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Should the Standard for Obtaining Preliminary Injunctions Under the NLRA Be Easier? The U.S. Supreme Court Weighs In...



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In a 9-0 decision, the U.S. Supreme Court recently sided with Starbucks Corp. over the National Labor Relations Board (NLRB) in a decision that would severely delay the process for the NLRB to obtain preliminary injunctions for employees discharged during labor disputes.

In *Starbucks v. McKinney*, the trial court entered a temporary injunction ordering the reinstatement of the “Memphis 7” employees after they were terminated for policy violations during a media event covering the unionization efforts at the Starbucks location in Memphis, Tenn. The workers appealed, and the question was which test must courts use to evaluate requests for injunctions under Section 10(j) of the National Labor Relations Act (NLRA).

In these types of matters, the NLRB files an administrative complaint to launch the dispute before an administrative law judge, the administrative law judge renders a decision and that decision is then reviewed by the NLRB (subject to an appeal in federal court).

While this process is ongoing, the NLRB can seek immediate relief by asking a federal district court to grant a preliminary injunction afforded under Section 10(j). Here, the NLRB sought such an injunction – which would reinstate the terminated Starbucks employees and restore the work done by the union organizers pending the ultimate outcome.

The Supreme Court took the case because there was disagreement in the various federal appellate courts as to the standard to use for injunctive relief: the so-called two-part test or the four-part test.

The two-part test, established by the Sixth Circuit Court of Appeals, asks

1. whether there is reasonable cause to believe an unfair labor practice has occurred, and
2. whether injunctive relief is just and proper.

Using this more lenient two-part test, the Sixth Circuit affirmed the district court’s granting of the requested injunctive relief.

However, the four-part test, having previously been authorized by the Supreme Court in general litigation matters, involves a stricter standard, requiring a party to make a clear showing:

1. that they’re likely to succeed on the merits,
2. that they are likely to suffer irreparable harm in the absence of the preliminary relief requested,
3. that the balance of equities tips in their favor, and
4. that an injunction is in the public interest.

In its 9-0 ruling, the Supreme Court concluded that federal courts must use the traditional four-part test when evaluating NLRB's request for a Section 10(j) preliminary injunction. The NLRB argued that the two-part test is required because the NLRA directs judges to apply a more lenient standard to the agency's petitions than they normally would for preliminary injunction requests that arise in private litigation.

In rejecting that argument, the Supreme Court held that nothing in Section 10(j) of the NLRA "overcomes the presumption that the four traditional criteria govern a preliminary-injunction request by the Board." As a result, the Supreme Court's decision vacates the lower court's ruling and remands the case for further proceedings with application of the traditional four-part framework in evaluating preliminary injunction applications.

There is no question that this outcome is a big win for employers facing potential unionization in their workforce. However, time will tell on if this reduces the number of successful requests for preliminary injunction made by the NLRB.

Please do not hesitate to contact any of the attorneys in Gould & Ratner's [Human Resources and Employment Law Practice](#) to review the specifics of your potential labor dispute.