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Despite Supreme (Court) Blow, Latest NLRB GC Memorandum Advocates for the Aggressive Pursuit of 10(j) Injunctions

Labor Relations Update on **July 17, 2024**

On July 16, 2024, the National Labor Relations Board's ("NLRB" or the "Board") General Counsel, Jennifer Abruzzo, released GC Memorandum 24-05 to all field offices stating that the agency should continue "to aggressively seek Section 10(j) injunctions," notwithstanding a recent decision by the U.S. Supreme Court raising the Board's burden for seeking a temporary injunction. Section 10(j) of the National Labor Relations Act ("NLRA") authorizes the Board to seek temporary injunctive relief in federal district court while litigating the merits of an unfair labor practice proceeding to ensure that any remedy the Board might eventually issue will not be moot or hollow.

As we previously reported here, on June 13, 2024, the Supreme Court issued its decision in *Starbucks Corp. v. McKinney*. The decision resolved a circuit split and held that courts deciding a request for a temporary injunction pending resolution of an unfair labor practice proceeding should apply the traditional four-factor test for evaluating whether to grant an injunction (likelihood of success, irreparable harm, the balance of equities, and public interest). In so doing, the Supreme Court expressly rejected a more liberal two-factor standard used by some circuits, including the Second, Fifth, Sixth, and Tenth Circuits.

The use of 10(j) injunctions has been a key component of the Board's strategy during GC Abruzzo's tenure (as reported here) and, notwithstanding this significant blow, GC Abruzzo presses forward. GC Memorandum 24-05 begins by citing to a memorandum issued at the start of GC Abruzzo's tenure as General Counsel, GC Memorandum 21-05, to reiterate that "Section 10(j) provides the Agency with an important tool in ensuring that employees' rights will be adequately protected from remedial failure due to the passage of time." GC Abruzzo then advises Regional Directors that "the Supreme Court's decision does not change my approach to seeking Section 10(j) injunctive relief in appropriate cases." GC Abruzzo cites the fact that several circuits already applied the four-factor test prior to *Starbucks* and takes the position that the decision, accordingly, "will not have a significant impact on the Agency's Section 10(j) program." GC Memorandum 24-05 further states that the Board has not sought injunctive relief without a "full evaluation and careful consideration of . . . difficult questions of law" and, thus, little change to the Board's usual procedures is required.

Despite her claim, GC Abruzzo seems to acknowledge the significant impact the decision will have on certain Regional offices; she notes that the Board's Injunction Litigation Branch will provide guidance "on an ongoing basis" to Regions that were accustomed to the more liberal standard employed by certain circuits pre-*Starbucks*.

It remains to be seen whether the *Starbucks* decision will temper the Board's recent eagerness to seek 10(j) injunctions, particularly in those circuits that previously employed the two-factor standard the Supreme Court has now rejected. We will continue to monitor these developments and will keep you informed as to any new updates.

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