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Supreme Court Denials Won't End NLRB Loper Bright Args

By **Tim Ryan**

Law360 (March 28, 2025, 8:28 PM EDT) -- The U.S. Supreme Court's recent rejection of two labor cases does not spell an end for employers' arguments disputing how much deference courts owe the National Labor Relations Board, challenges that are increasingly common since the justices' Loper Bright decision last term abandoning Chevron deference.

While the Supreme Court's recent denials mean the court will not yet answer the question of how Loper Bright will affect court review of NLRB decisions, labor law experts say that does not mean the justices will not do so when the right case comes up. (AP Photo/J. Scott Applewhite)

As part of orders released March 24, the high court **declined to review rulings** from the Ninth and Sixth circuits that upheld NLRB decisions finding employers violated federal labor law. Both petitions invoked the court's decision last June in Loper Bright Enterprises v. Raimondo, which ended the longstanding doctrine known as Chevron deference, under which courts were to defer to federal agencies' reasonable interpretations of the statutes they administer.

While the denials mean the court will not yet answer the question of how Loper Bright will affect court review of NLRB decisions, labor law experts said that does not mean the justices will not do so when the right case comes up.

"The Supreme Court will have the opportunity to choose from many petitions to find the right case that

the majority is looking for to make a decision in terms of explaining the breadth of the Loper Bright decision," said Jeff Starling, who represents employers as chair of the labor and employment practice at Balch & Bingham LLP.

The justices' Loper Bright decision was a major shakeup to administrative law, reversing the high court's decision in Chevron v. Natural Resources Defense Council, which had been in place for 40 years and underpinned much of the law surrounding federal agency actions. The court in Loper Bright said that instead of deferring to agency decisions as Chevron required, "courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority."

Experts have disagreed on the extent to which the Loper Bright holding will affect challenges to NLRB decisions because the board received deference from courts on its interpretation of the law before Chevron deference existed. That uncertainty **has not stopped** employers from arguing in appeals of board decisions that Loper Bright required a lower degree of deference that the board could not overcome.

The justices rejected one case brought by Valley Hospital Medical Center that challenged **Ninth Circuit holdings** from February 2024 upholding board decisions finding the hospital unlawfully stopped deducting union dues from its employees' paychecks. The hospital argued in its petition for writ of certiorari in October that the Ninth Circuit did not follow Loper Bright's requirement and instead "simply deferred to the NLRB's decision."

The other challenge the high court turned away March 24 involved Rieth-Riley Construction Co., which had asked the Supreme Court to reverse a 2024 **Sixth Circuit decision** that upheld the board's finding that the company unlawfully refused to give requested documents to a union. Unlike Valley Hospital, Rieth-Riley argued that the Sixth Circuit improperly applied a "blanket rule of non-deference" and said the high court needed to clarify how much deference courts owed the board in light of Congress' decision to delegate the interpretation of federal labor law to the agency.

Angela Cornell, a labor law professor at Cornell University Law School, said that because the justices did not write any opinions about either case, trying to figure out why the Supreme Court decided not to take them up amounts to speculation. She said court watchers should not take too much away from the fact that the court passed on saying how Loper Bright applies to the review of NLRB decisions at this point.

"There are a lot of considerations and that doesn't mean that the court might not take action in the near future," Cornell said. "I just don't think we should infer that much from these cases."

Cornell said the two cases also might not have been clear vehicles for the court to weigh in on the impact of Loper Bright because both were analyzing relatively well-established principles and the opinions did not rest heavily, or at all, on deference to the agency.

The cases were not the first to reach the Supreme Court raising the issue of how Loper Bright applies to court review of NLRB decisions. In December, the **justices remanded** to the D.C. Circuit a dispute over a Puerto Rico hospital's obligations to deal with a union after acquiring a unionized facility, saying the appeals court needed to review the level of deference it applied when it ruled against the hospital.

Thomas Lenz, a partner at Atkinson Andelson Loya Ruud & Romo PLC who represents employers, said the Supreme Court is going to have plenty of chances to say how Loper Bright affects review of NLRB decisions, and the justices are likely to be selective about the case they choose. Ultimately, though, he said the number of challenges invoking Loper Bright means that the court will eventually need to provide more clarity on how the decision affects the board.

One factor Lenz said the court might look for in a Loper Bright vehicle might be how often the board's interpretation of an issue has gone back and forth and how the board has responded to court criticism of the doctrine.

Many board policies shift back and forth with political changes in the White House, and the court might want to weigh in on whether that affects the deference the agency receives upon court review, Lenz said. He also said the justices may look for a case concerning an issue where the board has repeatedly raised the same theories despite multiple court rebukes.

"I think it's just a matter of the court having the confidence that the case presented, whichever one that is, is going to be the right one with the cleanest record to make their point," Lenz said.

Starling of Balch & Bingham said the court might also feel that a case challenging a major precedent shift that departs from how the board has long interpreted the law might present a good vehicle for clarifying the level of deference the board is owed when defending its decisions in court. He said an example might be the board's 2023 decision that set out a new, lower standard for issuing orders requiring employers to bargain due to unfair labor practices committed in the run-up to a union representation election.

"It's more likely to be that type of issue as opposed to an issue where the NLRB has had a relatively standard position for a number of years," Starling said.

Starling also noted that because Loper Bright touches on actions taken by many different federal agencies, the clarification on how the decision affects the board might not come in a case concerning the NLRB directly.

Starling said he would expect parties challenging board decisions to continue raising Loper Bright arguments until the court answers the question clearly, regardless of actions like the denials on March 24. Employers have been more likely to invoke Loper Bright than unions so far, and while Starling said that could change when a less union-friendly board comes into power, he would expect the management side to lean on it more heavily.

"I think you will see these arguments being raised at the very early stages so they can be preserved for appeal, and I think people will continue to do that going forward," Starling said.

--Additional reporting by Emily Brill. Editing by Abbie Sarfo and Nick Petruncio.
