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Supreme Court’s Clarified Standard Makes It Harder for NLRB to Obtain Injunctions

On June 13, the U.S. Supreme Court resolved a split in decisions of the circuit courts and made clear that the National Labor Relations Board (NLRB or Board) is not entitled to a deferential standard but must meet the same four-part test that other litigants must meet in order to obtain the extraordinary remedy of a preliminary injunction to avoid damage as a result of an employer's potential unfair labor practice. *Starbucks v. McKinney*, 602 U.S. ____ (2024).

The Supreme Court's decision stems from Starbucks' decision, after an investigation, to discharge seven employees for bringing a local television station into one of its Memphis stores after hours to promote their previously announced union organizing effort. The employees claimed they were discharged for their protected concerted activity.

By way of background, Section 10 of the National Labor Relations Act authorizes the NLRB to bring, prosecute and adjudicate administrative complaints against employers (and unions) for unfair labor practices, and under Section 10(j) in particular, to petition a federal district court for appropriate temporary relief or a restraining order, given that administrative proceedings can often take years to conclude. Section 10 also states that a district court may grant such relief as it deems just and proper.

After issuing a complaint against Starbucks, the Board filed a petition seeking a preliminary injunction in federal district court to require Starbucks to reinstate the discharged employees pending the outcome of proceedings on the merits before an NLRB administrative law judge. The District Court in Tennessee granted a temporary injunction applying a two-part test that asks whether there is "reasonable cause to believe that unfair labor practices have occurred" and injunctive relief is "just and proper." As the Supreme Court noted in its opinion, applying the two-part test is more favorable to the Board because "it seemingly suggests that courts *must* grant injunctive relief where the agency makes the required showing." *Id.* On appeal, the U.S. Court of Appeals for the Sixth Circuit agreed with the District Court's holding, thereby prompting Starbucks to appeal the decision to the Supreme Court.

The Supreme Court reversed the Sixth Circuit's decision and held that when considering a Board request for a preliminary injunction under Section 10(j), absent a clear command from Congress, district courts must apply the traditional standard articulated in *Winter v. Natural Resources Defense Council, Inc*., 555 U.S. 7 (2008), which is applicable to all other litigants seeking a preliminary injunction. Specifically, a party seeking a preliminary injunction must establish a clear four-part showing that (1) it is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the public interest. According to the Supreme Court, although Section 10(j) directs district courts to grant injunctive relief when they deem it just and proper during the pendency of the Board's administrative proceedings, the "just and proper" phase merely invokes the discretion that courts have traditionally exercised when faced with requests for equitable relief. As such, the Supreme Court remanded the case to the District Court to reassess the Board's request for a preliminary injunction under the more stringent traditional standard. It is also noteworthy that this same standard will apply when employers bring unfair labor practice charges against unions.

Practical Implications

This case is seen as a significant victory for employers as it may weaken what the NLRB has articulated to be a powerful enforcement tool that it would use with greater frequency to remedy what it considers to be employer unfair labor practices. This is because litigation over Section 10(j) injunctions is often costly for employers and favorable for employees and labor

unions, given the Board's high success rate with having such injunctions granted and given the impact that Section 10(j) injunctions have on cases pending before NLRB administrative law judges.

Although employees discharged during a union organizing drive may ultimately be awarded reinstatement, backpay and compensation for other direct or foreseeable damages if an employer was actually found to have violated the National Labor Relations Act, the Board has taken the position that such discharges chill organizing efforts. On the other hand, a preliminary injunction may require employers to reinstate employees discharged for misconduct for a potential period of years while such issues are litigated and when the employer may ultimately succeed on the merits of the case. Although the *Starbucks* case dealt with employees discharged in a union organizing drive, it will seemingly apply to all Board requests for preliminary injunctions. The more stringent standard will likely result in the Board gathering more information about the alleged unfair labor practice before requesting a preliminary injunction and may provide employers the opportunity to discover more information about the Board's case against them.

Looking Ahead

Although the Supreme Court's clarified standard may make it more difficult for the NLRB to obtain preliminary injunctions, employers should be aware of the potential significant damages that may accrue during years-long unfair labor practice proceedings in the absence of an injunction. As such, employers are encouraged to consult with labor counsel before engaging in conduct that may result in an unfair labor practice charge.

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