

NLRB's Authority to Order Employers to Reimburse for Unfair Labor Practices Limited by Federal Court of Appeals Decision

Labor & Employment Law Update

By Beverly Alphon and Kevin Kleine on January 7, 2025

On Friday, December 27, 2024, the U.S. Court of Appeals for the Third Circuit in *NLRB v. Starbucks Corp.* vacated part of a National Labor Relations Board (NLRB) order on the grounds that it exceeded its authority in ordering Starbucks to pay damages *beyond* what it unlawfully withheld (reinstatement, lost wages, and lost benefits) from two unlawfully terminated employees.

In the original case, the NLRB found that Starbucks unlawfully terminated the employees in response to union organizing activity. The NLRB ordered Starbucks to reinstate the employees and make them whole for any loss of wages and benefits by compensating them for any direct or foreseeable financial harms incurred as a result of the unlawful adverse actions against them. This included search-for-work and interim employment expenses, regardless of whether these expenses exceed the wages that the employee earned during the time between their termination and reinstatement.

There is no question that section 10(c) of the National Labor Relations Act gives the NLRB the power to award equitable relief to employees in the form of reinstatement of employment and backpay (lost wages and benefits) and authorization to order employers to reinstate employees with or without backpay if the NLRB determines that the employer has committed an unfair labor practice in violation of the NLRA. However, in 2022, the NLRB issued a decision in *Thryv, Inc.*, declaring that its power to award relief extended beyond backpay to include all *direct or foreseeable* financial harms suffered as a result of the employer's unfair labor practice.

The Third Circuit rejected the NLRB's decision in *Thryv, Inc.*, reasoning that Congress did not authorize "full compensatory damages." The court also found that the NLRB exceeded its authority by ordering Starbucks to compensate the employees for losses beyond backpay, adding costs "incurred as a result" of Starbucks' wrongdoing—this more resembled an order to pay damages, which is *not* an equitable remedy.

The Third Circuit clarified that while the NLRB “can still award monetary relief based on what the employer withheld as a result of an unfair labor practice, *that relief cannot exceed what the employer unlawfully withheld.*” Simply put, in the Third Circuit, the NLRB can award backpay and reinstatement for an unfair labor practice—but financial losses that are not directly incurred due to the employer’s unlawful withholding of wages or benefits (e.g., search-for-work, attorney fees, and other out-of-pocket expenses) are not recoverable under the NLRA for unfair labor practice violations.

The Third Circuit’s decision is a positive one for all employers. Although it is only binding within the circuit’s jurisdiction (Pennsylvania, New Jersey, and Delaware), it can be persuasive in other jurisdictions and confirms that legal challenges to such orders can be successful.

NLRB’s Authority to Order Employers to Reimburse for Unfair Labor Practices Limited by Federal Court of Appeals Decision