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When Refusal Isn't Enough: The Sixth Circuit Slams the Brakes on 10(j) Relief

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In a significant post-*Starbucks* ruling, the Sixth Circuit held that failure to bargain alone is not enough to justify an NLRB injunction absent specific evidence of immediate harm. The court vacated an injunction requiring the employer to resume bargaining with a union, holding that even where the NLRB is likely to prevail on the merits, courts may not presume “irreparable harm” from a refusal to bargain. Instead, the Board must present concrete, case-specific evidence that harm is both certain and immediate — a demanding standard the court emphasized should be met only in “rare situations.”

The decision tightly applies the Supreme Court's 2024 ruling in *Starbucks Corp. v. McKinney*, making clear that Section 10(j) injunctions are governed by traditional equitable principles, not labor-specific shortcuts. Importantly, the decision places the Sixth Circuit at odds with decisions in other circuits—particularly the Ninth Circuit—that permit courts to infer irreparable harm based on the inherent nature of a bargaining violation. Under the Sixth Circuit's rule, evidence such as generalized claims of employee frustration, declining union meeting attendance, or abstract concerns about lost bargaining leverage will not suffice absent proof that harm was certain and immediate. This meaningfully curtails the NLRB's ability to secure interim bargaining orders in Michigan, Ohio, Kentucky, and Tennessee.

What This Means for Employers. Employers in the Sixth Circuit facing alleged refusal-to-bargain claims now have stronger grounds to oppose emergency injunctive relief, even while underlying unfair labor practice proceedings continue. That said, the ruling does not insulate employers from eventual liability: the court acknowledged that Trinity may well lose on the merits before the Board. Employers should therefore continue to evaluate bargaining obligations carefully, document legitimate bases for recognition decisions, and be prepared for post-litigation remedies such as reinstated bargaining and potential make-whole relief. Strategically, however, the decision alters the leverage dynamic during litigation and may reduce the immediate operational and bargaining pressure historically associated with Section 10(j) proceedings — at least within the Sixth Circuit.



The 2-1 decision Friday involving Trinity Grand Haven Hospital arrives two years after the U.S. Supreme Court directed the Sixth Circuit in *Starbucks Corp. v. McKinney* to change its approach to



handing out injunctions under Section
10(j) of the National Labor Relations Act.

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