

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

AMAZON.COM SERVICES LLC,

and

Case 29-CA-261755

GERALD BRYSON

ORDER¹

The Respondent’s Motion to Dismiss or, in the Alternative, for Recusal is denied. None of its arguments was timely raised. First, 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. See *Sunrise Operations, LLC, a wholly owned subsidiary of The Pasha Group*, 373 NLRB No. 30, slip op. at 3 fn. 13 (2024) (finding respondent waived due process claims not first raised on exceptions).² Second, as to the Respondent’s contentions that Board members and administrative law judges are unconstitutionally insulated from Presidential removal, the Respondent failed to raise them in

¹ The Board has delegated its authority in this matter to a three-member panel.

² Even if this argument were timely raised, it would not warrant dismissal of the complaint. See *NP Red Rock LLC d/b/a Red Rock Casino Resort Spa*, 373 NLRB No. 67, slip op. at 1 fn. 2 (2024) (rejecting this argument on grounds that the combination of investigative and adjudicative functions does not, without more, constitute a due process violation) (citing *Withrow v. Larkin*, 421 U.S. 35, 56, 58 (1975)); see also *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1174 (D.C. Cir. 1998) (collecting analogous cases and applying the Supreme Court’s decision in *Withrow v. Larkin* to hold that “the Board’s authority under the Act to seek preliminary injunctive relief against an employer in the district court does not deprive the employer of a neutral decisionmaker in subsequent proceedings before the Board”), enfg. in relevant part 324 NLRB 72 (1997); *Eisenberg ex rel. NLRB v. Holland Rantos Co.*, 583 F.2d 100, 104 fn. 8 (3d Cir. 1978) (finding “no improper combination of functions of the Board . . . in view of the broad discretion which Congress has in distributing and combining functions in its administrative agencies”), enfg. 234 NLRB 726 (1978).

its answers to the complaint or before the judge. Accordingly, they are also waived. See *Yorkaire, Inc.*, 297 NLRB 401, 401 (1989), *enfd.* 922 F.2d 832 (3d. Cir. 1990).³

Dated, Washington, D.C., October 8, 2024.

LAUREN McFERRAN,	CHAIRMAN
DAVID M. PROUTY,	MEMBER
GWYNNE A. WILCOX,	MEMBER

³ Even if the Respondent’s challenge to Board member removal protections were timely raised, binding Supreme Court precedent forecloses it. See *SJT Holdings, Inc.*, 372 NLRB No. 82, slip op. 1-2 (2023) (citing *Humphrey’s Executor v. United States*, 295 U.S. 602 (1935) (Federal Trade Commission Act’s restriction on President’s removal power of FTC commissioners held constitutionally valid)). Also insufficient to justify dismissal is the Respondent’s one-sentence argument that the Board’s administrative law judges are unconstitutionally insulated from removal. See, e.g., *Decker Coal Co. v. Pehringer*, 8 F.4th 1123, 1133-1136 (9th Cir. 2021) (rejecting claim that ALJs are unconstitutionally protected from removal). In any event, there is no evidence that the Respondent suffered any harm from the Board members’ and administrative law judge’s removal protections. See *SJT Holdings, Inc.*, *supra*, slip op. at 1 fn. 4 (citing *Collins v. Yellen*, 594 U.S. 220, 257-258 (2021), and *Calcutt v. FDIC*, 37 F.4th 293, 316 (6th Cir. 2022), *rev’d per curiam* on other grounds 598 U.S. 623 (2023)); *K & R Contractors, LLC v. Keene*, 86 F.4th 135, 148-149 (4th Cir. 2023) (“[R]egardless of how we answer the constitutional question presented by the removal provisions, we would be required to deny the petition because K & R has not asserted any harm resulting from the allegedly unconstitutional statutes[.]”).