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COURT SAYS EMPLOYER CAN'T USE INJUNCTION TO CHALLENGE NLRB AUTHORITY: KEY TAKEAWAYS AS CIRCUIT SPLIT TAKES SHAPE

Insights
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Employers in the 3rd Circuit just received a warning that they cannot use federal court injunctions to halt NLRB proceedings, even when claiming that the Board's structure is unconstitutional. Last week, the federal appeals court rejected a nursing facility's request to block the NLRB's administrative proceedings against it, holding that the Norris-LaGuardia Act generally bars federal courts from issuing injunctions in cases "involving or growing out of a labor dispute." The ruling departs from a 5th Circuit decision earlier this year that upheld a preliminary injunction in a similar case – which means SCOTUS might ultimately weigh in. Here's what you need to know about the 3rd Circuit's ruling and what employers might expect next.

Key Developments in the Case

The NLRB alleged that Spring Creek Rehabilitation and Nursing Center committed unfair labor practices (ULPs) when it refused to bargain with a union after purchasing a unionized skilled nursing facility.

The prior collective bargaining agreement (CBA) expired in 2020, and Spring Creek bought the facility in 2021. Spring Creek told the union it would not assume the expired CBA.

The union claimed that the seller violated the expired agreement's successor provisions by selling to Spring Creek without requiring it to "be personally responsible for all unpaid wages, welfare fund payments, vacations, holidays, sick leave and all other monetary items."

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The NLRB ultimately notified Spring Creek that it would be required to appear at a hearing before an Administrative Law Judge (ALJ). But Spring Creek filed a federal lawsuit claiming that ALJs are unconstitutionally insulated from presidential removal. The employer aimed to stop the hearing and prevent the ALJ from issuing a decision.

The district court denied Spring Creek's request for an injunction, finding it failed to show irreparable harm. On appeal, however, the 3rd Circuit denied the injunction for a different reason. "Because this suit grows out of a labor dispute between Spring Creek and its employees, we hold that the Norris-LaGuardia Act ... strips the District Court of jurisdiction to issue the injunctive relief Spring Creek seeks in this context," the 3rd Circuit concluded.

A Deeper Dive Into the Ruling

Under the Norris-LaGuardia Act, courts do not have jurisdiction to issue a restraining order or injunction in cases "involving or growing out of a labor dispute" unless it is necessary to:

- accommodate the strong federal policy in favor of arbitration; or
- reconcile the act with other federal statutes.

The 3rd Circuit held that the Norris-LaGuardia Act removes the district court's jurisdiction in this case because:

- The case "grows out of a labor dispute" – even though the employer raised a constitutional challenge rather than a dispute over bargaining obligations. The act uses an "intentionally broad" definition of "labor dispute" with the critical element being the employer-employee relationship.
- Neither exception applies because the case does not involve arbitration, and the employer's claim for injunctive relief is not based on any federal statutory rights.

The 3rd Circuit declined to follow a contrary ruling from the 5th Circuit earlier this year, which held that an employer's action to enjoin the NLRB's administrative proceedings against it did not "grow out of the underlying labor dispute" with its employees.

Will SCOTUS Resolve the Issue?

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In the 5th Circuit case, the court upheld a preliminary injunction prohibiting the NLRB from prosecuting ULP complaints against several employers while courts debate the underlying constitutional challenges to the agency's structure.

The 5th Circuit's ruling suggests that the Norris-LaGuardia Act cannot apply to a lawsuit against the NLRB. But the 3rd Circuit disagreed. "If Congress meant to exempt all such suits from the act's anti-injunction provisions, it could have expressly done so. It did not," it said.

While the 5th Circuit narrowly interpreted the act, finding that Congress didn't intend to bar constitutional challenges to the NLRB's structure, the 3rd Circuit said the act's anti-injunction provisions serve the broader goal of preventing judicial interference in management-labor relations.

With this disagreement among federal appeals courts, outcomes on the issue may depend on where a case is filed. We'll be watching whether the Supreme Court takes up this issue.

What Does this Mean for Employers?

You Can Still Raise Constitutional Challenges: The *Spring Creek* decision does not prevent employers from raising constitutional arguments in the 3rd Circuit, which includes Delaware, New Jersey, and Pennsylvania. Rather, it holds that these arguments cannot be used to stop an ongoing ULP proceeding through injunctive actions. So, employers should still be sure to preserve such challenges during other proceedings, including ULP proceedings with the NLRB.

If You Have Operations in 5th Circuit's Jurisdiction: Employers operating in Texas, Louisiana, and Mississippi should consider aggressively challenging the NLRB's authority to prosecute any ULP cases against it.

If You Have Operations Elsewhere: At a minimum, employers across the country should preserve any such challenges by raising them at all stages of an NLRB proceeding, because courts have held that constitutional challenges to agency removal provisions are not jurisdictional in nature and may be waived.

Track Changes From the Trump Administration: Notably, the NLRB's Acting General Counsel decided to no longer

defend against constitutional challenges to the removal protections of NLRB members and ALJs. It remains to be seen what impact this will have on such cases.

Conclusion

We will continue to monitor developments in these cases, as well as the expected new wave of challenges to the NLRB's rules and positions, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Labor Relations Practice Group.