.

The Court should also be made aware that the NLRB has a newly appointed Acting General Counsel. *See* <https://www.nlr.gov/news-outreach/news-story/president-trump-appoints-willam-b-cowen-acting-general-counsel-of-the> (last visited Feb. 3, 2025). In light of these executive actions, Board counsel is not in a position to address the Board-member-removability arguments raised in the government’s briefs. For purposes of oral argument, therefore, counsel for the NLRB will limit his presentation on this issue to the other grounds briefed as

Lyle W. Cayce
February 3, 2025
Page 2

warranting reversal of the injunctions below, i.e. lack of subject-matter jurisdiction by effect of the Norris-LaGuardia Act, lack of causal harm, lack of irreparable harm, and balancing of the equities.

Respectfully submitted,

Nancy E. Kessler Platt
Associate General Counsel

Dawn L. Goldstein
Deputy Associate General Counsel

Kevin P. Flanagan
Deputy Assistant General Counsel

Paul A. Thomas
Supervisory Attorney

/s/ David P. Boehm

David P. Boehm

Trial Attorney

Tel: (202) 273-4202

Fax: (202) 273-4244

National Labor Relations Board
Contempt, Compliance, and Special
Litigation Branch

1015 Half Street, SE, 4th Floor
Washington, D.C. 20570

Attachment