CLIENT ALERTS & INSIGHTS

National Labor Relations Board Feels the Effects of Heightened Injunction Requirements and Reduced Deference to Board Findings

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As we previously addressed, on June 13, 2024, the Supreme Court struck a blow to the National Labor Relations Board (the "Board") and provided employers a major win in Starbucks Corp. v. McKinney, et al., a case involving a preliminary injunction issued against Starbucks under § 10(j) of the National Labor Relations Act. A preliminary injunction under §10(j) is a legal mechanism that the Board uses in its efforts to require employers to take certain action (like reinstating a terminated employee) or to refrain from certain action (like engaging in unfair labor practices).

As a result of that ruling, to obtain a preliminary injunction under § 10(j), the Board must show (1) it is likely to succeed on the merits of its claim against the employer; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest.

The *Starbucks* decision is impactful because the Supreme Court concluded that, on appeal from a final decision by the Board on a § 10(j) injunction, courts do not need to pay deference to the Board's final decision. Rather, the Supreme Court reasoned that the Board's final decisions do not "represent the Board's formal position-they are simply the preliminary legal and factual views of the Board's in-house attorneys who investigated and initiated the administrative complaint."

On Monday, October 28, a federal judge in Pennsylvania relied on the *Starbucks* decision to issue a harsh rebuke to a Board attorney who relied too heavily on the Board's findings in trying to make the case that the employer, the Pittsburgh Post-Gazette, should be forced back to the bargaining table. Paying homage to *Starbucks*, the judge admonished the Board, asserting that "You've given me nothing to assess in this hearing . . . I've read about what transpired in the administrative hearings, but that's not what's before this court today . . . Please read *McKinney* and understand what it says. It's no longer the case that I can rely on the administrative record; I cannot rely on it in any way."

This Court's invocation of the *Starbucks* holding serves as another small victory for employers appealing a Board decision. While the *Starbucks* decision speaks for itself and is favorable in its own right, its developing traction and use in the mainstream provides employers additional ammunition to argue that appeals to federal courts on § 10(j) injunctions should be reviewed on a clean slate. Ultimately, *Starbucks* and courts that defer to its holdings result in a deck that is slightly less stacked against employers. On the heels of *Loper* overturning *Chevron* deference (see alert here), the application of *Starbucks,* in this case, is another example of government agencies no longer receiving the deference they were previously afforded.

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