

# Amazon argues in court that the National Labor Relations Board is unconstitutional

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In a recent legal filing, Amazon argued that the US federal government's National Labor Relations Board (NLRB) is unconstitutional. The action is an escalation of the corporate giant's drive to eliminate any obstacles to its exploitation of its workforce.

The challenges to the NLRB may very well reach the US Supreme Court whose reactionary majority, personified by the unabashedly corrupt Justice Clarence Thomas, could very well move to weaken if not abolish the NLRB. The Court already seems poised to abolish the precedent that requires federal judges to defer to the actions of regulatory agencies that were duly established by Congress.

The company submitted its filing as part of a case in which it is accused of threatening and discriminating against workers who were organizing the Amazon Labor Union (ALU) at its JFK8 fulfillment center in Staten Island, New York. Despite the ALU's election victory nearly two years ago, Amazon still refuses to recognize the union.

The ALU's orientation to the established trade unions, the Democrats and the courts has not led to any improvements for JFK8 workers. Instead it has opened the door for Amazon's legal counter-attack.

In its filing, the company denied many of the allegations and asked for the complaint to be dismissed. It argued further that the NLRB's structure violates the Constitution's separation of powers by infringing on the powers of the executive branch.

To substantiate this claim, Amazon pointed to the limits on the removal of the federal agency's administrative law judges and five board members, who are appointed by the president. Amazon's sudden discovery of the supposed unconstitutionality of the NLRB is entirely hypocritical. The company has never criticized the administrative courts when they denied injured employees workers' compensation.

The company has also argued that NLRB proceedings violate Amazon's due process rights, deny the company a trial by jury and permit legal remedies beyond what is allowed without a trial by jury. With this argument the company's lawyers are insinuating that the giant transnational corporation, with its market capitalization of \$1.8 trillion and power to buy off governments around the world, is the same as any citizen with the right to due process, jury trials, etc.

In fact, Amazon is insisting that it should not be subjected to any federal regulations. It might be the NLRB today, but tomorrow it

will be the Occupational Health and Safety Administration (OSHA), the Environmental Protection Agency (EPA) or any other regulatory body. In other words, the company is insisting that it has the "right" to exercise an unlimited dictatorship over its one million employees in the US whose rights are meaningless in the eyes of Amazon's corporate executives and wealthy shareholders.

It is noteworthy that similar arguments have been used by right-wing Supreme Court justices in cases like *Citizens United v. Federal Election Commission* and *Burwell v. Hobby Lobby Stores, Inc.* to roll back fundamental constitutional rights.

In *Citizens United*, the US Supreme Court ruled that corporations have a First Amendment right to "free speech," by which the Court meant spending unlimited amounts of money on campaign contributions and buying off politicians.

In *Burwell*, the Court found that closely held for-profit corporations can exercise religious beliefs and that these beliefs can exempt the corporations from their legal obligations. It thus created a loophole that allows corporations to deny their workers health insurance that covers contraception.

Amazon's arguments about the NLRB's unconstitutionality are "radical," according to Wilma Liebman, a former NLRB chair who spoke to the *New York Times*. "The constitutionality of the NLRB was settled nearly 90 years ago by the Supreme Court," she added.

## America's restricted labor relations system

While Amazon is seeking to eviscerate the NLRB, it would be wrong to believe the claims by trade union officials that the federal agency is a pillar of workers' rights. As the bitter experiences of countless workers have attested, the federal agency regularly dismisses workers' complaints over management's trampling over their rights with the collusion of the trade union bureaucracy.

The NLRB, like every other institution of the federal, state and local governments, defends the capitalist system, the "right" of the corporate owners like billionaire Jeff Bezos to control vast industrial and financial monopolies and to extract profit from the unpaid labor of the working class.

Formally established in 1935, the federal agency has its roots in

the National Labor Relations Act (NLRA) signed by President Franklin D. Roosevelt the year before in the face of an increasingly explosive movement of the working class that was under leadership of socialists and left-wing militants.

It was part of the policy of relative class compromise and New Deal social reforms, which FDR implemented to forestall the danger of an “American October,” that is. a repeat of the Russian Revolution of 1917 in the United States. Based on the vast wealth accumulated by American capitalism, the Roosevelt administration made certain concessions to the working class, including the passage of Social Security, laws against child labor, and legal recognition of the industrial unions after decades of violent resistance by the employers.

But the new industrial unions were quickly entangled in a restrictive system of labor relations established under the auspices of the NLRA. In exchange for legal protections and an automatic dues checkoff system, union leaders agreed to guarantee “management rights.” This included uninterrupted production and the enforcement of contracts, no matter how egregious the terms, for the length of the agreement.

In a 1956 address to arbitrators, Arthur Goldberg, the general counsel for the United Steelworkers of America (later Secretary of Labor under Kennedy and Supreme Court justice), summed up management’s “inherent rights,” which were “not modified or diminished” by collective bargaining. “The union cannot direct its members to their work stations or work assignments. ... The union does not notify people who are discharged to stay put. The union does not tell employees to report for work after a layoff. ... Very often union men are disturbed by decisions they consider entirely wrong. Nevertheless, a company’s right to make its own judgments is clear.”

Workers, Goldberg said, had the right to challenge the company’s acts when they violate his or her rights, but “that challenge is made through the grievance procedure, not through rebellion.”

This system regulated class relations throughout the post-World War II period. Facing a historic decline in the world position of American capitalism and increasing challenges from European and Asian rivals, however, the American ruling class jettisoned its policy of relative class compromise and adopted a program of class war and social counter-revolution. This included the campaign of union-busting, begun with Reagan’s firing of 11,000 striking air traffic controllers in 1981, and the destruction of millions of industrial jobs. The ruling classes in the US and around the world utilized the globalization of capitalist production to exploit cheaper pools of labor and claw back achievements won through decades of struggle.

The pro-capitalist and nationalist AFL-CIO had no progressive response to globalization. Instead, over the last four and a half decades, they voluntarily accepted massive job cuts and wage concessions to make American capitalism more “competitive.” Throughout this period, the National Labor Relations Board (NLRB), like OSHA and other federal agencies, were gutted and did little to slow down the corporate onslaught.

Today, the so-called “reform” leaders of the Teamsters and the United Auto Workers sign contracts at UPS and the auto industry

that destroy the jobs and living standards of their members and collude with the Biden administration’s ever-expanding wars.

Nevertheless, the billionaire oligarchs like Bezos and Elon Musk do not want the slightest interference with their money-making operations, including having to deal with the NLRB’s wrist-slap penalties or the expense of buying off trade union bureaucrats.

In January, Musk’s SpaceX filed a lawsuit against NLRB, which also asserted that the federal agency’s structure was unconstitutional and that it was depriving the company of its supposed right to trial by jury.

SpaceX filed its lawsuit one day after the NLRB accused the company of firing eight employees for criticizing Musk in a letter to company executives.

A few weeks later, the NLRB held a hearing to discuss accusations that grocery chain Trader Joe’s had retaliated against workers who were seeking to unionize. During the hearing, a lawyer for the company echoed the SpaceX argument that the structure of the NLRB and its panel of administrative law judges is unconstitutional.

It is no coincidence that these three companies are using the same playbook to attack the NLRB. Amazon, SpaceX and Trader Joe’s have faced multiple accusations that they have violated labor law. Amazon alone has been the subject of more than 250 NLRB complaints alleging unlawful labor practices in recent years.

There are tactical differences between President Joe Biden and Donald Trump on these questions. Biden relies on the trade union apparatus to suppress the class struggle and impose the type of austerity and labor discipline necessary to expand US imperialism’s wars for global conquest.

Trump is seeking to build a fascist movement to crush the rising tide of social opposition and the growing support for socialism in the working class. Though their paths are somewhat different, the Democrats and Republicans both offer the working class nothing but a future of war, destitution and dictatorship.

In the face of this, the ALU and its pseudo-left leaders have proven totally incapable of defending workers against the gang-up of the corporations, the capitalist state and the corporatist unions.

To wage a genuine fight, workers must form rank-and-file committees that are independent of the trade union bureaucracies and both capitalist parties. These committees will be based on the militant initiative of rank-and-file workers. They will uphold the rights of workers to decent paying, secure and safe jobs. not the “rights” of the corporate oligarchs.

Through these organizations, workers can unite their struggles across industrial and national boundaries through the expansion of the International Workers Alliance of Rank-and-File Committees (IWA-RFC). This is the only way for workers to coordinate their fight against global capitalism.



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