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A Win for Employers: New SCOTUS Decision Raises the Bar for the NLRB in Seeking Preliminary Injunctions Against Employers Charged with Unfair Practice

By: [Tricia A. Pham](#) and [Alexandra M. Shulman](#)

On Thursday, June 13, 2024, in *Starbucks Corp. v. M. Kathleen McKinney*, Case No. 23-367, the U.S. Supreme Court ruled that district courts must apply a strict, four-factor test when adjudicating requests for preliminary injunctions brought by the NLRB against the employers it charges with unfair labor practices.

To now obtain an injunction—that is, to stop the targeted employer from continuing allegedly unfair labor practices while being prosecuted—the NLRB must make a clear showing that:

1. it is likely to succeed on the merits of the underlying case;
2. it is likely to suffer irreparable harmed without an injunction;
3. that the balance of equities tips in the NLRB's favor; and
4. that the injunction would serve public interest.

Put differently, the NLRB must now produce substantial proof to win an injunction under Section 10(j) of the National Labor Relations Act.

Prior to this ruling, districts courts applied different standards, including the less stringent “reasonable-cause” standard followed by the Sixth Circuit, which allowed the NLRB to obtain an injunction by merely showing it had reasonable cause to believe unfair labor practices exist and that injunctive relief was just and proper. The U.S. Supreme Court specifically noted that such a standard “substantively lowers the bar for securing a preliminary injunction by requiring courts to yield to the [NLRB’s] preliminary view of the facts, law, and equities” making it “hard to imagine how the [NLRB] could lose.” (Majority Opinion, pp. 8-9.)

In sum, the U.S. Supreme Court’s recent decision provides a much-needed uniform standard for the districts courts to apply when the NLRB seeks a preliminary injunction and makes it harder for the NLRB to routinely obtain preliminary injunctions—a clear win for employers.

For more information on the U.S. Supreme Court’s decision or how to defend against a claim for preliminary injunction under Section 10(j), please contact the attorneys listed below.



[Tricia A. Pham](#)

Senior Counsel
(949) 224-6222
tpham@buchalter.com



[Alexandra M. Shulman](#)

Senior Counsel
(503) 226-8660
ashulman@buchalter.com