

# NLRB must satisfy traditional preliminary injunction standards to secure Section 10(j) relief against an employer pending administrative enforcement proceedings, SCOTUS rules

By Shay Dvoretzky, Esq., Parker Rider-Longmaid, Esq., David E. Schwartz, Esq., and Sylvia O. Tsakos, Esq., Skadden, Arps, Slate, Meagher & Flom LLP\*

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In *Starbucks Corp. v. McKinney*,<sup>1</sup> the U.S. Supreme Court held that the National Labor Relations Board (NLRB) must satisfy the traditional preliminary injunction standard established in *Winter v. Natural Resources Defense Council, Inc.*,<sup>2</sup> to secure an injunction against an employer or labor union under Section 10(j) of the National Labor Relations Act (NLRA).

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That provision allows the NLRB to ask a federal district court to issue a preliminary injunction while administrative enforcement proceedings for claims of unfair labor practices are pending.

In reaching its conclusion, the Court rejected the “watered-down” standard that the Sixth Circuit had applied. Unlike the traditional standard, which requires establishing, among other things, a likelihood of success on the merits, the Sixth Circuit’s standard required the NLRB to show merely “reasonable cause to believe that unfair labor practices have occurred” and that injunctive relief is “just and proper.”

The June 13, 2024, ruling is an important victory for employers, because it makes clear that courts need to be “referees,” not “spectators,” when reviewing whether the “extraordinary” remedy of a preliminary injunction is warranted.

## Background

The NLRB can bring administrative enforcement proceedings against employers and labor unions for engaging in unfair labor practices. The process begins when a person files a charge with the agency, alleging that the employer or union has engaged in an unfair labor practice.

After an investigation, a regional director can file an administrative complaint with the agency. That complaint triggers adjudicatory proceedings first before an administrative law judge and then before the Board. A federal court of appeals can review the Board’s final order if the aggrieved party seeks review, or if the Board seeks enforcement.

Because the administrative process can take years, the NLRA permits the Board to ask a federal district court to issue a preliminary injunction against the employer or union while enforcement proceedings are pending.

Specifically, under §10(j) of the NLRA, “upon issuance of a complaint,” the Board may “petition any United States district court ... for appropriate temporary relief.” 29 U.S.C. §160(j). The district court, in turn, may “grant to the Board such temporary relief ... as it deems just and proper.”<sup>3</sup>

## History and facts of Starbucks

In *Starbucks*, several employees announced plans to unionize and formed an organizing committee. The employees, including some committee members, invited local television news crews to visit the store after hours, where the employees discussed their unionizing efforts. Store management learned about the event, and after conducting an investigation, terminated several of the employees for violating company policy.

The union and the employees filed charges with the Board, alleging that Starbucks violated the NLRA by interfering with the employees’ right to unionize and discriminating against union supporters.

After an investigation, the Board issued an administrative complaint against Starbucks, and the regional director filed a petition in federal district court seeking a preliminary injunction under §10(j). The injunction would, among other things, require Starbucks to reinstate the terminated employees.

The district court issued the injunction after concluding that there was “reasonable cause to believe that unfair labor practices have

occurred” and that injunctive relief was “just and proper.” Adhering to the Sixth Circuit’s standard, the Board showed “reasonable cause” by demonstrating that its legal theory was “substantial and not frivolous.”

The Board also showed that injunctive relief was “just and proper” by demonstrating that the relief was “necessary to return the parties to [the] status quo pending the Board’s proceedings in order to protect the Board’s remedial powers under the NLRA.” The Sixth Circuit affirmed.

### Majority opinion

The Supreme Court vacated the Sixth Circuit’s decision and remanded, concluding that district courts “must use the traditional four-part test” articulated in *Winter* when considering whether to grant preliminary injunctions under §10(j).

That test requires a “clear showing” that the plaintiff “is likely to succeed on the merits,” that she likely will “suffer irreparable harm” without a preliminary injunction, that the balance of equities favors an injunction, and that an injunction serves the public interest.

The Court explained that “[w]hen Congress empowers courts to grant equitable relief, there is a strong presumption that courts will exercise that authority in a manner consistent with traditional principles of equity.”

The *Winter* factors “encompass the relevant equitable principles” “[f]or preliminary injunctions,” and courts must apply that test “absent a clear command from Congress” directing otherwise.

The Court concluded that there is no such clear command in §10(j), so the provision does not displace the presumption that the traditional *Winter* factors apply. Section 10(j) allows a district court to issue preliminary relief that the court “deems just and proper.” But that phrase merely “invokes the discretion that courts have traditionally exercised when faced with requests for equitable relief.”

In contrast to §10(j), other statutes modify the traditional preliminary injunction rules by, for example, raising the burden for obtaining an injunction or directing how much weight to afford specified factors. Section 10(j) does none of those things.

The Court thus rejected the Sixth Circuit’s “watered-down” standard, which “require[ed] courts to yield to the Board’s preliminary view of the facts, law, and equities.” It remanded so the lower court could weigh the *Winter* factors in the first instance.

### Justice Jackson’s separate opinion

Justice Jackson concurred in part, dissented in part, and concurred in the judgment. Justice Jackson agreed that the case should be remanded for the Sixth Circuit to consider whether the Board meets the traditional four-factor test for determining whether a plaintiff is entitled to a preliminary injunction.

In Justice Jackson’s view, however, “a district court’s preliminary look at the merits” in considering a petition for §10(j) relief “should be far less searching than normal.”

According to Justice Jackson, that approach follows from the statutory scheme of the NLRA, under which district courts generally

play no role at all in the review process, and the Board is “the primary adjudicator of labor disputes and the central expositor of labor policy.”

### Implications

The Court’s decision is important because it places a significant limitation on a key NLRB enforcement tool. Injunctions are potent remedies, and §10(j) injunctions in particular can have far-reaching and detrimental consequences for employers.

For example, §10(j) injunctions can impose significant obligations on employers, including requiring them to rehire employees who have violated company policies. And because NLRB administrative proceedings can last years, preliminary injunctions entered at the outset of the administrative process can remain in place for years, even if the employer has a strong defense and will ultimately succeed at the end of the case.

What’s more, a §10(j) injunction can place significant settlement pressure on an employer. Before the Court’s decision, the NLRB could secure this powerful relief simply by showing that its theory was “substantial and not frivolous” — even if it could not establish that its theory was likely meritorious.

As the Supreme Court put it, under the Sixth Circuit’s test, “it is hard to imagine how the Board could lose under the reasonable-cause test if courts deferentially ask only whether the Board offered a minimally plausible legal theory, while ignoring conflicting law or facts.”

The Court’s decision makes clear that the Board must meet the traditional, stringent preliminary injunction standard, rather than some more lenient standard, to wield the powerful tool of a §10(j) injunction.

Faced with a more stringent standard — the traditional standard — the Board might be more selective in seeking preliminary injunctions under §10(j). Another possibility is that the Board will conduct more rigorous investigations to be prepared to demonstrate a likelihood of success on the merits as soon as it files an administrative complaint and seeks a preliminary injunction in federal district court.

Regardless, the Court’s decision reining in the Board’s ability to seek preliminary injunctive relief is particularly important given the NLRB general counsel’s recent comments urging the agency to pursue §10(j) injunctions at the “earliest” stages of administrative proceedings.<sup>4</sup>

More generally, the decision reinforces the rule that statutes incorporate traditional equitable principles, including in the context of administrative agencies, unless Congress clearly says otherwise. Thus, even beyond the NLRB context, Starbucks is likely to guide lower courts to focus more closely on both those traditional principles as well as statutory text to determine whether Congress displaced those principles.

### Notes:

<sup>1</sup> <https://bit.ly/4bdxKBM>

<sup>2</sup> 555 U.S. 7 (2008).

<sup>3</sup> *Id.*

<sup>4</sup> Memorandum from Jennifer A. Abruzzo, NLRB General Counsel, to Regional Directors, Officers-in-Charge, and Resident Officers (Aug. 19, 2021), <https://bit.ly/3xwewgl>.

## About the authors



(L-R) **Shay Dvoretzky**, head of **Skadden, Arps, Slate, Meagher & Flom LLP**'s Supreme Court and appellate practice, has argued 19 cases in the U.S. Supreme Court and has briefed and argued cases in federal and state appellate courts. He is based in Washington, D.C., and can be reached at [shay.dvoretzky@skadden.com](mailto:shay.dvoretzky@skadden.com).

**Parker Rider-Longmaid**, also a Washington-based

partner in the firm's Supreme Court and appellate practice, has significant argument and briefing experience before federal and state appellate and trial courts. He has argued before the U.S. Supreme Court and the 2nd, 4th, 7th, and 9th circuits and led briefing and strategy in the Supreme Court and the federal courts of appeals. He can be reached at [parker.rider-longmaid@skadden.com](mailto:parker.rider-longmaid@skadden.com).

**David E. Schwartz**, global head of the firm's labor and employment law group, advises clients on a full spectrum of employment-related issues. Schwartz regularly represents clients before state and federal administrative agencies and courts, as well as in arbitration proceedings. He is based in New York and can be reached at [david.schwartz@skadden.com](mailto:david.schwartz@skadden.com). **Sylvia O. Tsakos**, an associate in the firm's Supreme Court and appellate practice, has briefed cases before the U.S. Supreme Court and federal and state appellate and trial courts. She is based in Washington, D.C., and can be reached at [sylvia.tsakos@skadden.com](mailto:sylvia.tsakos@skadden.com). The authors would like to thank partner Annie Villanueva Jeffers for contributing to this article. This article was originally published June 14, 2024, on the firm's website. Republished with permission.

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