On June 13, 2024, the Supreme Court of the United States made it harder for the National Labor Relations Board (NLRB) to win injunctive relief against employers accused of unfair labor practices.

The Court held in *Starbucks v. McKinney* that the general standard for injunctive relief from *Winter v. Natural Resources Defense Council* applies to the NLRB's request for a preliminary injunction under Section 10(j) of the National Labor Relations Act (the Act). The Court rejected the U.S. Court of Appeals for the Sixth Circuit's more lenient test that asked whether there was "reasonable cause" to believe an unfair labor practice had occurred.

Brief Background

Starbucks fired some pro-union employees at a Memphis location for violating company policy. The employees at that store later voted to join the Workers United union. Workers United filed charges with the NLRB, alleging that the employees' terminations violated the Act. The NLRB issued an administrative complaint and filed a petition in the U.S. District Court for the Western District of Tennessee seeking an injunction reinstating the fired employees under Section 10(j) of the Act. Section 10(j) allows the NLRB to seek injunctive relief against an employer accused of unfair labor practices while the charge is pending before the NLRB. 29 U.S.C. § 160(j). The court may grant such relief "as it deems just and proper." *Id.*

Starbucks argued that the traditional four-factor test for preliminary injunctive relief articulated in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), should apply. That test considers whether (1) the movant has shown a likelihood of success on the merits, (2) the movant will suffer irreparable harm absent injunctive relief, (3) the balance of the equities tips in the movant's favor, and (4) an injunction is in the public interest. The NLRB argued for application of the more lenient two-part test used by the Sixth Circuit, which requires the NLRB to show (1) reasonable cause to believe that an unfair labor practice has occurred and (2) that injunctive relief is "just and proper."

Federal courts of appeals were split over the proper standard for injunctive relief: the U.S. Courts of Appeals for the Third, Fifth, Sixth, Tenth, and Eleventh Circuits used the two-factor test; the Fourth, Seventh, Eighth, and Ninth Circuits applied the traditional *Winter* factors; and the First and Second Circuits merged the two approaches.

Supreme Court's Decision

The Supreme Court resolved the circuit split by holding that Section 10(j) requires courts to apply the traditional four-factor test from *Winter*. In an 8-1 opinion written by Justice Clarence Thomas, the Court explained that only a clear statement from Congress can overcome the strong presumption that courts will exercise equitable authority consistent with the traditional test for preliminary injunctive relief. In the Court's view, nothing in Section 10(j) displaced the presumption in favor of the *Winter* factors. The phrase "just and proper" invoked the "exercise of discretion—the hallmark of traditional equitable practice." Thus, the *Winter* test applied.

Key Takeaway

The Court's decision will likely make it tougher for the NLRB to win injunctions against employers accused of unfair labor practices in the federal circuits that were not already using the *Winter* test.

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