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Appellate and Constitutional Law Update June 13, 2024

Supreme Court Rejects Lower Standard For Preliminary Injunctions Sought By The National Labor Relations Board

***Starbucks Corp. v. McKinney*, No. 23-367** – Decided June 13, 2024

The Supreme Court held 8-1 today that when the National Labor Relations Board seeks a preliminary injunction in court, it must satisfy the same traditional and demanding standard as any other litigant.

"Nothing in [the Act's] text overcomes the presumption that the four traditional criteria govern a preliminary-injunction request by the Board."

JUSTICE THOMAS, WRITING FOR THE COURT

Background:

Section 10 of the National Labor Relations Act authorizes the National Labor Relations Board to bring, prosecute, and adjudicate administrative complaints against employers for "unfair labor practice[s]." 29 U.S.C. § 160(b). While such administrative proceedings are pending, the Board can petition a federal district court "for appropriate temporary relief or restraining order." *Id.* § 160(j). And a district court may grant such relief "as it deems just and proper." *Id.*

The courts of appeals have split over the standard district courts should use in deciding whether to grant a preliminary injunction. Some have held that the Board must satisfy the traditional four-factor test that governs preliminary injunction requests—(1) the movant is likely to succeed on the merits, (2) the movant is likely to suffer irreparable harm absent preliminary relief, (3) the balance of the equities favors preliminary relief, and (4) preliminary relief is in the public interest. But others have applied a looser standard requiring the Board to show only that its theories of fact and law are "substantial and not frivolous."

After issuing an administrative complaint against Starbucks alleging unfair labor practices in connection with its employees' efforts to unionize a Tennessee store, the Board petitioned a Tennessee federal district court for a preliminary injunction. Applying the looser standard, the district court granted the injunction, reasoning that the Board had offered "some evidence" and a nonfrivolous legal theory, and the Sixth Circuit affirmed.

Issue:

Whether the traditional four-factor test for a preliminary injunction articulated in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), governs the Board's request for a preliminary injunction.

Court's Holding:

Yes. The traditional four-factor test applies to requests for preliminary injunctions by the Board.

What It Means:

- Today's decision reiterates that when Congress authorizes courts to issue preliminary injunctive relief, the traditional four-factor standard will apply absent a clear legislative statement to the contrary.
- In holding that the traditional four-factor test applies to the Board's requests, the Court emphasized that the Board gets no special deference or solicitude to its "convenient litigating position[s]." That means, to get an injunction, the Board must show that it is likely to succeed on the merits of its complaint—it is not enough to show that its theory is reasonable and nonfrivolous. In practice, today's decision will make it harder for the Board to obtain preliminary injunctions moving forward.
- Importantly, the Court cautions that application of the traditional four-factor test, including the requirement that the Board be likely to succeed on the merits, will not invade the Board's authority to finally adjudicate the complaint on the merits. "[T]he Board remains free to reach its own legal conclusions and develop its own record in its administrative proceedings."

Gibson Dunn Appellate Honors

The Court's opinion is available here.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the U.S. Supreme Court. Please feel free to contact the following practice group leaders:

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