

LABOR UPDATE

“SCOTUS Says NLRB Isn’t So Special—NLRB Requests for Preliminary Injunctions Subject to Traditional Standard”

MILLER NASH EMPLOYMENT LAW IN MOTION BLOG POST

In a 9-0 opinion in *Starbucks Corporation v. McKinney*, 602 U.S. ____ (2024), the U.S. Supreme Court limited the National Labor Relations Board’s (NLRB) ability to readily obtain injunctions under §10(j) of the National Labor Relations Act (the Act) by holding that courts must apply the traditional principles of equity encompassed in the four factors articulated in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008)—departing from the watered-down “reasonable cause” and “just and proper” standard.

As unionizing efforts at Starbucks began in 2022, several employees invited the media to visit a store after hours to promote their unionizing efforts. Starbucks later fired multiple employees involved with the media event for violating Starbucks’ company policy. Because the terminated employees included members of the organizing committee in attendance at the media event, the union that was attempting to organize the employees filed charges with the NLRB. The union alleged that Starbucks interfered with these employees’ right to unionize and discriminated against union supporters. After an investigation, the NLRB issued a complaint against Starbucks. But before an administrative hearing over the merits of the complaint occurred, the regional director filed a lawsuit in federal court seeking a preliminary injunction under §10(j) of the Act seeking, among other things, reinstatement of the terminated employees.

In considering whether to grant the preliminary injunction under §10(j), the district court applied the Sixth Circuit’s standard, which used a two-part test, asking (1) whether there is reasonable cause to believe unfair labor practices (ULPs) have occurred, and (2) whether injunctive relief was “just and proper.” Under this standard, the NLRB could establish reasonable cause by showing that the legal theory was “substantial and not frivolous,” and relief was “just and proper” if it was necessary to return the parties to the status quo pending the NLRB’s proceedings to protect the NLRB’s remedial powers. Applying this deferential standard, the district court granted the injunction. On appeal, the Sixth Circuit affirmed the district court’s grant of the preliminary injunction under §10(j).

In reviewing the Sixth Circuit’s decision, the U.S. Supreme Court found the Sixth Circuit’s standard inadequate, noting that there “is an obvious difference” between the traditional equity principles applied when typically seeking a preliminary injunction, which requires that the party show (among other things) that they are likely to succeed on the merits versus showing that their legal theory is substantial and not frivolous. The U.S. Supreme Court also reasoned that under this standard “it is hard to imagine how the [NLRB] could lose” if



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courts only ask if the NLRB offered a minimally plausible legal theory. Comparing this standard to traditional civil litigation, it would be like any complaint that could withstand a motion to dismiss based on failure to state a claim “would automatically be deserving of injunctive relief as well.” Because a preliminary injunction is an extraordinary remedy meant to preserve the parties’ position until trial, the U.S. Supreme Court concluded that “just and proper” relief under Section 10(j) means the traditional principles of equity should govern the court’s consideration of the NLRB’s requests.

Following this decision, NLRB General Counsel Abruzzo released [Memorandum GC-24-05](#) confirming that the Board would continue to “aggressively seek Section 10(j) injunctions” where the Board thought it was necessary to preserve status quo and the efficacy of the Board’s final orders. General Counsel Abruzzo explained that the U.S. Supreme Court’s decision provided a uniform standard, but it would not have an impact on the Board’s pursuit or success in obtaining these injunctions, because the Agency had a high rate of success in circuit courts that were applying the Winters four-part test.

KEY TAKEAWAYS

Moving forward, the NLRB will have to show that it is entitled to a preliminary injunction under the four criteria in *Winter v. Natural Resources Defense Council, Inc.*, which require the party seeking the injunction to establish:

1. They are likely to succeed on the merits;
2. That it is likely to suffer irreparable harm in the absence of preliminary relief;
3. That the balance of equities tip in its favor; and
4. That an injunction is in the public interest.

In other words, the NLRB will have to meet the same standard as other litigants seeking preliminary injunctions in federal court rather than the previously allowed more deferential standard.

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