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# supreme court ruling limits nlrbs ability to obtain preliminary injunctions

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In a closely watched case, the Supreme Court ruled against the National Labor Relations Board ("NLRB" or Board) and in favor of Starbucks on the question of what the NLRB must prove before it can obtain a preliminary injunction against employers prior to fully litigating allegations contained in an unfair labor practice complaint issued by the NLRB. In Starbucks Corp. v. McKinney, the Court's latest opinion resolves a split among the lower courts and will make it more difficult for the NLRB to secure a preliminary injunction under Section 10(j) of the National Labor Relations Act ("NLRA").

Section 10(j) authorizes the NLRB to seek preliminary injunctions against employers and unions in federal district courts in order to stop alleged unfair labor practices from continuing to occur while a complaint over the allegations is being prosecuted by the NLRB. In determining whether a preliminary injunction should issue, the Court held that the NLRB must satisfy the more stringent four-factor test that courts traditionally apply in general, instead of the two-factor test articulated by the Sixth Circuit. Under the two-factor test, the Sixth Circuit asked 1) whether there is reasonable cause to believe that an unfair labor practice occurred, and 2) whether injunctive relief is "just and proper." In reversing the Sixth Circuit, the Court held that this lenient standard gave too much deference to the NLRB's factual determinations and legal theories to support the issuance of a preliminary injunction, particularly since a preliminary injunction is an "extraordinary remedy that is "never awarded as of right," but instead is applied sparingly "to preserve the relative positions of the parties until a trial on the merits can be held."

Under the four-part test, the NLRB must make a clear showing that 1) it is likely to succeed on the merits that an unfair labor practice occurred; 2) the charging party will likely suffer irreparable harm if a preliminary injunction is not granted; 3) that the balance of equities tips in favor of the charging party; and 4) that a preliminary injunction is in the public interest. Under this standard, employers have a meaningful opportunity to be heard on their evidence in defense against

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## practice areas

labor & employment  
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an unfair labor practice complaint before being subjected to a court order affecting the management of their business operations.

Over the past few years under the Biden administration, the NLRB has made clear, both in policies expressed by its General Counsel and practice, that the NLRB field offices should increasingly rely on Section 10(j) as a means of obtaining provisional relief against employers accused of committing unfair labor practices under the NLRA. While it remains to be seen whether the Court's ruling will make it less likely for the NLRB to continue pursuing this policy, the ruling will make it more difficult for the Board to obtain this type of relief against employers.