CLIENT ALERTS & INSIGHTS

Starbucks Union Dispute Reaches Supreme Court

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On Friday, January 12, the United States Supreme Court agreed to hear an appeal from Starbucks on a case involving the termination of seven Memphis, Tennessee employees.

Starbucks Unionizing Activity:

None of Starbucks' over 8,000 U.S. locations were unionized prior to 2021, when employees at a location in Buffalo began a union organizing drive. Since then, over 340 stores have successfully organized throughout the country. The regional offices of the National Labor Relations Board ("NLRB") have brought at least 100 cases against Starbucks alleging more than 1,000 illegal actions, often relating to retaliation against workers for unionizing. For example, the NLRB accuses Starbucks of closing stores that became unionized or reducing workers' hours after their stores unionized. The NLRB has also filed a nationwide complaint accusing Starbucks of refusing to bargain at 163 unionized stores across 28 states.

Background of Present Case:

In January 2022, Starbucks terminated seven employees at a Memphis, Tennessee location after they posted a public letter to the CEO, passed out union authorization cards, and engaged in a television interview. Starbucks maintained it terminated the employees for breaching safety policies after they unlocked a door to allow journalists into the store after hours and went behind the store counter while off-duty. Five of the terminated employees were members of the union organizing committee and the other two were otherwise involved in the organizing efforts.

The Workers United Union filed multiple unfair labor practice charges against Starbucks. The NLRB investigated and issued a complaint and notice of hearing. The NLRB suspected Starbucks unlawfully fired the employees due to their involvement in union organizing in violation of Sections 8(a)(1) and 8(a)(3) of the National Labor Relations Act (the "NLRA"). It sought an injunction pursuant to Section 10(j) of the NLRA - a "10(j) injunction" - in federal court to require Starbucks to reinstate the workers.

The NLRB filed the petition for injunction in the Western District of Tennessee. It argued that Starbucks discriminatorily applied its policies to the Memphis employees, terminating them based on policies it did not consistently enforce at other locations. The district court agreed and issued an injunction ordering Starbucks to reinstate the seven workers. Starbucks appealed to the Sixth Circuit Court of Appeals, which upheld the decision in 2023.

Current Appeal:

Starbucks appealed the Sixth Circuit decision to the U.S. Supreme Court, arguing that courts apply inconsistent standards when deciding whether to grant NLRB injunctions under Section 10(j) of the Act. The Sixth Circuit, along with the Third, Fifth, Tenth, and Eleventh circuits use a two-part test to determine whether there was reasonable cause to believe a labor law violation occurred, and a 10(j) injunction would be "just and proper." The Fourth, Seventh, Eighth, and Ninth circuits use a four-factor test typically used for other types of injunctions. This test includes additional inquiries such as whether the NLRB has a likelihood of success on the merits and whether the injunction is in the public interest. The First and Second circuits combine those two approaches by weighing elements of the four-part test to decide whether the 10(j) injunction is just and proper.

Starbucks argues in its petition to the Supreme Court that the Sixth Circuit should have used the four-part test for regular injunctions, instead of the two-factor test that lowers the NLRB's burden to obtain an injunction. The NLRB for its part argues the legal tests are the same and only differ in terminology. The Supreme Court will hear oral argument to review the issue. Although Starbucks has been embroiled in litigation in light of union organizing across its stores nationwide, this is its first case to reach the Supreme Court.

Other NLRB Litigation:

Starbucks is not the only company engaged in litigation to challenge the NLRB's powers. Notably, SpaceX recently sued the NLRB in federal court in Texas over the agency's powers, including the claim that the NLRB's structure is unconstitutional because it permits the agency to act as prosecutor, legislator, and adjudicator, specifically regarding injunctions under 10(j). The SpaceX case stems from the company's decision to terminate eight employees who signed an open letter to CEO Elon Musk accusing him of sexist comments that violated company policies. That issue will be heard by the NLRB. SpaceX's federal lawsuit, filed one day after the NLRB complaint, takes an offensive approach at challenging the agency, claiming that because federal law only allows board members and administrative judges to be removed for cause, and not at will by the president, the NLRB's structure is unconstitutional. SpaceX filed the case in the Southern District of Texas, where it had previously won an order blocking the Department of Justice from pursuing allegations that SpaceX illegally discouraged people granted asylum or refugee status from applying for jobs and refusing to consider those who applied. The NLRB accuses SpaceX of "forum shopping" to file in Texas even though its headquarters are in Los Angeles, where the company is accused of illegally firing the eight employees. Although SpaceX has challenged the entire structure of the NLRB, the court is likely to focus on its application to the 10(j) injunction issue rather than the constitutionality of the agency structure as a whole.

We will continue to provide updates as the cases progress.

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