CLIENT ALERTS & INSIGHTS

Supreme Court Clarifies §10(j) Preliminary Injunction Standard

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On June 13, 2024, the Supreme Court struck a blow to the NLRB and provided employers a major win in 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 NLRB 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).

In its opinion (*Starbucks Corp. v. McKinney, et al.)* the Court held that the traditional preliminary injunction test applies to the NRLB, instead of the much less stringent two-part test that some courts, including the 6thCircuit Court of Appeals (Ohio, Michigan, Tennessee, and Kentucky) had been applying. Given the increased labor activity under the Biden Administration, the Court's ruling is a welcome win for employers that should result in the NLRB filing fewer §10(j) petitions for preliminary injunction or, at a minimum, in fewer orders granting preliminary injunctions under §10(j).

Going forward, to obtain a preliminary injunction under §10(j) the NLRB 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 Court, in siding with Starbucks, rejected the NLRB's argument that it should be held to a less exacting standard than the average plaintiff seeking a preliminary injunction. Instead, the Court found that nothing in the law suggests that the NLRB should be treated differently than any other litigant who requests a preliminary injunction. And while Congress could amend the National Labor Relations Act to allow the NLRB to proceed under a less stringent preliminary injunction test, such a result seems unlikely given Congress' current party breakdown.

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