

In the
United States Court of Appeals
For the Seventh Circuit

No. 25-3110

ANGIE COWAN HAMADA, Regional Director of Region 13 of the
National Labor Relations Board, for and on behalf of the Na-
tional Labor Relations Board,

Petitioner-Appellant,

v.

LABORFORCE, LLC, M&K EMPLOYEE SERVICES, and M&K TRUCK
CENTERS,

Respondents-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 1:25-cv-00541 — **Virginia M. Kendall**, *Chief Judge*.

ARGUED MAY 12, 2026 — DECIDED SEPTEMBER 18, 2026

Before EASTERBROOK, MALDONADO, and TAIBLESON, *Cir-
cuit Judges*.

TAIBLESON, *Circuit Judge*. In 2023 and 2024, Laborforce, LLC received petitions from some of its employees requesting decertification of their union. Laborforce obliged those requests and then changed the employees' compensation and

benefits to reflect their non-union status. In response, the union filed multiple charges with the National Labor Relations Board (“Board”), claiming that Laborforce had engaged in unfair labor practices prohibited by the National Labor Relations Act (“NLRA”). Those charges initiated administrative proceedings within the Board to consider Laborforce’s alleged violations of the NLRA. While those administrative proceedings were pending, the Board’s regional Director filed this action in federal court, seeking a preliminary injunction pursuant to § 10(j) of the NLRA in order to reinstate the union immediately.

The district court declined to issue an injunction, and we affirm. Section 10(j) injunctions are “extraordinary” remedies that are “never awarded as of right.” *Starbucks Corp. v. McKinney*, 602 U.S. 339, 345 (2024) (citation omitted). To justify relief under § 10(j), the Director must satisfy the traditional four-factor test for preliminary injunctions. The Director fails to do so here, because she cannot demonstrate that irreparable harm would result absent an injunction. Instead, the Director points only to mine-run risks of harm present in many labor disputes. There is nothing extraordinary about this case that warrants relief under § 10(j).

I. Background

A.

The NLRA, 29 U.S.C. § 151 *et seq.*, protects employees’ rights to “self-organization,” to participate in “labor organizations” and “bargain collectively,” and “to refrain from any or all of such activities,” 29 U.S.C. § 157. The statute prohibits both employers and unions from engaging in various unfair labor practices, such as refusing to bargain collectively with

each other or discriminating between employees on the basis of union membership. *Id.* § 158. The Board enforces that prohibition. *Id.* § 160(a). The Board’s “authority kicks in when a person files a charge with the agency alleging that an unfair labor practice is afoot.” *Glacier Nw., Inc. v. Int’l Bhd. of Teamsters Loc. Union No. 174*, 598 U.S. 771, 775 (2023). After investigation, the Board may initiate a formal action against the offending party by issuing an administrative complaint. 29 C.F.R. § 101.8.

The complaint triggers adjudicatory proceedings within the agency: An administrative law judge (ALJ) holds a hearing and recommends a decision, which is subject to review by the Board. *See id.* §§ 101.10–12. If the parties do not take exception to the ALJ’s order, the ALJ’s recommended decision becomes the decision of the Board. *Id.* §§ 101.11(b), 101.12(b). But if the parties do file exceptions, the Board reviews the ALJ’s recommendation and issues an order that may (or may not) adopt the ALJ’s analysis and conclusion. *Id.* §§ 101.11(b), 101.12(a). The Board’s order, in turn, is subject to review in a court of appeals, where the Board may seek to enforce its order and an aggrieved party may seek judicial review. 29 U.S.C. § 160(e)–(f); *see* 29 C.F.R. § 101.14.

“Because the Board’s administrative proceedings take years, Congress vested the Board with authority to seek a preliminary injunction in federal court while the proceedings unfold.” *Starbucks*, 602 U.S. at 343. Specifically, § 10(j) of the NLRA authorizes the Board “upon issuance of a complaint ... charging that any person has engaged in or is engaging in an unfair labor practice, to petition [a] United States district court ... for appropriate temporary relief.” 29 U.S.C. § 160(j). That provision is at issue here.

B.

M&K Truck Centers operates truck dealerships that service and sell semi-tractors across several Midwestern states. One of those dealerships is in Summit, Illinois. The Summit dealership, like other M&K operations, leases its employees from Laborforce and M&K Employee Services. (For purposes of this appeal, the differences between these three corporate entities are not significant, and we refer collectively to the relevant employer here as “Laborforce.”)

Employees at the Summit dealership have been represented by Automobile Mechanics’ Local 701, International Association of Machinists and Aerospace Workers, AFL-CIO since the 1950s. As relevant here, the most recent collective bargaining agreement between Laborforce and the union went into effect on October 1, 2020, and was supposed to last until September 30, 2027. That agreement did not define the “bargaining unit” of employees at the Summit dealership to which it applied, but the agreement referenced employees in both the Parts and Service Departments.¹

Laborforce employed Joe Loman in the Parts Department at the Summit dealership. Loman served as a union steward, representing other Parts Department employees as part of the bargaining team. Around October of 2022, Loman became fed up with the union and its “[i]mproper representation,” so he started collecting signatures to decertify the union. By all accounts, Loman acted unilaterally; Laborforce did not encourage, interfere with, or assist in the decertification process. In July of 2023, Loman presented his decertification petition to

¹ In layman’s terms, a bargaining unit is simply a group of employees who are, or seek to be, represented by a labor union.

the general manager of the Summit dealership. The petition was signed by 19 of the 31 Parts Department employees, but none of the Service Department employees.

Laborforce responded quickly. Shortly after Loman presented his petition, Laborforce notified the union that it would withdraw recognition as to Parts Department employees at midnight on September 30, 2023.² Laborforce also posted a memorandum to all Summit Parts Department employees, announcing that on October 1, they would receive a “new payrate consistent with the payrate at non-union M&K Truck Center facilities in the area,” a new insurance plan that would “provide[] all of the same major benefits as your current health plan” with “no co-pay,” and a new 401(k) plan “with a company match of 3%.”

While awaiting the formal withdrawal date, Laborforce filed a unit clarification petition with the Board to determine which employees comprised the bargaining unit covered by the collective bargaining agreement. Laborforce’s petition described the existing unit as “All Parts and Service Department Employees,” and it proposed to limit that unit to “All Service Department Employees.” Laborforce explained that it sought this clarification because the “Parts Department has demanded employer withdraw recognition of Union on their

² Laborforce could not immediately withdraw recognition of the union because Loman’s decertification petition was presented within the first three years of the collective bargaining agreement’s term, during which time the union had a “conclusive presumption of majority support” and decertification petitions were barred. *Polycon Indus., Inc. v. NLRB*, 821 F.3d 905, 907 (7th Cir. 2016) (citing *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996)). Laborforce thus withdrew recognition as of the date that the three-year bar would end.

behalf.” The Board denied Laborforce’s petition, stating that “the Parts employee classification has historically been included in the bargaining unit, and there is no evidence that this classification has undergone recent changes in duties or responsibilities” sufficient to justify a midterm clarification.

Notwithstanding the Board’s denial of Laborforce’s unit clarification petition, Laborforce proceeded to withdraw union recognition with respect to Parts Department employees at midnight on September 30, 2023. Consistent with its withdrawal, Laborforce stopped responding to grievances from the union, and it implemented new increased wage rates and benefits packages for Parts Department employees.

But Loman was not finished with his decertification efforts. A Board employee informed Loman that “in a typical case,” he would need “to get the entire shop”—*i.e.*, both the Parts and Service Departments—to support decertification. So Loman presented a second decertification petition in June of 2024. This time, the petition was signed by a combined majority of employees in the Parts and Service Departments, 36 out of 70 total. Laborforce again acted quickly, notifying the union that it was withdrawing recognition for both departments effective immediately. And Laborforce posted a memorandum to all Parts and Service Department employees, confirming that Laborforce would no longer recognize the union and specifying pay and benefits changes.

C.

In response to these events, the union filed multiple charges with the Board alleging that Laborforce had violated the NLRA by engaging in unfair labor practices. The Board’s regional Director then issued an administrative complaint

against Laborforce in June of 2024, alleging that Laborforce's first withdrawal of union recognition with respect to Parts Department employees was unlawful because the first petition was signed by only a minority of the bargaining unit. In September of 2024, the Director amended the complaint, claiming that Laborforce's second withdrawal of recognition for both Parts and Service Department employees was also unlawful because it was tainted by the earlier withdrawal. An ALJ for the Board conducted an evidentiary hearing on these alleged unfair labor practices in October of 2024.

From its very first charge filed in July of 2023 (when Loman submitted his first decertification petition), the union requested "immediate 10(j) injunctive relief." But it was not until January of 2025—after the ALJ hearing—that the Director initiated this case by petitioning the district court for interim injunctive relief under § 10(j). The Director sought an injunction requiring Laborforce to, among other things, recognize and bargain with the union in good faith and to rescind unilateral changes to the employees' wages and benefits.

While the Director's § 10(j) petition was pending in the district court, the ALJ released her decision on the merits, finding that Laborforce had engaged in multiple unfair labor practices. The ALJ determined that Laborforce's first withdrawal of union recognition for the Parts Department was unlawful because the disaffection petition had not been signed by a majority of the bargaining unit. And even though the second petition cured that defect, the ALJ found that the second petition had been tainted by the unremedied first withdrawal, coupled with Laborforce's unilateral, favorable changes to the Parts Department's wages and benefits that would tend to "denigrate the Union."

Four days later, the district court denied the Director’s petition for a § 10(j) injunction. The district judge found that the Director had failed to establish irreparable harm, a likelihood of success on the merits, or that an injunction was in the public interest. Because the parties had not yet submitted the ALJ opinion to the district judge, she issued her order without its benefit. The parties declined the district judge’s invitation to file a motion for reconsideration in view of the ALJ’s opinion, and this appeal followed.

II. Discussion

The Director challenges the denial of her petition for a § 10(j) injunction. We review the district court’s ultimate decision for abuse of discretion, its underlying findings of fact for clear error, and its legal conclusions *de novo*. *K.C. v. Individual Members of Med. Lic. Bd.*, 121 F.4th 604, 614 (7th Cir. 2024); *Harrell ex rel. NLRB v. Am. Red Cross, Heart of Am. Blood Servs. Region*, 714 F.3d 553, 556 (7th Cir. 2013).

In *Starbucks Corp. v. McKinney*, the Supreme Court held that the Director—like most ordinary plaintiffs—must meet the traditional four-factor test to justify a preliminary injunction under § 10(j). 602 U.S. at 346, 348. Under that test, the Director “must make a clear showing” that she “is likely to succeed on the merits” of her unfair labor practices claim, that “irreparable harm” will likely ensue “in the absence of preliminary relief,” that “the balance of equities tips in [her] favor, and that an injunction is in the public interest.” *Id.* at 346 (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). *Starbucks* did not directly overrule our case law, as we previously applied the same four-factor test. *See id.* at 345 (citing *Bloedorn ex rel. NLRB v. Francisco Foods, Inc.*, 276 F.3d 270, 286 (7th Cir. 2001)). But the Supreme Court did emphasize

that like all preliminary injunctions, § 10(j) injunctions are “extraordinary” remedies that are “never awarded as of right.” *Id.* at 345 (quoting *Winter*, 555 U.S. at 24).

The irreparable harm factor is dispositive in this case, and so we begin (and almost end) there. We agree with the district court that an injunction is unwarranted because the Director has failed to meet the “threshold requirement” of showing “irreparable harm absent an injunction.” *Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 545 (7th Cir. 2021) (citation omitted).

A.

To show irreparable harm, the Director must “(1) specifically identify the injury threatened by the alleged unfair labor practice, (2) establish that the injury is likely to result absent an injunction, and (3) explain why the Board’s ... remedial powers could not fix the injury after the fact.” *Kerwin ex rel. NLRB v. Trinity Health Grand Haven Hosp.*, 174 F.4th 942, 958 (6th Cir. 2026). The relevant injuries that may support a § 10(j) injunction are those that defeat the rights protected by the NLRA—including employees’ rights to “self-organization,” to participate in “labor organizations” and “bargain collectively,” and “the right to refrain from any or all of such activities.” 29 U.S.C. § 157; *cf. Starbucks*, 602 U.S. at 362 (Jackson, J., concurring in part and in the judgment) (irreparable harm inquiry focuses on “violation of labor rights”). Thus we consider “whether, in the absence of immediate relief,” the injury to those labor rights “flowing from the alleged violation cannot be prevented or fully rectified by the final Board order.” *Am. Red Cross*, 714 F.3d at 557.

1.

The Director has not made such a showing here. To demonstrate irreparable harm, the Director relies on generic claims about erosion of union support among employees and deprivation of the benefits of collective bargaining and union representation. For instance, the Director claims that “Labor-force’s conduct has already dissipated Union support,” and “the unit employees contemporaneously and irreparably suffer the loss of the benefits of good-faith collective bargaining and representation by their chosen Union.” But the Director does not point to specific injuries beyond the risks of future harm that, in the Director’s telling, non-unionized employees generally face.

In these circumstances, the “employees’ lack of union representation while awaiting the Board’s action is not enough to make this a ‘serious and extraordinary’ case that requires injunctive relief.” *McKinney ex rel. NLRB v. S. Bakeries, LLC*, 786 F.3d 1119, 1125 (8th Cir. 2015) (citation omitted). That is true for a few reasons.

First, if a union falling out of favor suffices to show irreparable harm, then the irreparable-harm requirement will automatically be satisfied whenever the Director can show the Board is likely to succeed on the merits of certain unfair labor practices claims. Indeed, the Director explicitly embraces this approach, arguing that the very presence of some unfair labor practices, like “the failure to bargain in good faith, causes likely irreparable injury.” But *Starbucks* says the opposite: Unlike some other statutes, § 10(j) does *not* establish “a rebuttable presumption of irreparable harm . . . upon a finding of likelihood of success on the merits.” 602 U.S. at 348 (alteration in original) (citation omitted). The Director thus cannot “be

entitled to an injunction anytime collective bargaining is disrupted in any way.” *Trinity Health*, 174 F.4th at 957. But that is precisely what the Director asks for here.

Second, the facts of this case implicate not only employees’ rights to organize and bargain collectively, but also their right “to refrain from any or all of such activities.” 29 U.S.C. § 157. Before Laborforce undertook any alleged unfair labor practices, it received an employee-originated petition to decertify the union. Laborforce’s response to that petition was to increase wages and benefits for affected employees. The “objective evidence [thus] indicates the Union lacks majority support,” and Laborforce’s unilateral compensation and benefits changes help to explain why. *S. Bakeries*, 786 F.3d at 1125. The Director argues that an injunction would vindicate the Summit employees’ right to unionize. But on this record, an injunction might just as well defeat the employees’ right “to refrain” from unionizing. 29 U.S.C. § 157. When a § 10(j) injunction is as likely to defeat some employee rights as it is to vindicate others, the Director cannot make the required showing of irreparable harm. That is particularly clear here, given the undisputed material benefits that Summit employees have obtained since exercising their right to withdraw recognition of the union. *See Trinity Health*, 174 F.4th at 957 (dismissing director’s “generalizations” about union benefits when, in “reality,” employer “began implementing pay raises shortly after ditching the union”).

The dissent rejects this latter point, arguing that the irreparable-harm analysis should focus only on harm to the union and its organizing efforts, not to the employees directly. *See Diss. Op.* at 28–31. Indeed, the dissent describes the Director as essentially the union’s lawyer. But we can find no basis

in the NLRA’s text for that one-sided approach, and the dissent points to none. The statute’s core rights-creating provision focuses on the rights of *employees*, not of unions. *See* 29 U.S.C. § 157 (“Employees shall have the right to self-organization, ... to bargain collectively ..., and shall also have the right to refrain from any or all of such activities”). Consistent with that focus, the statute forbids both employers and unions from engaging in unfair labor practices that would violate these statutorily protected rights. *Id.* § 158. Section 10(j), in turn, empowers the Director to seek a preliminary injunction when “any person has engaged in or is engaging in an unfair labor practice” — whether the offending actor is an employer or a union. *Id.* § 160(j). The statute therefore does not protect unions over and above everyone else; if anything, it puts employee rights first. *See generally Chamber of Commerce v. Brown*, 554 U.S. 60, 65 (2008) (NLRA “str[ikes] a balance of protection, prohibition, and laissez-faire” with respect to labor issues). Given that statutory text, we see no justification for limiting our irreparable-harm analysis to the union’s interests alone. That is particularly clear in cases like this one, where prioritizing the union’s interests risks defeating the employees’ rights and worsening the conditions of their employment.

The evidence here—of genuine employee disaffection with the union and improved employee compensation after decertification—also distinguishes this case from our § 10(j) precedents finding irreparable harm. *See, e.g., Hamada v. Laborforce, LLC*, No. 25 C 541, 2025 WL 2696410, at *6 (N.D. Ill. Sep. 22, 2025) (district court finding below that the “Union has been out of favor from a majority of employees for over a year,” and that in the meantime “the employees are currently making more than they were making under the Union

contract and have expanded benefits”). By and large, our prior decisions have considered labor disputes involving bad-faith employer misconduct, such as an employer taking affirmative steps to cripple a union or harm unionized employees. *See, e.g., NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559, 1571–73 (7th Cir. 1996) (reversing district court’s denial of injunction where employer attempted to thwart union formation, including by threatening plant closure, interviewing employees about union activity, and firing union organizers); *Francisco Foods*, 276 F.3d at 298–300 (reversing district court’s denial of injunction where employer refused to hire employees from predecessor company to avoid bargaining with their union representative); *Lineback ex rel. NLRB v. Spurlino Materials, LLC*, 546 F.3d 491, 495–98, 501–02 (7th Cir. 2008) (affirming grant of injunction where employer campaigned heavily to discourage and warn employees against electing union representation and allegedly discriminated against union organizers); *Lineback ex rel. NLRB v. Irving Ready-Mix Inc.*, 653 F.3d 566, 568–69, 573 (7th Cir. 2011) (affirming grant of injunction where employer refused to recognize union after collective bargaining agreement expired despite lack of evidence that union lost majority support and also decreased employee benefits). The employers’ practices in those cases directly injured employees, making it easier for the Director to show irreparable harm. But the Director points to no such evidence here.³ And while—as the dissent notes—those cases focused

³ The dissent—but not the Director—suggests that a “mysterious 15% shrinkage of the bargaining unit” between 2023 and 2024 may be part of the irreparable-harm analysis. Diss. Op. at 31 n.5. But there is no evidence in the record about this diminution, other than the 2023 and 2024 decertification vote counts from which the dissent apparently calculates this figure.

on injury to a union in considering irreparable harm, none holds that injury to a union is the *only* cognizable harm. *See* Diss. Op. at 28–30.

To the extent any of our cases suggests that irreparable harm can be inferred whenever a union’s influence wanes, that inference is now foreclosed by the Supreme Court’s recent decision in *Starbucks*, which we consider today for the first time. As described above, that inference would rob the irreparable-harm requirement of independent force in many § 10(j) cases. *Starbucks* therefore forbids it: Section 10(j)’s “text bears no resemblance to the language that Congress has employed when it has altered the normal equitable rules,” and it contains no language that would relieve the Director of the usual burden of showing irreparable harm. 602 U.S. at 348 (contrasting § 10(j) with Lanham Act provision, 15 U.S.C. § 1116(a), which does permit “a rebuttable presumption of irreparable harm” upon “a finding of likelihood of success on the merits”) (citation omitted). The Director is not entitled to a thumb on the scale. Instead, like an ordinary plaintiff seeking a preliminary injunction, the Director must actually demonstrate specific irreparable harm to the labor rights protected by the NLRA.⁴

⁴ To the extent the Second Circuit’s decision in *Poor ex rel. NLRB v. Parking Systems Plus, Inc.*, 162 F.4th 335 (2d Cir. 2025), suggests otherwise, we disagree. *See id.* at 351 (indicating that irreparable harm may be based on generic claims of “impairment of the employees’ collective bargaining rights and the unionization process”). Instead, we agree with the Sixth Circuit that “with the Supreme Court’s *Starbucks* decision now our guiding light,” we may not follow cases like *Parking Systems Plus* “that would artificially lighten the Director’s evidentiary burden.” *Kerwin v. Trinity Health Grand Haven Hosp.*, 174 F.4th 942, 955 (6th Cir. 2026); *see also McKinney ex rel. NLRB v. S. Bakeries, LLC*, 786 F.3d 1119, 1125 (8th Cir. 2015). To

Rather than follow *Starbucks*, the dissent claims to be following *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678 (1944), and *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), arguing that those cases “rejected” the approach we take here. Diss. Op. at 33, 35. But while *Starbucks* concerns the precise issue before us, neither *Medo* nor *Gissel* involved § 10(j) or considerations of irreparable harm. *Medo*—which predated § 10(j)’s very existence—considered only the merits of an unfair labor practices claim, which is a question we expressly do not reach here. 321 U.S. at 679–80; see Labor-Management Relations Act of 1947, Pub. L. No. 80–101, § 101, 61 Stat. 136, 149 (enacting § 10(j)). As *Starbucks* explained, “irreparable harm” is “not part of [an] unfair-labor-practice claim” and is therefore “completely irrelevant to the Board’s adjudicatory authority,” which is all that was at issue in *Medo*. 602 U.S. at 351. And *Gissel* is even further afield. That case involved an employer’s duty “to recognize a union that bases its claim to representative status solely on the possession of union authorization cards.” 395 U.S. at 579. In considering that question, the Court made only a passing mention of § 10(j) injunctions when differentiating § 10(j)’s “last resort” remedy from the Board’s other powers. *Id.* at 611–12.⁵

be clear, though, we do not hold that every cognizable irreparable harm must be “extraordinary”—that is the dissent’s formulation, not our own. Diss. Op. at 27. But these harms must be real and specific injuries to statutorily protected interests, rather than generic claims about the lost benefits of unionization.

⁵ The dissent also cites *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705 (1944), for the proposition that “a § 10(j) remedy ‘does not involve any injustice to employees who may wish to substitute for the particular union some other bargaining agent or arrangement.’” Diss. Op. at 36. But *Franks*, like *Medo*, predated § 10(j)’s existence. *Franks* was not considering a § 10(j)

Our irreparable-harm inquiry is instead guided by the NLRA's text, *Starbucks*, and the many cases instructing that a "preliminary injunction is an 'extraordinary and drastic remedy.'" *Munaf v. Geren*, 553 U.S. 674, 689 (2008). The Director's lackluster showing of irreparable harm does not meet the standards set by statute or Supreme Court precedent.

2.

Were there any doubt about the irreparable-harm issue in this case, the Director's "delay in seeking an injunction seals the deal." *Trinity Health*, 174 F.4th at 958. While the passage of time alone does not bar a finding of irreparable harm, it is significant if the alleged harm has already "occurred and the parties cannot be returned to the status quo or if the Board's final order is likely to be as effective as an order for interim relief." *S. Bakeries*, 786 F.3d at 1125 (citation omitted). That is the case here.

The parties disagree about how to count the months of delay before the Director sought an injunction: Did the Director wait eighteen months (counting from the first decertification petition and the union's first charge), or merely seven (counting from the Board's issuance of its first complaint)? But it doesn't matter how we count; either way, it is too late. Union

injunction, but instead a final Board order issued after administrative proceedings were complete. *See* 321 U.S. at 702–04. Again, as *Starbucks* explained, the Board's internal adjudications of unfair labor practices do not involve the same considerations of irreparable harm that inform a federal court's preliminary-injunction analysis. *See* 602 U.S. at 351. It is one thing for the Board to order relief after the completion of its full administrative proceedings; it is quite another for a federal court to intervene early in the process through the extraordinary equitable remedy of a preliminary injunction.

support has been waning at the Summit dealership since at least July of 2023, when the first decertification petition was submitted. Since June of 2024, both Parts and Service Department employees have been working without union representation and for increased compensation. The Board has been aware of these events from the outset. Yet the Director only sought a § 10(j) injunction in January of 2025.

In the meantime, the regular administrative process chugs along. The Director filed a formal complaint in June of 2024, shortly after the second decertification petition. The ALJ conducted a hearing in October of 2024 and issued a thorough recommended decision in September of 2025. The matter is now fully briefed before the Board, and all that remains is for the Board to decide it.

Given this timeline, it is hard to see how the Director acted with the requisite “sense of urgency” in seeking a § 10(j) injunction. *Trinity Health*, 174 F.4th at 959 (citation omitted). The Director asks us to grant “an extraordinary remedy” to jump ahead of the administrative process, *id.* at 955, in order to redress a labor dispute that began three years ago and has now stabilized. On this record, imposing a § 10(j) injunction would not simply be “a temporary return to the status quo,” Diss. Op. at 35; it would whipsaw employees who long ago voted to decertify their union and would risk destabilizing their employment conditions. Thus whether we call it seven months or eighteen, the Director’s delay in seeking an injunction reinforces our conclusion that extraordinary interim relief is not necessary to preserve the efficacy of the Board’s ultimate order.

The Director argues that the upcoming expiration of the collective bargaining agreement (in September of 2027)

renders the situation time-sensitive, because the union needs “to be reinstated now so that it may regain its legitimate level of support in advance of that bargaining.” But that is not a sufficient reason to impose an extraordinary preliminary injunction and “accelerate[] what at this point only may be the ultimate remedy.” *S. Bakeries*, 786 F.3d at 1125. As it stands, a majority of the employees of the Parts and Service Departments collectively voted to decertify the union. Whether an injunction issues now or when the Board’s final decision is issued, “the Union w[ill] have to perform largely the same work to rebuild support from employees.” *Id.* Because the Board has “very potent remedial powers,” *id.* (citation omitted), that are “far from ‘fragile,’” *Trinity Health*, 174 F.4th at 954 (citation omitted), we see no compelling reason to jump ahead of the normal administrative process.

B.

Like the district court, we cannot find irreparable harm on this record, and that conclusion forecloses a § 10(j) injunction. The district judge also considered other preliminary-injunction factors, including likelihood of success on the merits. We refrain from doing so here, reluctant to prejudge the case that may ultimately come to us seeking review of the Board’s final decision. But we briefly pause to correct one error in the district court’s analysis of the merits.

Recall that the first decertification petition was signed only by a majority of the Parts Department employees—not a majority of the Parts and Service Department employees together. The Director contends that the petition was defective because it was not signed by a majority of the bargaining unit as a whole. The propriety of Laborforce’s first withdrawal of union recognition thus turns, in part, on the scope of the

bargaining unit. But the district judge believed that she could not determine “whether the Parts and Service Departments constitute a single bargaining unit” because “district courts do not have jurisdiction to opine on questions of representations and determinations of appropriate bargaining authority.” *Hamada*, 2025 WL 2696410, at *4.

That was a mistake. It is true that, in considering a § 10(j) petition, a district court’s assessment of the merits does not bind the ALJ or the Board in its consideration of the same questions. *See Starbucks*, 602 U.S. at 350–51 (“[N]o matter how searching the district court’s merits inquiry or what evidence it considers or credits, the Board remains free to reach its own legal conclusions and develop its own record in its administrative proceedings.”). But the district court has jurisdiction to consider these questions in adjudicating a § 10(j) petition, and it need not hesitate to exercise that jurisdiction in assessing the Board’s likelihood of success on the merits.⁶

* * *

Because the Director failed to establish irreparable harm, the district court did not abuse its discretion in refusing to grant a § 10(j) injunction. The judgment is accordingly

AFFIRMED.

⁶ Because we are not reviewing the Board’s final decision on the merits, we do not reach Laborforce’s claims that the Board’s adjudicative system is unconstitutional. We understand Laborforce to be preserving these claims for potential future litigation, and it has done so.

MALDONADO, *Circuit Judge*, dissenting. Although *Starbucks Corp. v. McKinney*, 602 U.S. 339 (2024), changed several circuits' approach to addressing § 10(j) petitions, it did not change ours. We have long applied traditional equitable factors in assessing § 10(j) petitions. The Supreme Court approved our approach, *Starbucks*, 602 U.S. at 345 (citing favorably to *Bloedorn v. Francisco Foods, Inc.*, 276 F.3d 270 (7th Cir. 2001)), and that endorsement leaves untouched decades of our precedent setting forth what constitutes irreparable harm—namely, “diminution of union support,” *Francisco Foods*, 276 F.3d at 299 (citation modified). Now, as before, the crux of our irreparable harm inquiry is “the labor effort,” *id.* at 286, so a preliminary injunction is appropriate where the Board’s “ability to remedy a violation of labor rights will likely be precluded absent interim relief,” *Starbucks*, 602 U.S. at 362 (Jackson, J., concurring in part, concurring in the judgment, and dissenting in part).

Compelled by its expansive view of *Starbucks*, the majority has carved a new path, making irreparable harm all but impossible to prove in the absence of “extraordinary” circumstances. But we have long held that “no rule of law limits injunctive relief [under § 10(j)] to ‘serious and extraordinary circumstances.’” *Kinney v. Pioneer Press*, 881 F.2d 485, 493 (7th Cir. 1989). And focusing on harm to individual employees’ wages and benefits permits an employer to defeat a § 10(j) petition by paying employees more to induce their defection from the union, “caus[ing] the majority’s support for the union to crumble by committing unfair labor practices.” *Outboard Marine Corp. v. NLRB*, Nos. 92-2733 & 92-3171, 1993 WL 410875, at *10, *enforced*, 9 F.3d 113 (7th Cir. 1993) (citing *Medo Photo Supply Corp. v. NLRB*, 321 U.S. 678, 687 (1944)). In fact, the majority’s novel irreparable

harm analysis does exactly what *Starbucks* cautions against: “reading § 10(j) to supplant the traditional equitable principles governing injunctions.” *Starbucks*, 602 U.S. at 347.

If the Board ultimately concludes that Laborforce sought to unlawfully divide and conquer the bargaining unit, a bargaining order issued years later likely cannot remediate the damage. At the time of the second decertification petition, 48.6% of the bargaining unit did not vote to decertify the Union, but if more time passes, and the Union remains impotent, those employees who may have supported the Union might thin in their ranks. The stakes are especially high here: the Union has been the sole bargaining representative of Summit Facility employees for more than 70 years, and already, between the first and second decertification petitions, the bargaining unit at the Facility has shrunk by fifteen percent.¹ Further, the collective bargaining agreement negotiated in 2020 by the Union and Laborforce is set to expire in 2027, so the opportunity to negotiate with a strong, well-supported Union may pass before the Board awards any relief.

The Director has clearly shown that the labor effort at the Summit Facility faces irreparable harm in the absence of § 10(j) relief. And when I apply our long-established irreparable harm jurisprudence to the record here, I can only conclude that the district court abused its discretion when it denied preliminary injunctive relief. I respectfully dissent.

¹ As the Director noted in the district court and on appeal, the bargaining unit shrank from 82 to 70 employees between the first and second decertification petitions. App. Dkt. 15 at 5, 8; Dist. Ct. Dkt. 15 at 4 n.6.

I

Before diving into the majority's analysis, it is worth emphasizing that § 10(j) petitions for preliminary injunctive relief are rare. The Board only petitions for § 10(j) relief after a thorough vetting process and not anytime there is a credible alleged violation of the labor law.² The majority today repeats the Sixth Circuit's hyperbole in *Kerwin ex rel. NLRB v. Trinity Health Grand Haven Hospital*, 174 F.4th 942 (6th Cir. 2026), that the Director might seek § 10(j) injunctions "anytime collective bargaining is disrupted in any way." Maj. Op. at 11 (quoting *Trinity Health*, 174 F.4th at 957).

But the Director does not demand equitable relief whenever union support is eroded. "Section 10(j) ... never requires the Board to sue." *Pioneer Press*, 881 F.2d at 489. Rather, when the Director seeks § 10(j) relief, she does so in an adjudicatory capacity, after a thorough investigation, and within the finite set of circumstances under which Congress, via the National Labor Relations Act ("NLRA"), authorizes such action. See *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 193 (1941) ("The Board ... is the agency of Congress for translating into concreteness the purpose of safeguarding and encouraging the right of self-organization.").

"Time is usually of the essence [in labor disputes.]" *Pioneer Press*, 881 F.2d at 488 (quoting S. Rep. No. 80-105, 80th Cong., 1st Sess. 8 (1947)). As the majority notes, the Board's administrative proceedings can take years, Maj. Op. at 3, so

² 29 U.S.C. § 160(a), (j); NLRB, Off. of the Gen. Couns., Section 10(j) Manual: User's Guide § 5.5, at 11-14 (2002), https://www.nlr.gov/sites/default/files/attachments/basic-page/node-1727/redacted_10j_manual_5.0_reduced.pdf.

Congress “added to the Board’s arsenal” the discretionary authority to seek preliminary injunctive relief under § 10(j), *Pioneer Press*, 881 F.2d at 488. This power serves “as a means of preserving or restoring the status quo as it existed before the onset of unfair labor practices,” while the Board adjudicates the claims in the first instance. *NLRB v. Electro-Voice, Inc.*, 83 F.3d 1559, 1575 (7th Cir. 1996) (citation omitted); see *Starbucks*, 602 U.S. at 358-89 (Jackson, J.) (citing *Electro-Voice*, 83 F.3d at 1575) (“Congress designed § 10(j) ... so that the Board’s ultimate ability to remedy an unfair labor practice would not be impeded.”). Thus, the remedy provided by a grant of § 10(j) relief is definitionally “temporary,” and here it would impose on the parties no more than what they originally bargained for before the alleged labor-law violations. See 29 U.S.C. § 160(j).

The Board’s “screening process for determining when to seek a § 10(j) injunction is exceedingly rigorous,” involving “an extensive, and strikingly deliberative, standard operating procedure.” *Starbucks*, 602 U.S. at 359, 363 (Jackson, J.) (detailing four-stage deliberative process before § 10(j) petition can be filed in federal court). At oral argument, counsel for the Director referenced the care taken when seeking § 10(j) relief, noting that “part of the process is to gather evidence when a charge is filed. We collect position statements, sometimes affidavits, we speak with witnesses ... before we decide there is merit in a case,” to warrant the filing of a complaint, and thereafter, a request for approval for a § 10(j) petition from the General Counsel and then the Board. This process therefore “can understandably take several months.” *Poor ex rel. NLRB v. Parking Sys. Plus, Inc.*, 162 F.4th 335, 353 (2d Cir. 2025).

Data from the Board reveals that the vast majority of charges alleging violations of the NLRA do not contain the factual predicates to warrant filing a petition for § 10(j) relief. *See Starbucks*, 602 U.S. at 363 (Jackson, J.). For instance, “[o]f the roughly 20,000 unfair labor practice charges filed [in 2023], the Board authorized the filing of a petition for § 10(j) relief *only 14 times*.” *Id.* at 363. And in 2025, when the Board petitioned the district court here for § 10(j) relief, the Board authorized only seven § 10(j) petitions. *See NLRB, 10(j) Injunctions*, <https://www.nlr.gov/what-we-do/investigate-charges/10j-injunctions> (last visited September 3, 2026).

Given that the Board spends months applying its expertise in assessing a case, and then authorizes a petition only in roughly 0.07% of cases, the majority misjudges this case as one of routine, easily remediated labor violations. If the issues raised by the Director here were harms that “non-unionized employees generally face,” Maj. Op. at 10, would we not see the Board filing far more § 10(j) petitions? The majority’s floodgates argument, Maj. Op. at 10–11 (quoting *Trinity Health*, 174 F.4th at 957), is simply not supported by the Board’s reported data.

I note the Board’s selectivity in filing § 10(j) petitions not to suggest that the courts should substitute the Board’s screening process for our own independent application of the traditional equitable factors set forth in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). *See Starbucks*, 602 U.S. at 350–351. Instead, I mean to emphasize that when the Board approves the filing of a petition for § 10(j) relief, the Board acts not as a mere party movant in favor of the union or the employer, but rather as the first-level adjudicator of the merits of the alleged labor dispute. 29 U.S.C. § 160(a); *NLRB*

v. United Food & Com. Workers Union, 484 U.S. 112, 117–18 (1987). While we are not bound by and do not defer to the Board’s reasoning, we (who are not labor experts) do ourselves a disservice if we put blinders on and ignore the Board’s critical gatekeeping function in the filing of § 10(j) petitions.

II

With a more fulsome understanding of the context in which § 10(j) petitions make their way to this court, I turn to why a preliminary injunction was appropriate and necessary. Even with the appropriate deference to the district court, its ultimate decision was an abuse of discretion. I begin, as the majority opinion does, with irreparable harm.

A

The majority opinion hangs on the notion that preliminary injunctive relief under § 10(j) is an “‘extraordinary’ equitable remedy,” *Starbucks*, 602 U.S. at 345 (quoting *Winter*, 555 U.S. at 24), inappropriate for “mine-run” harms. *See* Maj. Op. at 2, 9, 16–18. But this reasoning collapses concepts, taking an adjective used to describe the unique character of the *remedy* requested and redeploying it as a requirement for the predicate facts. In so holding, the majority “supplant[s] the traditional equitable principles governing injunctions,” *Starbucks*, 602 U.S. at 347, by instead requiring the Director to show that the case is “extraordinary.”³ *See* Maj. Op. at 2, 10.

³ As a term of art, “extraordinary” described the courts of equity, contrasted with the “ordinary” courts of law. 3 WILLIAM BLACKSTONE, COMMENTARIES 47 (1768). Early twentieth century Supreme Court jurisprudence maintained the same distinction. *See Ownbey v. Morgan*, 256 U.S. 94, 110 (1921) (avoiding hardship “in the interest of substantial

In *Pioneer Press*, we rejected the standard now set forth by the majority. We held that the district court’s “belief that section 10(j) is reserved for more serious and extraordinary circumstances than presented here” was incorrect because “no rule of law limits injunctive relief to serious and extraordinary circumstances.” *Pioneer Press*, 881 F.2d at 493 (citation modified).

A remedy can be “extraordinary” in that categorical sense—appropriate only where a remedy at law does not suffice—and still issue routinely wherever its prerequisites are met in ordinary course. For instance, “courts have granted injunctive relief upon a finding of infringement in the vast majority of patent cases,” which “is not surprising, given the difficulty of protecting a right to *exclude* through monetary remedies ... a difficulty that often implicates the first two factors of the traditional four-factor test.” *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 395 (2006) (Roberts, C.J., concurring). At the same time, “[t]his historical practice” of finding irreparable harm “in the vast majority of patent cases” “does not *entitle* a patentee to a permanent injunction or justify a *general rule* that such injunctions should issue.” *Id.* So too here: *Starbucks* forbids reading the text of § 10(j) to presume any irreparable harm, but in those rare §10(j) petitions the Board brings, it just might be typical that the Director will be able to make an independent showing of irreparable harm to the labor effort under the traditional test.

justice”—as when a court grants temporary injunctive relief—“is a recognized extraordinary jurisdiction of common-law courts, distinguishable from their ordinary or formal jurisdiction.”).

The majority's bootstrapping of "serious and extraordinary circumstances" onto irreparable harm, to create a heightened standard under which a case must be exceptionally severe to warrant § 10(j) relief—for example, a case replete with obvious "bad-faith employer misconduct," Maj. Op. at 13—is therefore misplaced. Irreparable harm is harm that "legal remedies are inadequate to cure" and nothing more. *Life Spine, Inc. v. Aegis Spine, Inc.*, 8 F.4th 531, 545 (7th Cir. 2021). Insofar as *Starbucks* cautions against "jettison[ing] the normal equitable rules," 602 U.S. at 347, the majority goes too far by imposing an "extraordinary" circumstances test onto the irreparable harm prong of the *Winter* factors. See Maj. Op. at 10 (citing *McKinney ex rel. NLRB v. S. Bakeries, LLC*, 786 F.3d 1119, 1125 (8th Cir. 2015)).

B

Further morphing the equitable inquiry, the majority says there is no irreparable harm to the Board where employees benefit from an employer's alleged unfair labor practices or eventually choose to decertify the union following an allegedly unfair labor practice. Maj. Op. at 11. But the Supreme Court has rejected this buy-off-the-employee approach to the NLRA. See *NLRB v. Gissel Packing Co.*, 395 U.S. 575, 580 n.1 (1969); *Medo*, 321 U.S. at 679, 687.⁴ First, it misses

⁴ The majority disavows reliance on *Gissel* or *Medo* because the cases do not concern § 10(j) petitions. Maj. Op. at 15. But both are NLRA decisions that discuss the propriety of Board orders where there were similar employee-inducing unfair labor practices at play that could harm the union effort. *Gissel*, 395 U.S. at 580 n.1; *Medo*, 321 U.S. at 679, 687. So those cases are generally instructive to our predictive effort in assessing the propriety of §10(j) relief, including the likelihood of success and the risk of irreparable harm. The majority, citing *Starbucks*, says that irreparable harm is "completely irrelevant" to an unfair-labor-practice

the focus of irreparable harm in the labor context, which is aimed at the union's "labor effort." *Electro-Voice*, 83 F.3d at 1567. Second, it creates a safe harbor for an employer to defeat § 10(j) relief so long as employees also receive higher wages. And third, it misconstrues a § 10(j) injunction as undermining the right to "refrain from" organizing or collective bargaining under 29 U.S.C. § 157, when a preliminary injunction merely preserves the status quo before the onset of any unfair labor practice.

To start, the majority incorrectly replaces harm to the "labor effort"—that is, harm to the union's "ab[ility] to organize and represent ... employees effectively if and when the Board orders the company to commence bargaining"—with harm to individual employees' material benefits. See *Francisco Foods*, 276 F.3d at 286, 299; *Parking Sys.*, 162 F.4th at 351 (recognizing that *Starbucks* did not change the standard for "what constitutes harm justifying a grant of equitable relief" in the § 10(j) context). Specifically, the majority finds no irreparable harm here because after Laborforce withdrew recognition of the Union, it raised employees' wages,

claim. Maj. Op. at 15. But the majority's distinction is ultimately semantic: for instance, in *Gissel*, whether or not the Supreme Court used the term "irreparable harm," it was trying to avoid "damage" to the labor effort when it remarked that "[t]he damage will have been done, and perhaps the *only* fair way to effectuate employee rights is to re-establish the conditions as they existed before the employer's unlawful campaign." *Gissel*, 395 U.S. at 612 (emphasis added). And *Medo* too articulates why unlawful wage increases still may be harmful, especially to the labor effort. 321 U.S. at 686–87. Although at a later procedural juncture, *Gissel* and *Medo* offer useful insights into how the Supreme Court has viewed harm to the labor effort in enforcing Board bargaining and cease-and-desist orders.

provided a cheaper health-insurance plan, and matched their 401(k)s. Maj. Op. at 5, 11.

But it is the Director, not the employees, who files the petition for § 10(j) relief and who must establish irreparable harm. She may do so by showing that “the harm to organizational efforts that will occur while the Board considers the case is so great as to permit persons violating the Act to accomplish their unlawful objectives, rendering the Board’s remedial powers ineffectual.” *Electro-Voice*, 83 F.3d at 1567. After all, “[t]he idea underpinning 10(j) is that a district court can issue a speedy preliminary injunction to *protect a union* where the effective enforcement of the NLRA is threatened by the delays inherent in the NLRB dispute resolution process.” *Ohr ex rel. NLRB v. Latino Express, Inc.*, 776 F.3d 469, 472 (7th Cir. 2015) (emphasis added) (citing *Lineback ex rel. NLRB v. Irving Ready-Mix, Inc.*, 653 F.3d 566, 570 (7th Cir. 2011)).

“The goal [of § 10(j)] is to protect the integrity of the collective bargaining process” *Irving Ready-Mix*, 653 F.3d at 570 (affirming district court’s entry of preliminary injunction as “clearly correct” where it found irreparable harm based on “employer’s practices [that were] ‘enormously destructive’ to the union’s organizational efforts”). Thus, “the harm [the Director] must show is not injury to the specific *employees*, as [the majority] suggests, but to the unionization process,” such that the Board’s delayed issuance of a bargaining order might be rendered futile. *Parking Sys.*, 162 F.4th at 351 (citation modified); cf. *Trinity Health*, 174 F.4th at 953–54 (“[W]e will not grant [the Director] an injunction unless she also demonstrates that *the Board* is likely to suffer ‘irreparable harm’ in the absence of injunctive relief.”)

(emphasis added)); *Harrell ex rel. NLRB v. Am. Red Cross, Heart of Am. Blood Servs. Region*, 714 F.3d 553, 557 (7th Cir. 2013) (holding that irreparable harm “strike[s] at the heart of the Union’s ability to effectively represent the unit employees” (citation omitted)); *Aguayo ex rel. NLRB v. Tomco Carburetor Co.*, 853 F.2d 744, 750 (9th Cir. 1988) (“[T]he predominant focus under section 10(j) is the harm to the bargaining process, not to individual employees.”), *overruled on other grounds by Miller ex rel. NLRB v. Cal. Pac. Med. Ctr.*, 19 F.3d 449, 457 (9th Cir. 1994).

Laborforce acknowledged as much. In its principal brief, Laborforce discussed the potential effect of an injunction on the employees’ wages under the factors about the balance of equities and public interest, not irreparable harm. Likewise, the district court correctly assessed “what the Laborforce employees want” as affecting the public interest, not as an issue affecting the Director’s showing of irreparable harm.

The majority responds that nothing “in the NLRA’s text” supports this long-held focus on the labor effort. True, both employers and unions can engage in unfair labor practices, but here the Board seeks an injunction because of unfair labor practices allegedly committed by an employer to induce decertification of the Union. The Supreme Court has long recognized that “the legislative policy embodied in the NLRA is aimed at safeguarding, first and foremost, workers’ rights to join unions and to engage in collective bargaining.” *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 521 (2018) (citation omitted). So here, the Board seeks to enforce the NLRA’s rules of play regarding decertification of the Union. Thus, the majority’s focus on the impact of the alleged unfair labor practices on

individual employees instead of the passage of time on the Board's authority to remedy those practices is incorrect.

The majority also insists that these articulated harms are "generic claims about the lost benefits of unionization" rather than "real and specific injuries." Maj. Op. at 14–15 n.4. But it is not possible to offer a real and specific account of the hypothetical, counterfactual world in which Laborforce did not allegedly commit unfair labor practices. *See Trinity Health*, 174 F.4th at 955 ("To be sure, every court resolving a preliminary injunction motion must inevitably make reasonable predictions about future harm based on existing evidence."); *see also Hooks ex rel. NLRB v. Nexstar Broad., Inc.*, 54 F.4th 1101, 1116 (9th Cir. 2022) (quoting *Frankl v. HTH Corp.*, 650 F.3d 1334, 1363 (9th Cir. 2011)) (distinguishing "between an impermissible presumption of irreparable harm" and "a permissible inference regarding the likely effects of that violation" (citation modified)).

Second, the majority creates a "safe harbor" from temporary injunctive relief where an employer simultaneously engages in unlawful labor practices while increasing wages and benefits. The majority contends that granting a § 10(j) injunction then would harm employees who, as a result of Laborforce's alleged labor-law violations, enjoy increased wages and benefits. Maj. Op. at 11.⁵ But this

⁵ In any event, the effect on Laborforce's employees is a mixed bag. While the majority focuses on increased wages and benefits (i.e., the 401(k) match and lower-cost health insurance) provided to the employees, a collective bargaining agreement ("CBA") not only sets wage rates but also generally provides robust health insurance benefits, pension benefits, and lay-off and termination protections. Employees no doubt benefit from increased wages and 401(k) matches, but they also benefit from the

strategy is contrary to Supreme Court and Seventh Circuit precedent. The Supreme Court has long made clear that an employer cannot shirk its duty to bargain with a union because, as a result of the employer's alleged labor-law violations, union support has waned. *See Medo*, 321 U.S. at 687. So "[a]n employer ... cannot cause the majority's support for the union to crumble by committing unfair labor practices" and then rely on that lack of majority support to preclude § 10(j) relief. *Outboard Marine*, 1993 WL 410875, at *10, *enforced*, 9 F.3d 113.

In *Medo*, the Supreme Court explained that the NLRA's protection of the collective bargaining process "may not be ignored by the employer, even though the employees consent ... at least where the employer is in a position to secure any advantage from the [unfair labor] practices." 321 U.S. at 687. There, employees told the employer that "they were dissatisfied with the union and would abandon it if their wages were increased." *Id.* at 679. The employer then offered

stability and security provided by a multi-year CBA that, by design, an employer cannot change on a whim. How employees value any complete employment package (i.e., short term and "unsecured" wage increases compared to longer term stability provided through contractual protections) likely varies among employees. In an ideal scenario, a union listens to its members and negotiates a CBA that values its members' needs and priorities. Perhaps that did not happen here, leading to discontent by about half of the Union's members, but it is not for us to weigh in on whether the employees have benefited from decertification. And there are hints in the record that the narrative is not as straightforward as the majority suggests. For instance, the Service Department employees remain on the Union's health insurance plan after decertification, not Laborforce's, suggesting that the Union's plan may provide superior health benefits. And there is the mysterious 15% shrinkage of the bargaining unit workforce, unexplained in the record.

higher wages to the union members without negotiating with the union, thereby cultivating the employees' disillusionment with the union. *Id.* Thereafter, the employer refused to bargain with or even recognize the union. *Id.* Sound familiar? The Board charged the employer with unfair labor practices, finding that the employer had "interfere[ed] with its employees in the exercise of their rights to bargain collectively," and the Supreme Court concluded that "[t]here could be no more obvious way of interfering with these rights of employees than by grants of wage increases upon the understanding that they would leave the union in return." *Id.* at 680, 686.

The Supreme Court also rejected the employer's argument "that it would be equally an unfair labor practice to refuse the wage increases as to grant them, for that would influence the employees to stay in the union, instead of abandoning it." *Id.* at 686. It held that "either consequence, as well as any violation of the [NLRA]," could have been avoided had the employer simply bargained properly, "as is its statutory duty." *Id.* *Medo* makes clear that an employer "cannot, as justification for its refusal to bargain with the union, set up the defection of union members which it had induced by unfair labor practices, even though the result was that the union no longer had the support of a majority." *Id.* at 687; *see also Texaco, Inc. v. NLRB*, 436 F.2d 520, 524 (7th Cir. 1971) (holding that "the promise of benefits such as wage increases" to union-represented employees harms the collective bargaining process as well as the Board's remedial authority "whether or not the employees or the employer initiate the suggestion.").

The majority now blesses the theory that the Supreme Court rejected in *Medo*. Maj. Op. at 11. The majority notes that Laborforce “received an employee-originated petition to decertify the union,” and “Laborforce’s response to that petition was to increase wages and benefits for affected employees,” namely the minority of the bargaining unit that wanted out. Maj. Op. at 11. As a result, the majority contends that the Director cannot make a showing of irreparable harm “given the undisputed material benefits that Summit employees have obtained since exercising their right to withdraw recognition of the union.”⁶ Maj. Op. at 11. That is, in the majority’s view, these benefits show that Laborforce did not engage in “bad-faith employer misconduct.” Maj. Op. at 13. But this analysis critically omits that Loman, for his first decertification effort, actively lobbied the Parts and Service Departments yet received no signatures from the 51 employees in the Service Department. Only by allegedly engaging in a textbook, impermissible divide-and-conquer strategy did Laborforce succeed in systematically fracturing a union that has represented employees for 70 years.

The majority’s approach permits an employer to make the product of its own unfair labor practice a defense against preliminary injunctive relief by invoking the “right to

⁶ Notably, the majority’s only support for this contention is *Trinity Health*, a split Sixth Circuit decision, with Judge Boggs dissenting, that rectified jurisprudential issues unique to the Sixth Circuit. *Trinity Health* also provided no support from caselaw or the NLRA for its “decision to decline the Director’s invitation to infer irreparable harm” where an employer “offer[s] a better or different combination of perks to forestall union intervention, leaving workers at least as well off as with a union.” *Trinity Health*, 174 F.4th at 957.

refrain.” Ultimately the same employer strategy that the majority relies on to preclude a finding of irreparable harm constitutes the very “vice that *Medo* sought to avoid”—namely, “the practice of undermining the authority of the union’s bargaining representatives” by increasing the wages of employees who agree to abandon their union. *NLRB v. Gen. Elec. Co.*, 418 F.2d 736, 755 (2d Cir. 1969). To find no irreparable harm here because some Summit Facility employees are now being paid more not only runs afoul of *Medo*, but rewards Laborforce for unfair labor practices that an ALJ has found violated the NLRA.

Third, the majority’s concern with employees’ right to refrain from collective bargaining under 29 U.S.C. § 157 also misunderstands the limited, status-quo-preservation purpose of § 10(j) injunctive relief. See *Electro-Voice*, 83 F.3d at 1575. Departing from our circuit’s precedent, the majority contends that “[w]hen a § 10(j) injunction is as likely to defeat some employee rights as it is to vindicate others, the Director cannot make the required showing of irreparable harm.” Maj. Op. at 11. But the Supreme Court rejected the majority’s proposed standard in *Gissel*. 395 U.S. at 612 n.33; see also *id.* at 613 (“There is, after all, nothing permanent in a bargaining order”). Imposition of a temporary return to the status quo ex ante does not impede the rights of employees who wish to refrain from collective bargaining, and who still may defeat the Union through a decertification process that does not run afoul of the NLRA.

If, after the period of status-quo preservation under § 10(j), the Board ultimately decides that Laborforce’s withdrawal of Union recognition was lawful, then those employees who have exercised their right to refrain from collective bargaining

by signing one of the two decertification petitions will be vindicated. *See id.* at 613. That is, a § 10(j) remedy “does not involve any injustice to employees who may wish to substitute for the particular union some other bargaining agent or arrangement” because such a remedy is merely a temporary return to conditions prior to the alleged labor violations, and “is not intended to fix a permanent bargaining relationship without regard to new situations that may develop.” *Franks Bros. Co. v. NLRB*, 321 U.S. 702, 705 (1944).⁷ In fact, as collective bargaining resumes, any effect of this reset “will be minimal at best” because “there ‘is every reason for the union to negotiate a contract that will satisfy the majority, for the union will surely realize that it must win the support of the employees, in the face of a hostile employer, in order to survive the threat of a decertification election after a year has passed.’” *Gissel*, 395 U.S. at 612, n.33 (quoting Derek C. Bok, *The Regulation of Campaign Tactics in Representation Elections Under the National Labor Relations Act*, 78 HARV. L. REV. 38, 135 (1964)).

In assessing the Director’s showing of irreparable harm, the district court did not discuss irreparable harm to the labor effort. To be sure, the Director raised in the district court several such harms: the difficulty of re-gaining bargaining power, the diminution of support for the Union, the subsequent inability for the Union to represent and organize

⁷ Like with *Medo* and *Gissel*, the majority distinguishes *Franks* as predating the existence of § 10(j). Maj. Op. at 15–16 n.5. True, *Franks* does not discuss “irreparable harm,” but *Franks* discusses whether employees are harmed at all by a bargaining order. 321 U.S. at 705. *Franks* therefore rejects the majority’s view of the countervailing harm to employees who wish to refrain.

employees, and the interim loss of non-monetary benefits secured by the CBA.⁸ The district court's failure "to address all the relevant arguments" alone is an abuse of discretion. *Dewitt v. Corizon, Inc.*, 760 F.3d 654, 658 (7th Cir. 2014).

C

The district court instead concluded that the Director made no showing of irreparable harm because she "delayed significantly in seeking the injunction." The majority also discusses this delay, though it does not go so far as to endorse the district court's decision to treat it as virtually dispositive. As a threshold matter, while "delay is a factor that may be considered, ... it is not particularly probative; the question is whether interim relief is necessary to restore the parties to the status quo." *Lineback v. Spurlino Materials, LLC*, 546 F.3d 491, 501 (7th Cir. 2008) (citing *Gottfried v. Frankel*, 818 F.2d 485, 495 (6th Cir. 1987)).

In any event, the majority mistakenly appears to measure the delay from "at least July of 2023, when the first decertification petition was submitted" to January 16, 2025, when the Director petitioned for § 10(j) relief, because "[t]he Board has been aware of these events from the outset." Maj. Op. at 17. This misses the mark. The operative delay in § 10(j) cases is the delay between the Director's issuance of a complaint and the Director's petition for § 10(j) relief. *See* 29 U.S.C. § 160(j) ("The Board shall have power, *upon issuance of a complaint* ... charging that any person has engaged or is engaging in an unfair labor practice, to petition any United

⁸ For example, the Director listed examples like "grievance protection against unjust terminations, safety and health conditions, and freedom from unilateral changes in working conditions."

States district court ... for appropriate temporary relief or restraining order.”) So the Director did not have the statutory authority to petition for § 10(j) relief until June 24, 2024, when the Director issued the initial complaint, which the Director subsequently amended on September 4, 16, and 25, 2024.

The § 10(j) petition was predicated on the complaint, as amended on September 25, 2024. A four-month delay (or six and a half months, measured from the initial complaint) is not undue or excessive. *See Parking Sys.*, 162 F.4th at 353 (noting, “as a practical matter, delays of this length between the filing of a complaint and petition are not uncommon in § 10(j) litigation” and collecting cases including a one-year delay between complaint and petition, eighteen-month delays, and a seven-month delay). Consider, after all, the Board’s lengthy and rigorous § 10(j) vetting process. *See supra* at 3–6.

The majority contends that entering a preliminary injunction now “would whipsaw employees who long ago voted to decertify their union.”⁹ Maj. Op. at 17. But this concern for whipsawing is all the more reason to preserve the status quo: relief that comes at the end of “the notoriously glacial course of NLRB proceedings,” *Pioneer Press*, 881 F.2d at 491 (citation omitted), could produce only a more significant whipsaw effect. By contrast, if a temporary injunction issues now and the Board affirms the ALJ’s

⁹ The potential whipsaw effect on employees would be ameliorated by the Director’s suggestion that, with permission of the Union, employees keep the unilaterally imposed wages and benefits pending a final order from the Board. Such a preservation of wages and benefits would work to remedy the message communicated to employees by Laborforce’s alleged labor-law violations that the Union is ineffectual and ill-suited to represent them.

decision, the Union will have far less work to do to rebuild support than when the Board's final decision is issued, potentially long after the expiration of the collective bargaining agreement. *See Francisco Foods*, 276 F.3d at 299 (granting § 10(j) relief even where "more than two years have already passed" since employer refused to recognize and bargain with the union because "the longer that the Union is kept out of the store and from working on behalf of [the] employees, the less likely it is to be able to organize and represent those employees effectively if and when the Board orders the company to commence bargaining.").

For the foregoing reasons, I would find that the district court abused its discretion by ignoring relevant, Board-focused harms while placing too much weight on the perceived delay. The majority wrongly rejects "mine-run risks of harm" even though extraordinary (that is, equitable) relief may be appropriate here. And the majority's reliance on higher wages and lower union support—in this case spurred by allegedly unrepresentative and tainted decertification petitions—cannot preclude a finding of irreparable harm to the labor effort.

III

Though the majority does not reach the Director's likelihood of success on the merits, I would reach this factor because of my view that the Director has made an adequate showing of irreparable harm.

The district court began its analysis here by concluding that it could not opine on the exact scope of the bargaining unit. The majority acknowledges that was error, *Maj. Op.* at 18–19, and I agree with that assessment. Here, a single CBA

referring to a singular bargaining unit governed all employees in the Parts and Service Departments. So although the parties continue to dispute the merits of the issue, the Director made a “strong” showing that she is likely to succeed on the merits of her argument about the bargaining unit’s proper definition. *Ill. Republican Party v. Pritzker*, 973 F.3d 760, 762–63 (7th Cir. 2020) (noting that likelihood of success for preliminary injunction “does not mean proof by a preponderance”).

The district court’s assessment of causation also was legally erroneous. Loman submitted the first decertification petition with signatures only from employees in the Parts Department, despite also actively soliciting and failing to obtain signatures from any of the 51 employees of the Service Department. Acting on that petition, Laborforce signaled its intent to withdraw recognition, and also filed its own petition with the Director to clarify the scope of the bargaining unit. Although the Director denied Laborforce’s petition to clarify, Laborforce went ahead and withdrew recognition for employees in the Parts Department anyway and unilaterally raised wages and some benefits.

As the district court set forth, a causal relationship between an unfair labor practice and union decertification proceeds in four steps. *See Master Slack Corp.*, 271 NLRB 78, 84 (1984). The inquiry looks to (1) the time between the unfair labor practice and withdrawing recognition of the union; (2) the nature of the illegal acts and any “detrimental or lasting effect on employees”; (3) any “tendency to cause employee disaffection from the union”; and (4) the effect on “employee morale, organizational activities, and membership in the union.” *Id.*

The district court erred at the first step of the causal analysis by determining that any time at all separated “the unfair labor practices and the withdrawal of recognition.” *Id.* The district court pinned Laborforce’s unfair labor practice as a discrete event that occurred in July 2023. To be sure, the ALJ has concluded that Laborforce’s first withdrawal of recognition was unlawful. *Cf. Rock-Tenn Co. v. NLRB*, 69 F.3d 803, 809 (7th Cir. 1995) (“[T]he company was only free to withdraw recognition based on objective good faith evidence of a loss of majority status.”); *Hill-Rom Co. v. NLRB*, 957 F.2d 454, 457 (7th Cir. 1992) (noting that employers may not unilaterally re-define the bargaining unit). But Laborforce then acted in sequential steps, with its series of unfair labor practices culminating in the second successful vote to decertify the Union. So if Laborforce did not lawfully withdraw recognition from the Part Department (as the ALJ has found), Laborforce’s changes to the wages and benefits of employees in the Parts Department were an ongoing, unilateral change that persisted until the second decertification petition. *See Mondelez Global LLC v. NLRB*, 5 F.4th 759, 772 (7th Cir. 2021).¹⁰

The district court also concluded that the employees benefited from the unfair labor practices. It is not clear that all bargaining-unit employees unqualifiedly benefitted (some may have been terminated), *supra* at 2 n.1, 12 n.5, and potential employee benefit does not make lawful “the

¹⁰ And as with irreparable harm, the district court did not address the full range of arguments. The court assessed only the Director’s argument about the July 2023 notification of intent to withdraw recognition. The district court’s silence on the other unfair labor practices alleged by the Director reinforces my view that the court abused its discretion.

defection of union members which it had induced by unfair labor practices[.]” *Medo*, 321 U.S. at 687. The fact that Laborforce unilaterally changed the conditions of employment for employees in the Parts Department could have had a “lasting effect on employees” in the Service Department, may have “cause[d] [their] disaffection from the union”; and may have had a negative effect “on employee morale, organizational activities, and membership in the union.” *Master Slack*, 271 NLRB at 84. And only then did the decertification petition achieve the barest majority. The district court thus incorrectly rejected the Director’s strong showing that the initially unlawful withdrawal of recognition tainted the rest of the process, and the court had the opportunity to review its own work when the ALJ issued her decision, concluding that Laborforce’s string of unfair labor practices infected the second decertification effort.¹¹

Likelihood of success on the merits and irreparable harm are “the most critical” factors in the preliminary-injunction inquiry. *Nken v. Holder*, 556 U.S. 418, 434 (2009). But on the remaining factors—balance of equities and the public interest—nothing compels a different result. The district court focused on the employees’ right to refrain, which, as discussed above, *supra* at 12–17, is intertwined with Laborforce’s unfair labor practices. Laborforce identifies no

¹¹ The district court issued its opinion on September 22, 2025. On the same day, the Director notified the court that the ALJ had issued her decision on September 18. Of course, the ALJ’s decision was not presented to the district court before the opinion was issued, but once available, the district court could have, and probably should have, exercised its inherent authority to reconsider its ruling in light of the development. *See Curran v. Kwon*, 153 F.3d 481, 487 (7th Cir. 1998).

harms specific to it as an employer, nor does it advance any argument about the public interest. Meanwhile, the Director highlights that “[t]he public interest is furthered, in part, by ensuring that an unfair labor practice will not succeed because the Board takes too long to investigate.” *Electro-Voice*, 83 F.3d at 1574 (citation modified); *see also Am. Red Cross*, 714 F.3d at 557 (“The interest at stake ... is the public interest in the integrity of the collective bargaining process.” (citation modified)).

IV

Starbucks does not erase our decades of § 10(j) jurisprudence. Quite the opposite, *Starbucks* endorsed our approach in *Francisco Foods* as a proper application of the “traditional equitable principles” guiding all sorts of preliminary injunctive relief. 602 U.S. at 345. As a result, our longstanding framework for irreparable harm—querying whether evidence of weakening union support, or degradation of the union’s bargaining position, shows that the Union’s strength will continue to decline irreparably before the Board can issue a bargaining order—remains good law.

Nevertheless, the majority views *Starbucks* as having left a blank slate, and in response crafts a new framework significantly heightening and changing the threshold metrics (both qualitatively and quantitatively) for irreparable harm in this circuit. To show irreparable harm, the Director may no longer merely establish that “[t]he union’s position ... may deteriorate to the point that effective organization and representation is no longer possible” rendering the Board’s remedial authority futile. *Electro-Voice*, 83 F.3d at 1573. Now, the Director must show evidence of extraordinary underlying

circumstances or “bad-faith employer misconduct” that harms individual employees. Maj. Op. at 13. The majority’s new standard makes it exceedingly difficult for the Director to prevail on a § 10(j) petition in this circuit. Because it follows the Sixth Circuit’s decision in *Trinity Health* in lieu of our own precedent and is not compelled—or even suggested—by the Supreme Court’s decision in *Starbucks*, I respectfully dissent.