



NLRB STRIKES DOWN STARBUCKS’S SUBPOENAS FOR EMPLOYEE AFFIDAVITS

On September 6, 2024, a National Labor Relations Board three-member panel determined that Starbucks violated Section 8(a)(1) of the National Labor Relations Act (“the Act”) when it issued subpoenas to union employees that requested information protected by Section 7 of the Act. Starbucks claimed that it issued the subpoenas to prepare against an unfair labor practice filed by forth by the union.

The NLRB rejected Starbucks’s argument that an employer’s right to information outweighs the employees’ right to keep their Section 7 activity confidential, explaining: “The Board has consistently found that employers act with illegal objective when serving subpoenas to current and former employees to obtain their confidential Board affidavits.” *Ampersand Publishing, LLC*, 361 NLRB 903 (2014).

The Board’s priority is to preserve the safeguards of employees’ engagement in concerted activities protected by Section 7, not to ease an employer’s efforts in the discovery process. This priority is underscored by the Boards emphasis of the “potential chilling effect on union activity” that could result from employer knowledge of information included in confidential Board affidavits. In other words, an employee will be fearful to express their rights in the workplace for fear that the Employer will use such efforts to disadvantage them in the workplace.

The Board did not go as far as to say that the mere issuance of subpoenas in preparation to defend against an unfair labor practice was illegal per se, only that the scope of the subpoenas, which included information protected by Section 7 of the Act, was illegal.

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