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On Deck: Supreme Court To Review An Important Labor Case Concerning The Legal Standard For Injunctive Relief In Traditional Labor Matters

Labor Relations Update on **January 18, 2024**

On January 12, 2024, the U.S. Supreme Court announced that it will hear a challenge in a key case involving the ease with which the National Labor Relations Board (NLRB) may successfully petition a district court for injunctive relief in unfair labor practice (ULP) cases.

The outcome of this case likely will have a significant impact on the legal strategies available to employers in litigating a ULP.

***Starbucks* & the Proper Standard for 10(j) Injunctions**

A hotly contested issue that both the NLRB and circuit courts have debated for years is the appropriate standard for determining whether to grant a Section 10(j) injunction under the National Labor Relations Act (NLRA). This question was presented to the Supreme Court in a petition for a writ of certiorari filed by Starbucks in *Starbucks v. McKinney,* after the Sixth Circuit upheld a 10(j) injunction requiring Starbucks to reinstate seven employees during the pendency of the employees' ULP charge.

As previously discussed here, Section 10(j) of the NLRA authorizes the NLRB to seek injunctive relief in federal court to remedy an alleged unfair labor practice while the merits of the underlying case are being litigated. However, for decades, circuit courts have been split as to the proper analysis for deciding whether this exceptional remedy should be granted.

- Some circuits, such as the Sixth, Fifth and Tenth Circuits, follow a two-factor test to determine whether a 10(j) injunction is appropriate and look to: (i) whether there is "reasonable cause" to believe that ULPs have occurred; and (ii) whether injunctive relief is "just and proper."

- Other circuits, including the Fourth, Seventh, Eighth and Ninth Circuits, adopt afour-factor test weighing: (i) whether the NLRB is likely to succeed on the merits ofthe underlying case; (ii) whether denying the injunction would cause “irreparable harm;” (iii) the balance between the parties’ interest; and (iv) whether an injunction would serve the public interest.

Starbucks petitioned the Supreme Court to resolve this “entrenched” and “frequently recurring” circuit split once and for all. Starbucks takes the position that the two-factor test applied by the Sixth Circuit and others does not impose a sufficiently “onerous or heavy” burden on the NLRB and, as a result, these courts end up granting this special remedy too easily.

Conversely, Starbucks argues that the four-factor test applied by the Fourth Circuit and others imposes an appropriately-significant burden on the NLRB, which ensures that a 10(j) injunction continues to be a “drastic and extraordinary remedy which should not be granted as a matter of course,” as initially intended by the Supreme Court.

Throughout her tenure, NLRB General Counsel Abruzzo has openly encouraged all NLRB Regional Offices to utilize 10(j) injunctions, deeming them to be “one of the most important tools available to effectively enforce the Act” (see our previous post here). Indeed, Starbucks reported that the NLRB, as of October 3, 2023, had already filed ***ten*** 10(j) injunction petitions against the company in the prior 18 months alone. As such, it is clear that General Counsel Abruzzo’s plan is well underway, and we can continue to expect to see requests for injunctive relief used more regularly by NLRB Regional Offices against employers. However, the success of these petitions will ultimately hinge on the test adopted by the Supreme Court in *Starbucks* and the weight of the burden imposed on the Board to demonstrate that a 10(j) injunction is warranted.

The Supreme Court’s decision in this case will thus have a significant effect on employers and unions, as well as on the NLRB’s ability successfully seek 10(j) injunctions in federal court. Given the import of this decision, we will continue to monitor the latest developments and report any updates here.

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