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Muffley Ex Rel. NLRB v. Spartan Mining Co.

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MUFFLEY EX REL. NLRB V. SPARTAN MINING CO.

Last year, in *Muffley ex rel. NLRB v. Spartan Mining Co.*,[1] the United States Court of Appeals for the Fourth Circuit held that the National Labor Relations Board (the Board) may delegate power to its general counsel to seek temporary injunctive relief under the National Labor Relations Act[2] (NLRA) and that courts in the Fourth Circuit should apply a traditional four-factor equitable test to determine whether to grant such relief.[3] The court also held that "the district court did not abuse its discretion"[4] by ordering that the offending company had to offer employment to former employees who belonged to the United Mine Workers of America (UMWA).[5] Finally, the court held that the district court properly denied the Board further injunctive relief.[6]

In October 2004, Spartan Mining Company, a subsidiary of A.T. Massey Coal Company that does business as Mammoth Coal Company (Mammoth), acquired the coal mining assets of Cannelton Industries, Inc. and Dunn Coal and Dock (Cannelton/Dunn).[7] In December 2004, Mammoth began hiring workers to resume mining operations on the property previously operated by Cannelton/Dunn.[8] Mammoth interviewed and hired most of the "non-bargaining unit employees" who had previously worked at the facility for Cannelton/Dunn.[9] However, Mammoth refused to provide interviews or employment opportunities to most of the Cannelton/Dunn employees who belonged to the UMWA, choosing instead to fill vacant positions with employees from nearby facilities that Mammoth also operated.[10] On June 2, 2005, the UMWA, alleging that Mammoth engaged in illegal activity by its refusal to hire UMWA members, filed an "unfair labor practice charge" with the Board.[11] On August 18, 2006, after investigating the activities reported by the UMWA, the Board's General Counsel filed a complaint against Mammoth "alleging multiple violations of the National Labor Relations Act."[12]

After the complaint was filed, an administrative law judge (ALJ) conducted an evidentiary proceeding regarding the matter.[13] On November 21, 2007, the ALJ held that Mammoth had "violated §§ 8(a)(1) and 8(a)(3) of the NLRA . . . by discriminatorily refusing to hire union employees of Cannelton/Dunn in order

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1. 570 F.3d 534 (4th Cir. 2009).
2. ch. 372, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151–169 (2006)).
3. *Muffley*, 570 F.3d at 546.
4. *Id.*
5. *Id.* at 539.
6. *Id.* at 546.
7. *Id.* at 538. Massey acquired the Cannelton/Dunn assets in bankruptcy and then assigned those assets to its subsidiary Spartan. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*

to avoid an obligation to recognize and bargain with the union"[14] and that Mammoth had violated section 8(a)(5) by "fail[ing] to recognize and bargain collectively with the predecessor union."[15] The ALJ's order recommended relief including "immediate employment offers and back pay for 85 listed discriminatees, forced recognition and bargaining with the union, rescission of any unilateral changes to employment terms and conditions, and remission of all wages and benefits that Mammoth would have paid absent of discrimination."[16] Subsequently, "[b]oth sides filed exceptions to the . . . proposed order."[17]

Under NLRA section 10(j), the Board may petition a district court in any district in which the alleged unfair labor practices occurred and request an order temporarily enjoining such practices.[18] In December 2007, the Board delegated its petition powers under section 10(j) of the NLRA to its General Counsel pursuant to section 3(d).[19] The General Counsel then recused himself from the matter "because of personal ties to the case" and delegated power to the Deputy General Counsel.[20] The Deputy General Counsel then "authorized the regional director to petition the district court for temporary injunctive relief under § 10(j)" to preserve the Board's remedial power while the administrative proceedings were pending.[21] Mammoth filed a motion to dismiss the petition for injunctive relief, claiming that "the Board lacked authority to delegate its § 10(j) powers," but the district court denied the motion.[22] The district court then conducted an evidentiary hearing on the petition merits, during which Mammoth "conceded that the Board had demonstrated 'reasonable cause' to believe that Mammoth violated the NLRA."[23] The district court determined that "limited injunctive

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14. *Id.* (citing 29 U.S.C. § 158(a)(1), (3) (2006)). Section 8(a)(1) of the NLRA provides that it is an "unfair labor practice" for employers "to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed" by the Act, 29 U.S.C. § 158(a)(1), and section 8(a)(3) makes it unlawful for an employer to discriminate with regard to the hiring or tenure of employees in order to encourage or discourage union membership, *id.* § 158(a)(3).

15. *Muffley*, 570 F.3d at 538 (citing National Labor Relations Act § 8(a)(5)).

16. *Id.*

17. *Id.*

18. 29 U.S.C. § 160(j).

19. *Muffley*, 570 F.3d at 539 (citing 29 U.S.C. § 153(d)). The Board chose to delegate its powers under section 10(j) because of "anticipated reductions from its full five-member complement, which would take the Board below its quorum of three members." *Id.* Section 3(d) of the NLRA provides for the appointment, tenure, powers, and duties of the Board's General Counsel:

> [The Board's General Counsel] shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 160 of this title, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law.

29 U.S.C. § 153(d).

20. *Muffley*, 570 F.3d at 539.

21. *Id.*

22. *Id.* (citing Muffley *ex rel.* NLRB v. Massey Energy Co., 547 F. Supp. 2d 536, 544 (S.D. W. Va. 2008)).

23. *Id.* (quoting Muffley v. Massey Energy Co., No. 2:08-cv-00073, 2008 WL 4103881, at *5 (S.D. W. Va. Aug. 29, 2008)).

relief . . . ordering Mammoth to offer employment to the alleged discriminatee employees . . . was 'just and proper' under § 10(j)."[24] However, the court refused to grant the Board's other requested relief, specifically declining "to order Mammoth to recognize and bargain with the union, post notices of the district court's order throughout its workplace, or rescind any unilaterally imposed employment conditions, finding those measures unnecessary to preserve the Board's remedial powers" during the pending proceedings.[25]

Both Mammoth and the Board appealed the district court's judgment.[26] On appeal before the Fourth Circuit, Mammoth proffered three arguments for the court's consideration: (1) that neither the district court nor the Fourth Circuit could consider the case "because the Board improperly delegated the power to seek § 10(j) relief to its General Counsel"; (2) that "the district court committed reversible error in applying an improper standard in deciding whether to grant the § 10(j) injunction"; and (3) that "even if the district court's selection of a standard does not require reversal, the district court abused its discretion in granting" injunctive relief.[27] In its cross appeal, the Board alleged that "the district court erred in refusing to award more extensive injunctive relief."[28]

The Fourth Circuit first addressed Mammoth's argument that the Board improperly delegated to its General Counsel the power to seek relief under the NLRA.[29] In affirming the district court's holding that the delegation was proper under section 10(j),[30] the court reasoned that because "Congress vested the power to seek § 10(j) injunctive relief with the Board" and provided that the General Counsel would have authority to investigate charges and carry out other duties on the Board's behalf,[31] the Board may "lawfully delegate § 10(j) authority to the General Counsel."[32] In so holding, the court rejected Mammoth's contention that the NLRA allows only the "delegation of certain 'duties,'" which do not include the power to seek relief under section 10(j).[33] The court explained that the power to seek injunctive relief constitutes a "prosecutorial function" that the Board may delegate to the General Counsel.[34]

Next, the court addressed Mammoth's argument that the "district court committed reversible error in applying an improper standard in deciding whether

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24. *Id.* (quoting *Muffley*, 2008 WL 4103881, at *9).
25. *Id.* (citing *Muffley*, 2008 WL 4103881, at *12).
26. *Id.*
27. *Id.* at 539–41.
28. *Id.* at 545.
29. *Id.* at 539–40.
30. *Id.*
31. *Id.* at 540 (citing 29 U.S.C. § 153(d) (2006)).
32. *Id.*
33. *Id.* The court also noted that every court that has addressed the issue of delegation of power to seek section 10(j) relief has found that the NLRA permits the Board to delegate such power to the General Counsel. *Id.*
34. *Id.*

to grant the § 10(j) injunction."[35] The court noted that "[s]ection 10(j) provides that a district court shall award temporary injunctive relief 'as it deems just and proper.'"[36] The court explained that the Supreme Court has not directly addressed the precise standard for awarding a temporary injunction based on this statutory language and that there are three competing interpretations that split the federal circuits.[37] Five circuits apply a two-step approach in determining whether to grant a temporary injunction, asking first whether "'reasonable cause' exists to believe a violation of the NLRA has occurred" and second whether "injunctive relief is 'just and proper.'"[38] The circuits following this approach agree that whether relief would be just and proper should be determined by "whether temporary injunctive relief is necessary to preserve the effectiveness" of the Board's ultimate order.[39] Three circuits have rejected this two-step approach and have applied a "traditional equitable standard" in awarding a temporary injunction.[40] These courts consider four factors: "(1) the possibility of irreparable injury to the moving party if relief is not granted; (2) the possible harm to the nonmoving party if relief is granted; (3) the likelihood of the moving party's success on the merits; and (4) the public interest."[41] The third approach, adopted by two circuits, is a "hybrid standard" that combines the traditional four-factor test with "a separate 'reasonable cause' step."[42]

Prior to *Muffley*, the Fourth Circuit had never directly answered the question of what is the proper standard for awarding temporary injunctive relief under section 10(j) of the NLRA.[43] In analyzing the proper standard for an award of injunctive relief, the Fourth Circuit cited the Supreme Court's decision in *Weinberger v. Romero-Barcelo*,[44] in which the Supreme Court noted that courts "should exercise their traditional equitable discretion" and should not interpret statutory language in a manner that departs from that "'established' rule" unless Congress's intent for such a departure is clear.[45] In light of the Supreme Court's

35. *Id.* at 541.

36. *Id.* (quoting 29 U.S.C. § 160(j)).

37. *Id.*

38. *Id.* The Third, Fifth, Sixth, Tenth, and Eleventh Circuits all follow this two-step approach. *See* Ahearn v. Jackson Hosp. Corp., 351 F.3d 226, 234–36 (6th Cir. 2003); Sharp *ex rel.* NLRB v. Webco Indus., Inc., 225 F.3d 1130, 1133–34 (10th Cir. 2000); Hirsch v. Dorsey Trailers, Inc., 147 F.3d 243, 247 (3d Cir. 1998); Arlook v. S. Lichtenberg & Co., 952 F.2d 367, 371 (11th Cir. 1992); Boire v. Pilot Freight Carriers, Inc., 515 F.2d 1185, 1188–89 (5th Cir. 1975).

39. *Muffley*, 570 F.3d at 541.

40. *Id.* These three circuits include the Seventh, Eighth, and Ninth Circuits. *See* Sharp v. Parents in Cmty. Action, Inc., 172 F.3d 1034, 1038–39 (8th Cir. 1999); Miller v. Cal. Pac. Med. Ctr., 19 F.3d 449, 456–60 (9th Cir. 1994) (en banc); Kinney v. Pioneer Press, 881 F.2d 485, 488–90 (7th Cir. 1989).

41. *Id.*

42. *Id.* These two circuits are the First and Second Circuits. *See* Hoffman *ex rel.* NLRB v. Inn Credible Caterers, Ltd., 247 F.3d 360, 365, 368 (2d Cir. 2001); Pye *ex rel.* NLRB v. Sullivan Bros. Printers, Inc., 38 F.3d 58, 63 (1st Cir. 1994).

43. *Muffley*, 570 F.3d at 541.

44. 456 U.S. 305 (1982).

45. *Muffley*, 570 F.3d at 542 (quoting *Romero-Barcelo*, 456 U.S. at 313).

decision, the court determined that district courts in the circuit should use the traditional four-factor test to determine whether section 10(j) relief is just and proper.[46] The court noted that "a separate 'reasonable cause'" analysis is unnecessary in awarding section 10(j) relief because section 10(j) contains only "just and proper" language but "no explicit reference to 'reasonable cause.'"[47] Accordingly, courts should not read a "reasonable cause" requirement into the statute without clear evidence of congressional intent.[48] The district court in this case did not apply the standard that the Fourth Circuit deemed proper on appeal because the district court added the "reasonable cause" analysis that is now improper in the circuit.[49] The Fourth Circuit upheld the district court's decision, however, because Mammoth alleged no harm from the district court's application of a "reasonable cause" analysis and because the Fourth Circuit found no such harm.[50] Additionally, Mammoth had "conceded that reasonable cause existed," leading the court to conclude that no reversal was necessary based on the application of an improper standard.[51] The court went on to find that the district court had incorporated the four-factor test in evaluating the necessity of a limited injunction.[52]

The Fourth Circuit then considered Mammoth's alternative contention that, even in the absence of a reversible error based on the legal standard used below, the district court erred in awarding injunctive relief.[53] Reviewing the order granting the injunction via an abuse of discretion standard, the court rejected Mammoth's argument.[54] Mammoth first asserted that "the district court erred in finding that the Board had shown possible irreparable harm resulting from a refusal to grant any injunctive relief."[55] The Fourth Circuit rejected this argument, agreeing with the district court that, without a temporary injunction, the UMWA might lose support while the matter was before the Board.[56] Mammoth also contended that the district court failed to give sufficient consideration to "the harm that an injunction could pose to it."[57] Specifically, Mammoth asserted that it "might have had to lay off" workers already employed at the facility to comply with the temporary injunction.[58] Rejecting this argument as well, the Fourth Circuit determined that the district court had properly applied

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46. *Id.*
47. *Id.*
48. *Id.* (citing *Romero-Barcelo*, 456 U.S. at 313, 320).
49. *Id.* at 543.
50. *Id.*
51. *Id.*
52. *Id.* (citing Muffley v. Massey Energy Co., No. 2:08-cv-00073, 2008 WL 4103881, at *7, *9 (S.D. W. Va. Aug. 29, 2008)).
53. *Id.*
54. *Id.* at 543, 545.
55. *Id.* at 543–44.
56. *Id.* at 544.
57. *Id.*
58. *Id.*

equitable principles and that possible harm to Mammoth was unlikely since it "had advertised for additional employees to fill positions formerly held by the discriminatees."[59] Finally, Mammoth argued that an unusually long eighteen-month "delay between the allegedly unfair labor practices and the petition for § 10(j) relief renders a grant of any § 10(j) relief improper" because the potential harms alleged in the petition would have already occurred by the time a court granted temporary injunctive relief.[60] The court gave due consideration to this argument, but it determined that the district court had "properly weighed the delay" against the balance of possible harms resulting from the injunction, the Board's likelihood of success, and issues of public policy.[61]

Lastly, the court considered and rejected the Board's contention on cross-appeal that "the district court erred in refusing to award more extensive injunctive relief"—specifically, an order requiring that Mammoth "recognize and bargain with the UMWA[] and . . . an injunction rescinding any unilaterally imposed initial employment terms."[62] In affirming the district court's decision, the Fourth Circuit noted that temporary injunctive relief under section 10(j) of the NLRA "is extraordinary and that such relief should be narrowly tailored."[63] The district court's reinstatement order "provide[d] an offer of jobs for the discriminatee miners."[64] Thus, the order "completely accomplishe[d]" the purpose of limited injunctive relief under the NLRA—the preservation of the Board's remedial power while the case was pending.[65] Therefore, the court determined that further injunctive relief was unnecessary to accomplish this goal and was not proper under the requirement that section 10(j) relief be narrowly tailored.[66]

Therefore, in affirming the district court's decision, the Fourth Circuit held that the NLRB may delegate power to its General Counsel to seek section 10(j) injunctions under the NLRA, that the proper test to be applied in the Fourth Circuit in determining whether to grant a temporary injunction under section 10(j) is the traditional four-factor equitable test, that "the district court did not abuse its discretion in awarding limited injunctive relief to the Board," and that the district court properly "den[ied] the Board further injunctive relief."[67]

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59. *Id.* (citing Muffley v. Massey Energy Co., No. 2:08-cv-00073, 2008 WL 4103881, at *9, *11 (S.D. W. Va. Aug. 29, 2008)).
60. *Id.* at 544–45.
61. *Id.*
62. *Id.* at 545.
63. *Id.*
64. *Id.* at 546.
65. *Id.* at 545–46 (citing Schaub v. Detroit Newspaper Agency, 154 F.3d 276, 279 (6th Cir. 1998)).
66. *Id.* at 546.
67. *Id.*