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The Starbucks Effect: Sixth Circuit Vacates NLRB 10(j) Injunction

Labor Relations Update on **July 9, 2026**

On May 1, 2026, the U.S. Court of Appeals for the Sixth Circuit vacated a Section 10(j) injunction issued by a district court in *Kerwin v. Trinity Health Grand Haven Hospital*, 174 F.4th 942 (6th Cir. 2026). In its first Section 10(j) case since the Supreme Court's 2024 decision in *Starbucks Corp. v. McKinney*, 602 U.S. 339 (2024), the Sixth Circuit applied the traditional four-factor preliminary injunction test and found that the National Labor Relations Board ("NLRB" or "Board") failed to demonstrate irreparable harm.

Background and Procedural Posture

Section 10(j) authorizes the NLRB to seek temporary injunctive relief in federal district court while an unfair labor practice charge is litigated, preventing continued harm during administrative proceedings. These injunctions are often used where the NLRB's remedial authority may be inadequate—for example, in refusal-to-bargain cases where erosion of union support and loss of bargaining power may be difficult to quantify.

Prior to 2024, several circuits, including the Sixth Circuit, applied a lower standard when analyzing Section 10(j) petitions. NLRB prosecutors generally only had to show "reasonable cause" to believe an unfair labor practice occurred and that injunctive relief was "just and proper." As we reported here, the Supreme Court rejected that standard in *Starbucks*, holding that the NLRB must satisfy the traditional four-factor preliminary injunction test: (1) likelihood of success on the merits; (2) irreparable harm absent preliminary relief; (3) the balance of equities favors an injunction; and (4) an injunction is in the public interest.

In *Kerwin*, a hospital withdrew recognition from an incumbent union and refused to bargain based on an employee disaffection petition obtained after an unsuccessful decertification vote. The NLRB issued a complaint alleging the disaffection petition was inadequate to prove the union had lost majority support. While the case was pending before an administrative law judge, the NLRB secured a Section 10(j) injunction from the district court compelling the hospital to resume bargaining.

The Sixth Circuit's Decision

On appeal, the Sixth Circuit applied the traditional four-factor test and dissolved the injunction. While the NLRB showed it was likely to succeed on the merits—deficiencies in the disaffection petition undermined the hospital's withdrawal of recognition—it failed to show irreparable harm.

The Court rejected the NLRB's argument that irreparable harm may be inferred because an unlawful withdrawal of recognition and refusal to bargain "will erode union support to the point that the union will be unable to bargain effectively in the future." This inference was often accepted under the old Section 10(j) standard, and even after *Starbucks*, the Second, Fourth, and Ninth Circuits continue to rely on it in refusal-to-bargain cases. The Sixth Circuit instead ruled that irreparable harm must be shown clearly with affirmative evidence—the same burden imposed on any other preliminary injunction plaintiff.

The NLRB's evidence of decreased attendance at union meetings and generalized assertions of dwindling support in an affidavit from the union president proved insufficient. The Court emphasized that injunctive relief is an extraordinary remedy that should not be granted based on "speculative and theoretical" harm. Finally, the Court noted that any harm arising from unilateral changes to terms and conditions of employment ultimately found unlawful could be remedied through traditional make-whole relief, such as backpay.

Takeaways

Starbucks resolved the question as to what overall standard applies to Section 10(j) petitions, but *Kerwin* raises a separate, more narrow issue: whether an inference of irreparable harm is appropriate in refusal-to-bargain cases. As the circuits continue to split on the issue, the Supreme Court may once again be asked to intervene.

Without the inference of irreparable harm, it will be even more difficult for NLRB prosecutors to secure injunctions during the pendency of refusal-to-bargain cases. Rarely is there concrete, affirmative evidence that can definitively show a union's loss of support or bargaining power particularly in the early stages of litigation. The threat of injunctive relief has long been used by the NLRB as a tool to encourage settlement; however, as Section 10(j) injunctions become more difficult to secure, employers have less incentive to reach an early settlement.

While the issue in *Kerwin* is presently limited to refusal-to-bargain cases, it may indicate that courts now expect the NLRB to satisfy the traditional evidentiary burden for irreparable harm in *all* Section 10(j) proceedings.

Unlike her predecessor, the current NLRB General Counsel has not articulated an agencywide policy encouraging field offices to aggressively pursue injunctive relief under the NLRA. That, coupled with decisions like *Starbucks* and *Kerwin* which make it increasingly difficult to secure an injunction and the NLRB's limited resources, may signal that employers will see fewer injunctions sought in unfair labor practice cases. We will continue to monitor the latest developments regarding NLRA injunctive relief across the federal courts.

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