VOLUME 79 ◆ NUMBER 3

Employee Benefit Plan Review

Federal Appeals Court Narrows National Labor Relations Board's Ability to Award Money to Workers

By Steven M. Bernstein

A federal appeals court just clipped the wings of the National Labor Relations Board (Board) by limiting its authority to impose monetary remedies against employers. In a significant decision that could soon reverberate around the country, the U.S. Court of Appeals for the Third Circuit ruled that Starbucks should not have to pay workers consequential damages caused by alleged labor law violations not directly related to lost wages or benefits. The court's December 27, 2024, opinion curtails the expanded powers the NLRB granted itself in a controversial 2022 decision and serves as a rebuke to the more ambitious aspects of the Biden-era Labor Board.

While the decision currently only applies to workplaces in Pennsylvania, New Jersey, and Delaware, we could see other federal courts follow the Third Circuit's lead – not to mention the possibility that the new Trump NLRB could also roll back this expansive interpretation of the law. What do you need to know about this decision and what should employers do as a result?

The Starbucks Case: A Snapshot

The case originated with the termination of two Philadelphia baristas, Echo Nowakowska and Tristan Bussiere, in 2020. The workers alleged they were fired for their unionization efforts, and the NLRB ruled that the terminations violated the NLRA. The Board not only ordered Starbucks to reinstate the employees and pay them back wages, it also ruled that Starbucks had to cover additional damages for "direct or foreseeable pecuniary harms" to the workers, such as search-for-work expenses and interim employment costs.

The Board's decision relied heavily on its controversial *Thryv* precedent from 2022, which expanded the remedies employers could be required to pay, including indirect financial harms.

Starbucks appealed the monetary damages, arguing that they exceeded the NLRB's authority under the NLRA.

The Court's Decision

In a unanimous decision, the Third Circuit panel sided with Starbucks, striking down the ability of the NLRB to order employers to pay broader monetary remedies. Writing for the court, Judge Thomas Ambro noted, "The Board's current order exceeds its authority under the NLRA." The court ruled that while the NLRB can mandate back pay and reinstatement, it cannot order employers to cover consequential damages not directly related to lost wages or benefits.

Key excerpts from the opinion emphasize this point:

- "Congress did not establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful conduct."
- "The relief here went beyond the equitable remedies allowed under the NLRA."

The court's ruling vacated the monetary damages and remanded that portion of the order to the NLRB for further consideration, reinforcing the principle that remedies under the NLRA must be tied directly to the employer's unlawful withholding of wages or benefits.

Implications for Employers

The Third Circuit's decision underscores key limits on the NLRB's authority. Here are the primary implications:

- *For Employers in Pennsylvania, New Jersey, and Delaware* – You can take some reassurance that the Board's ability to impose consequential monetary remedies against you is constrained. Employers found to have violated the NLRA will generally not face damages beyond traditional remedies like back pay, reinstatement, and other remedies that bear a direct causal connection to the underlying unfair labor practice charges – as opposed to tort-like awards for indirect downstream economic harm bearing no such connection.
- *For Employers Elsewhere* – You now have a stronger defense available against expansive NLRB remedies. The court's rejection of consequential damages provides you with a precedent to push back against similar rulings in other circuits. However, recognize that we now have a potential for inconsistent outcomes in different jurisdictions. While this ruling binds the NLRB in Pennsylvania, New Jersey, and Delaware, it remains to be seen whether other federal appellate courts will follow suit. The U.S. Court of Appeals for the Fifth Circuit recently addressed *Thryv* remedies but did not definitively resolve their future applicability.

What's Next?

The ruling leaves open questions about how far the NLRB can – and will – go in imposing remedies. Employers should monitor the following developments:

- *Further Judicial Scrutiny of* Thryv *Remedies*: Other circuit courts, including the U.S. Court of Appeals for the Sixth Circuit, are weighing challenges to *Thryv*. A split among appellate courts could lead to eventual Supreme Court review.
- *Potential Course Correction by Trump NLRB*: With the Senate unable to muster a majority to renew Democratic Board Chair Lauren McFerran's term before it expired in December, President Trump will be able to create a Republican majority on the NLRB early in his second term. Once a new Board is set, do not be surprised to see the *Thryv* case as one its first targets. But it will take time to set up a case to reverse this precedent, so do not count on immediate action.
- *Evolving Enforcement Priorities*: What we do expect to happen fairly immediately after Trump takes office is for a new NLRB General Counsel to take the reins. This will no doubt lead the Board to revise its enforcement approach on issues like *Thryv* remedies, so we might see a cooling-down period before the case is overturned for good.

Practical Suggestions for Employers

Given the evolving landscape, employers should take proactive steps to minimize risks and ensure compliance with labor laws:

- *Review and Update Policies*: Ensure your policies and practices align with NLRA requirements, particularly regarding discipline or terminations that may involve protected activities.
- *Conduct Supervisor Training*: Train supervisors to recognize and address protected concerted activities appropriately, reducing the likelihood of unfair labor practice claims.
- *Engage in Compliance Audits*: Work with labor counsel to audit HR practices and identify potential risks before they become legal liabilities.
- *Anticipate Board Proceedings*: Prepare for the possibility of NLRB complaints by documenting decision-making processes and maintaining records that can support lawful justifications for employment actions.

The author, a partner in Fisher Phillips, may be contacted at sbernstein@fisherphillips.com.