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In NCLA Amicus Win, Supreme Court Overturns NLRB-Specific Preliminary Injunction Standard

Starbucks Corporation v. M. Kathleen McKinney, Regional Director of Region 15 of the NLRB

Washington, DC (June 13, 2024) – The U.S. Supreme Court issued an 8-1 decision in *Starbucks Corp. v. McKinney*, overturning a deferential legal standard that has allowed the National Labor Relations Board (NLRB) to enjoin a company's conduct without showing that it likely broke the law. Justice Thomas authored the Court's opinion. Justice Jackson provided a ninth vote, concurring in the judgment, but dissenting in part at a length greater than the majority decision. The Court held that federal courts may not issue preliminary injunctions unless the NLRB meets four requirements: (1) it is likely to succeed on the merits; (2) it would suffer irreparable injury absent an injunction; (3) the balance of equities favors an injunction; and (4) an injunction serves the public interest. These are the same four preliminary injunction factors that every other litigant has always had to satisfy.

Today's decision overrules the five federal circuits that have been applying a relaxed standard when NLRB seeks a preliminary injunction, permitting it to punish an employer based on legal and factual allegations that are most likely meritless. As NCLA requested in its *amicus curiae* brief supporting Starbucks, the ruling bars NLRB from initiating an administrative enforcement proceeding and then obtaining a preliminary injunction in federal district court just by showing that (1) its claims are not frivolous, and (2) its claims serve NLRB's remedial purposes. NCLA thanks the Justices for rejecting this textually baseless test, reversing the decision of the U.S. Court of Appeals for the Sixth Circuit, and requiring NLRB to satisfy the same four-part standard as everyone else.

"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," Justice Thomas wrote for the Court. The decision correctly held that judicial independence requires much more than kowtowing to the Board's non-frivolous allegation.

The Supreme Court recognized that the National Labor Relations Act did not support the special, judge-created P.I. standard NLRB has enjoyed, which did not apply to any other federal agency. The unique test also defied the Fifth Amendment's prohibition against the deprivation of property without due process of law. Under the Sixth Circuit's approach, NLRB could obtain a punitive injunction forcing Starbucks to retain and pay unwanted employees for an indefinite period—resulting in a loss of the company's property—without the agency ever having to prove even a likely violation of law. This "reasonable cause" test employed by the lower courts exhibited improper judicial deference to NLRB's legal theories, a problem NCLA is addressing separately in the pending Supreme Court case *Relentless Inc. v. Department of Commerce*.

Once it secured a preliminary injunction forcing an employer to do the Board's bidding under the inappropriately relaxed standard, NLRB had every incentive to drag out administrative proceedings. Meanwhile, the P.I. imposed mounting economic costs on the employer for the duration of the administrative proceedings, whose length was entirely within NLRB's control. Especially for companies less rich than Starbucks, capitulation has often been the only viable option to stanch the financial bleeding. NCLA commends the Supreme Court for eliminating this coercive dynamic and forcing NLRB to meet the traditional preliminary injunction standard.

NCLA released the following statements:

"Many federal courts have improperly deferred to NLRB's litigating positions for decades, allowing the agency to punish businesses with costly injunctions even if the preponderance of evidence indicates no wrongdoing occurred. Today, the Supreme Court corrects this injustice and reminds lower courts that their obligation to exercise independent judgment precludes them from taking the easy way out by deferring to agencies."
— Sheng Li, Litigation Counsel, NCLA

"NCLA applauds today's decision. It never made sense to have an odd, NLRB-specific preliminary injunction standard that set an absurdly low bar for the Board to clear. No other federal agency enjoys such special treatment, and Congress never gave it to NLRB either. The non-statutory, judge-made test struck down today deserved to be discarded."
— Mark Chenoweth, President, NCLA

For more information visit the *amicus* page here.

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA's public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans' fundamental rights.

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