

Case No. 23-1187

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

ELIZABETH K. KERWIN, Regional Director of
Region 7 of the National Labor Relations Board,

Petitioner-Appellee,

v.

STARBUCKS CORPORATION,

Respondent-Appellant.

On Appeal from the United States District Court
for the Eastern District of Michigan, Southern Division
Honorable Mark A. Goldsmith
District Court Case No. 2:22-cv-12761

**RESPONDENT-APPELLANT'S UNOPPOSED MOTION
TO VACATE DISTRICT COURT'S**

Neil B. Pioch (P67677)
A. John Harper, III (24032392)
Arthur T. Carter (00792936)
LITTLER MENDELSON, P.C.
200 Renaissance Center, Suite 3100
Detroit, Michigan 48243
(313) 202-3180
npioch@littler.com
ajharper@littler.com
atcarter@littler.com

Attorneys for Respondent-Appellant

Respondent-Appellant Starbucks Corporation requests this Honorable Court issue an Order for the district court to vacate its February 23, 2023 injunction and for remand. Petitioner-Appellee does not oppose this motion.

1. This matter involves Respondent-Appellant's appeal of an injunction issued by the district court on February 23, 2023, pursuant to Section 10(j) of the NLRA, 29 U.S.C. § 160(j).

2. On August 9, 2023, the Board issued its Decision and Order in Board Cases 07-CA-292971 and 07-CA-293916. (RE 49-2, PageID 2538-2562).

3. On August 23, 2023, Petitioner-Appellee filed a Notice in the district court requesting that the district court terminate its February 23, 2023 injunction that is the subject of this appeal. (RE 48).

4. According to the Board, the district court's February 23, 2023 injunction terminated by operation of law on August 9, 2023, after the Board issued its aforementioned August 9, 2023 Decision and Order in the proceedings that were the basis for the Section 10(j) relief. (RE 48).

5. On August 25, 2023, Respondent-Appellant filed its response to the Board's Notice (RE 49) concurring with its request to dissolve the district court's February 23, 2023 injunction but disagreeing with the Board's contention that this appeal is now moot.

6. Specifically, Respondent-Appellant advised the district court that it continues to believe that its February 23, 2023 injunction was inappropriate because, among other things, the Order and Opinion was not supported by the evidence and the district court applied Sixth Circuit precedent for “just and proper” relief under Section 10(j) that has no basis in the plain language of the NLRA and is contrary to the U.S. Supreme Court’s holding in *Winter v. Natural Resources Defense Council*, 555 U.S. 7 (2008).

7. To the extent Petitioner-Appellee suggests otherwise, Starbucks contends that the Board’s final decision in an underlying administrative proceeding does not on its own render moot the appeal of a district court’s decision to grant relief under Section 10(j). *See, e.g., Miller v. Cal. Pacific Med. Ctr.*, 19 F.3d 449, 454 (9th Cir. 1994) (finding Section 10(j) appeal not moot despite Board’s final decision in the underlying administrative proceeding where the issue on appeal involved the appropriate standard to be used when determining the propriety of relief under Section 10(j) which fell within the “capable of repetition yet evading review” exception to Article III’s case-and-controversy requirement). (RE 49).

8. Both parties have now requested that the district court dissolve its injunction.

9. Based on the foregoing, and subject to and not waiving its legal position as set forth in paragraph 7 above, Respondent-Appellant requests an Order to vacate the district court's February 23, 2023 injunction and remand this matter.

10. Each party is to bear its own costs relative this matter.

For the foregoing reasons, Respondent-Appellant respectfully requests that this Honorable Court issue an Order to vacate the district court's February 23, 2023 injunction and to remand this matter.

Respectfully submitted,

/s/Neil B. Pioch

Neil B. Pioch (P67677)

A. John Harper, III (24032392)

Arthur T. Carter (00792936)

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Attorneys for Respondent-Appellant

CERTIFICATE OF SERVICE

I certify that on September 5, 2023, I filed and served the foregoing Motion with the Clerk of the Court by causing a copy to be electronically filed via the appellate CM/ECF system. I also hereby certify that the participants in the case are registered CM/ECF users and will be served via the CM/ECF system.

/s/Neil B. Pioch