CLIENT ALERT: The U.S. Supreme Court Clarifies the Legal Standard for the NLRB Seeking Preliminary Injunctions Against Employers

On June 13, 2024, the U.S. Supreme Court issued *Starbucks v. McKinney*,[1] which clarifies the legal standard governing temporary injunctions sought by the National Labor Relations Board (NLRB or Board) against employers alleged to have committed unfair labor practices.

By way of background, the NLRB has the right to request a 10(j) preliminary injunction[2] in federal court against employers to prevent further harm resulting from an alleged unfair labor practice while the case proceeds before the Board. In 2021 and 2022, Jennifer Abruzzo, the NLRB's General Counsel, issued memoranda to all NLRB field offices, encouraging regional directors to seek 10(j) injunctions, particularly against employers who allegedly threatened or terminated employees in response to a union organizing drive. In her 2021 memo, General Counsel Abruzzo wrote, "I believe that Section 10(j) injunctions are one of the most important tools available to effectively enforce the Act… During my tenure as General Counsel, I intend to aggressively seek Section 10(j) relief where necessary to preserve the status quo and the efficacy of final Board orders."

The case underlying the Supreme Court's recent decision arose out of a union organizing drive of employees at a Starbucks store in Memphis, Tennessee. In February 2022, a number of pro-union Starbucks workers hosted media interviews inside the store after it was closed while they were supposed to be engaging in closing duties, resulting in several employees being fired for violating company policy. The NLRB brought an unfair labor practice charge against Starbucks, alleging that the terminations were in retaliation to the union organizing effort, as well as requested a preliminary injunction requiring Starbucks to reinstate the workers for the duration of the administrative unfair labor practice case. The federal district court issued the injunction, ordering Starbucks to rehire the workers, using a two-part test established by the Sixth Circuit Court of Appeals. This two-part test asks whether (1) "there is reasonable cause to believe that unfair labor practices have occurred" and (2) whether injunctive relief is "just and proper." On appeal, Starbucks claimed the federal district court used the wrong legal standard but the Sixth Circuit upheld the district court's issuance of the injunction.

Starbucks further appealed to the U.S. Supreme Court, maintaining that the NLRB should be held to the traditional four-part legal standard for injunctive relief, not the less stringent two-part test. That four-factor test Starbucks argued should have been applied requires showing: (1) a likelihood the underlying case will succeed on the merits; (2) the party is likely to suffer irreparable harm without injunctive relief; (3) the balance of equities favors the party seeking relief; and (4) an injunction is in the public interest.

In a unanimous decision authored by Justice Clarence Thomas[3], the Supreme Court ruled in favor of Starbucks. The Supreme Court noted that, as an extraordinary equitable remedy, a preliminary injunction is "never awarded as of right" and thus require a significant showing of likelihood of success on the merits. *Starbucks v. McKinney* resolves a split in the federal circuit courts of appeal and establishes a consistent four-factor standard for all federal courts. The decision may make it more difficult for the NLRB to obtain injunctive relief against employers during a labor dispute.

[1] *Starbucks Corp. v. McKinney*, 602 U.S. _____ (2024)

[2] The National Labor Relations Act (NLRA) was amended in 1947 to add Section 10(j), authorizing the Board to seek temporary injunctions in federal district court while litigation before the NLRB is pending.

[3] Justice Ketanji Brown Jackson dissented in part but agreed the four-factor test should be used.

James M. Pender is a partner at Morgan, Brown & Joy, LLP, and may be reached at 617-523-6666 or jpender@morganbrown.com. This alert was prepared with the assistance of Northeastern University School of Law student, Charlotte Seaman. Morgan, Brown & Joy, LLP focuses exclusively on representing employers in employment and labor matters.

This alert was prepared on July 11, 2024.