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Rejected, Again: The Sixth Circuit Denies NLRB Enhanced Remedies, Expanding Circuit Split

Labor Relations Update on **November 12, 2025**

We have been tracking the ongoing challenges to the National Labor Relations Board's ("NLRB" or "Board") power to issue enhanced remedies under *Thryv, Inc.*, 372 NLRB No. 22 (2022). In *Thryv,* the Board held that employees aggrieved by an unfair labor practice ("ULP") charge under the National Labor Relations Act ("NLRA" or "Act") could seek compensation from employers for "all direct or foreseeable pecuniary harm." (See here, here, here, and here.)

In the latest development, on November 5, 2025, a split Sixth Circuit panel in a published opinion aligned with the Third and Fifth Circuits in rejecting the NLRB's enhanced remedies under *Thryv* as a violation of the Act and U.S. Constitution. By contrast, the Ninth Circuit upheld *Thryv* remedies. In joining the ongoing circuit split, the Sixth Circuit's rejection of *Thryv* increases the likelihood that the U.S. Supreme Court will eventually resolve this issue.

Echoing the rationale of the Third and Fifth Circuits, the Sixth Circuit held that the Board's decision in *Thryv* violated the NLRA and Constitution for the following reasons:

- Congress only permitted the Board to seek equitable remedies under the NLRA.Section 10(c) of the Act requires employers to "cease and desist" ULPs and "take such affirmative action including restatement of employees with or without back pay, as will effectuate" the Act's policies. The Sixth Circuit rejected the Board's argument that "affirmative action" includes "all types of relief, including those legal in nature" under *Thryv*, such as out-of-pocket medical expenses, credit-card debt, and retirement-account withdrawals that an employee incurs because of an employer's ULP.
- Congress' refusal to make Board orders self-enforcing—*i.e.*, the NLRB must seek enforcement of its orders in federal court—and the fact that "the NLRA nowhere specifies monetary relief" (*e.g.*, consequential damages) provides additional evidence that the NLRA does not permit legal remedies, including those under *Thryv*. Rather, the "only remedies enumerated in § 10(c)—reinstatement and

backpay—land clearly in equity."

- *Thryv* was unconstitutional under the Supreme Court's recent decision in *SEC v. Jarkesy*, 144 S. Ct. 2117 (2024), which we covered here, because the Seventh Amendment guarantees those facing all claims "legal in nature"—which include *Thryv* remedies, according to the Sixth Circuit—a civil jury trial. By seeking to "punish wrongdoers and deter future misconduct" with *Thryv* remedies, the Board strayed beyond its traditional make-whole equitable relief options (*i.e.*, backpay, reinstatement, notice posting) and implicated the Seventh Amendment.

Importantly, the Sixth Circuit also refused to defer to the Board's interpretation of the Act under *Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244 (2024), which we covered here, adding that of "the sister circuits that have addressed this issue, virtually all do likewise." It remains unclear the degree of deference that the Board is entitled to post-*Loper Bright*—indeed, in March 2025, the Supreme Court declined to address the issue, as we covered here.

Though rejecting the imposition of *Thryv* remedies in the case at bar, the Sixth Circuit (which has jurisdiction over federal courts in Kentucky, Michigan, Ohio, and Tennessee), upheld the Board's finding that Starbucks violated the Act by firing the lead union organizer at one of its Michigan stores.

We will continue to monitor how federal appellate courts assess *Thryv* remedies and whether the Supreme Court ultimately resolves the ongoing and deepening circuit split on this issue.

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