

The 6th Circuit’s *NLRB v. Starbucks* and Keeping the Door Open for *Thryv* Remedies

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I. INTRODUCTION

In the landmark decision *Thryv and International Brotherhood of Electrical Workers Local 1269*, the National Labor Relations Board (NLRB) transformed the way “make-whole remedies” are awarded under the National Labor Relations Act (NLRA).² The NLRB (hereinafter “the Board”) ruled that its remedial powers were broad and that make-whole relief must cover all “direct or foreseeable pecuniary harms” resulting from the respondent’s unfair labor practices.³ This decision was a shift from what employers saw as traditional backpay remedies towards a broader monetary remedy regime under § 10(c); though broader remedies had been awarded in the past, they had never been automatically granted.⁴ As employees reaped the benefits of equitable restorative relief, companies pushed back, and courts began to address the central question: Are *Thryv* remedies a permissible form of equitable make-whole relief, or impermissible “consequential damages” that go beyond the scope of § 10(c)?

¹ UChicago Law ’27.

² See generally *Thryv, Inc.*, 372 N.L.R.B. No. 22 (Dec. 13, 2022).

³ *Id.* at 10.

⁴ *Id.* at 14–15.

A circuit split has emerged surrounding *Thryv* remedies.⁵ The Third and Fifth Circuits have rejected restorative relief and ruled that equitable relief does not expand past monetary direct relief such as back pay.⁶ Both circuits held that under the *Thryv* standard, the remedial power of the Board crossed the line into awarding consequential damages.⁷ The latest decision in this growing circuit split is the Sixth Circuit’s *NLRB v. Starbucks Corp.* decision.⁸ In *Starbucks*, the Sixth Circuit rejected the expanded view of remedies established under *Thryv* and advocated for a stricter reading of § 10(c).⁹ *Starbucks* ultimately refused to rule in favor of expanded remedies, following in the footsteps of the Third and Fifth Circuits, favoring a narrower reading of § 10c, and avoiding a definitive ruling on the Seventh Amendment question.¹⁰

As of now, the only circuit to formally accept the *Thryv* standard is the Ninth Circuit.¹¹ In *International Union of Operating Engineers v. NLRB*, the Ninth Circuit ruled that *Thryv* style remedies were tailored to the harms caused by employers and were not consequential damage awards or private harms remedies.¹² Despite the Sixth Circuit’s new anti *Thryv* entry to the circuit split, there is still a way forward for *Thryv* remedies. When properly constrained, *Thryv* remedies (as exemplified in *International Union of Operating Engineers*) can be beneficial for both workers and employers. Though there is a real and important need to protect employers’ constitutional and statutory rights, *Thryv* does not necessarily trample these rights. The Ninth Circuit further writes that there has been no showing that remedies provided in this case are not meaningfully connected to equitable remedy.¹³ While the Seventh Amendment concerns were not properly raised in this case, the majority mentions that the Board has yet to offer the “virtually unlimited” relief that the dissent worries about.¹⁴ Under this reading the Board still has

⁵ See generally *Int’l Union of Operating Eng’rs, Stationary Eng’rs, Loc. 39 v. Nat’l Lab. Rels. Bd.*, 127 F.4th 58 (9th Cir. 2025); *Nat’l Lab. Rels. Bd. v. Starbucks Corp.*, No. 23-1767, 2025 WL 3089798 (6th Cir. 2025); *Hiran Mgmt., Inc. v. Nat’l Lab. Rels. Bd.*, 157 F.4th 719 (5th Cir. 2025); *Nat’l Lab. Rels. Bd. v. Starbucks Corp.*, 125 F.4th 78 (3d Cir. 2024).

⁶ See *Starbucks*, 125 F.4th at 97; *Hiran*, 157 F.4th at 728.

⁷ See *Starbucks*, 125 F.4th at 97; *Hiran*, 157 F.4th at 728.

⁸ See generally *Starbucks*, WL 3089798.

⁹ *Starbucks*, WL 3089798 at * 14–15.

¹⁰ *Id.* at *13.

¹¹ See *Int’l Union of Operating Eng’rs*, 127 F.4th at 82.

¹² *Int’l Union of Operating Eng’rs*, 127 F.4th at 82–84.

¹³ *Id.* at 87.

¹⁴ *Id.*

the burden of showing that each remedy it provides is tailored to the actual injury and therefore does not implicate constitutional concerns.¹⁵

II. ANALYSIS

A. The Sixth Circuit’s “New” Approach In *NLRB v. Starbucks*.

On November 5, 2025, the Sixth Circuit decided *NLRB v. Starbucks*.¹⁶ The case concerned an employee who was terminated for violating company policy.¹⁷ Workers United, a local labor union, issued a complaint alleging that this was a pretextual firing, and Whitbeck, the employee in question, was fired due to her pro-union behavior at work.¹⁸ Whitbeck did violate Starbucks’s “two-employee rule” by leaving the store with only one other employee present.¹⁹ However, she had no prior disciplinary record, timely reported the altercation surrounding her behavior, and ultimately left due to a family emergency.²⁰ When the Board investigated Whitbeck’s firing, they found that another shift supervisor had violated the two-employee rule on multiple occasions and racked up other disciplinary infractions, but had only been given a written warning.²¹ Compare with Whitbeck, who was fired after only one infraction.²²

After the complaint was issued, an Administrative Law Judge found Starbucks committed unfair labor practices and ordered reinstatement and broad make-whole relief.²³ The Board ordered backpay and compensation for “direct or foreseeable pecuniary harms” caused by the unlawful firing; the Board then petitioned the Sixth Circuit to force Starbucks’ compliance.²⁴ On review, the Sixth Circuit upheld the finding of unfair labor practices but did not accept the broad remedies provided, writing, “Nor in any event, do these orders support *Thryv*’s all-encompassing award for ‘direct or foreseeable pecuniary harms.’”²⁵

The court first looked at the text of § 10(c).²⁶ The NLRA allows the Board to order an employer to “cease and desist” and to take “such affirmative action,

¹⁵ *Int’l Union of Operating Eng’rs*, 127 F.4th at 80.

¹⁶ See *Starbucks*, WL 3089798 at *1.

¹⁷ *Starbucks*, WL 3089798 at *1.

¹⁸ *Id.* at *3.

¹⁹ *Id.* at *2.

²⁰ *Id.* at *2, *4.

²¹ *Starbucks*, WL 3089798 at *4.

²² *Id.* at *3.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at *17–*20.

²⁶ *Id.* at *9.

including reinstatement of employees with or without back pay, as will effectuate the policies of th[e] [NLRA].”²⁷ The Board argued that “affirmative action” is broad and can include direct or foreseeable remedies that go beyond back pay.²⁸ These remedies include any that may help effectuate the act such as “childcare costs, transportation expenses, [and] credit card debt.”²⁹ However, the Sixth Circuit rejected this premise and instead treated affirmative action as a legal term of art.³⁰ Looking back to the early twentieth-century understanding of the phrase, and finding that historically, affirmative action referred to the effect of equitable remedies, injunctions, specific performance, and mandatory orders, not to open-ended monetary damages.³¹

The court then looked at the structure of the statute, noting that the Board’s reading would create an anomalous result.³² § 10(c) says that an employee “suspended or discharged for cause” may not receive “reinstatement or back pay.”³³ If affirmative action included any form of monetary relief then an employee validly fired for cause could still obtain consequential damages.³⁴ Next, the court compared § 10(c) to other statutory provisions, such as § 706(g) of Title VII.³⁵ When Congress first extended Title VII’s remedial power, it used nearly identical language, authorizing courts to order “affirmative action . . . which may include . . . reinstatement . . . with or without back pay . . . or any other equitable relief as the court deems appropriate.”³⁶ In the case of § 10(c), Congress did not include the phrase “or any other equitable relief.”³⁷ The court interpreted this to mean that if Congress intended affirmative action to encompass legal relief, the inclusion of the extra phrase would make little sense.³⁸

Finally, the opinion addressed Seventh Amendment concerns, highlighting that the Board’s interpretation could raise constitutional tensions. The court asserts that a narrow reading of the Act would avoid a constitutional question: “it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the

²⁷ *Id.* at *8.

²⁸ *Id.* at *9.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.* at *11.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Starbucks*, WL 3089798, at *11.

³⁷ *Id.*

³⁸ *Id.*

question may be avoided.”³⁹ To the court, *Thryv*’s remedies look like consequential monetary damages, damages that traditionally trigger the right to a jury trial.⁴⁰ Allowing an agency to impose those remedies in an adjudicatory proceeding without a jury, absent clear congressional permission, creates a serious constitutional issue. The Sixth Circuit views this concern as another reason to read § 10(c) more narrowly.⁴¹

Putting those strands together, the court holds that § 10(c) authorizes only equitable, make-whole remedies like reinstatement and traditional back pay.⁴² The “direct or foreseeable pecuniary harms” component of the Board’s order is vacated, and the case is remanded for the Board to craft a remedy that stays within its equitable authority.⁴³ The merits victory for Whitbeck and the union stands, but the Sixth Circuit pointedly refuses to turn the NLRA into a general consequential-damages statute enforced through the Board.⁴⁴

The Sixth Circuit *Starbucks* case follows a similar line of reasoning as both the Third and Fifth Circuit cases in *NLRB v. Starbucks Corp.* and *Hiran Mgmt., Inc. v. NLRB* respectively.⁴⁵ In *NLRB v. Starbucks Corp.*, the Third Circuit employed a less robust analysis of *Thryv* damages, but ultimately ruled against a more expansive reading of § 10(c), holding that the Board was only empowered by Congress to award “equitable, not legal, relief.”⁴⁶ However the Third Circuit did not rule that the Board could *never* award more expansive damages, only that in the past these remedies have been awarded on a case-by-case basis.⁴⁷ In *Hiran*, the Fifth Circuit focused on the plain meaning of damages, citing Black’s Law Dictionary and the Restatement of Torts.⁴⁸ The Fifth Circuit found that the harms that are listed in *Thryv* are similar to, or the same as, classic examples of consequential damages.⁴⁹ Ultimately, the court agrees with the Third Circuit’s earlier analysis, holding that *Thryv* exceeds the NLRB’s authority under the NLRA.⁵⁰

B. *Thryv* And The “Expansion” Of NLRB Make-Whole Remedies.

³⁹ *Id.* at *13 (citing *Ashwander v. Tenn. Valley Auth.*, 297 U.S. 288, 348 (1936)).

⁴⁰ *Starbucks*, WL 3089798 at *13.

⁴¹ *Id.* at *14.

⁴² *Id.*

⁴³ *See id.* at *20.

⁴⁴ *See generally Starbucks*, WL 3089798.

⁴⁵ *See generally Starbucks*, 125 F.4th 78; *Hiran*, 157 F.4th 718.

⁴⁶ *See Starbucks*, 125 F.4th at 95.

⁴⁷ *Starbucks*, 125 F.4th at 96.

⁴⁸ *Hiran*, 157 F.4th at 728.

⁴⁹ *Id.*

⁵⁰ *Id.*

While some circuits may interpret *Thryv* as an overstepping of the Board’s authority, it is important to map the actual effects of the *Thryv* case. After a breakdown in negotiations and communication between *Thryv* and the Local Union, the Board found violations of § 8(a)(5) and (1) of the NLRA.⁵¹ Upon the finding of an unfair labor practice, § 10(c) directs the Board to order the respondent “to cease and desist” and “to take such affirmative action including reinstatement of employees with or without backpay, as will effectuate the policies of this Act.”⁵² From the beginning, the Board and the Supreme Court have understood this language to confer “a broad discretionary” remedial power, constrained mainly by the requirement that the remedy provided restore “the economic status quo that would have obtained but for the company’s wrongful” actions.⁵³ In past cases this has meant the awarding of backpay, the restoration of certain benefits, and even the ordering of rehiring.⁵⁴

As early as 1938, the Board has awarded remedies that go beyond simple backpay.⁵⁵ In *Crossett Lumber Co.*, the Board acknowledged that workers unlawfully displaced from their jobs often incur additional out-of-pocket costs, finding that employees “may incur ‘expenses for transportation, room, and board, which they would not have incurred had they continued to work for the respondent.’”⁵⁶ The court also found these expenses “should reduce the amount of interim earnings that is subtracted from backpay awards.”⁵⁷ Other decisions allowed reimbursement or backpay adjustments for medical expenses tied to unlawful benefit changes, lost growth on retirement contributions, and similar concrete losses.⁵⁸ From this perspective, the *Thryv* decision is not a sharp break from tradition, but an attempt to synthesize a long line of precedent in which the Board used its § 10(c) authority to address economic harms directly and foreseeably connected to the unfair labor practice at issue, but not encompassed by simple backpay.

Thryv does add an explicit statement of this principle to the interpretation of § 10(c).⁵⁹ The Board concludes that, whenever its standard remedy includes make-whole relief, it will “expressly order that the respondent compensate affected employees for all direct or foreseeable pecuniary harms suffered as a

⁵¹ *Thryv*, 372 NLRB No. 22 at *4.

⁵² *Thryv*, 372 NLRB No. 22 at *25.

⁵³ *Id.* at *10.

⁵⁴ *Id.* at *11–*13.

⁵⁵ *Id.* at *11.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.* at *11–*13.

⁵⁹ *Thryv*, 372 NLRB No. 22 at *21.

result of the respondent’s unfair labor practice.”⁶⁰ This can be framed as not an expansion of the NLRA’s or the Board’s power, but instead as necessary to accomplish the make-whole purposes of the Act.⁶¹ The Board identifies concrete and foreseeable harms from unlawful labor violations such as interruptions in health coverage, late fees on credit cards used to cover basic living expenses, and out of pocket costs incurred during a new job search.⁶² Defining these harms within the remedial power of the NLRA harmonizes the remedies given with the statute’s purpose of restoring victims of labor violations “as nearly as possible” to their situation before the labor violation occurred.⁶³

The Board situates this “expansion” within traditional equitable and public-rights concepts.⁶⁴ Relying on cases like *Phelps Dodge* and *Virginia Electric & Power, Thryv* emphasizes that Congress gave the Board flexibility to address a variety of situations produced by unfair labor practices⁶⁵ so long as the remedy can “fairly be said to effectuate the policies of the Act.”⁶⁶ This “expansion” of remedies addresses only specific provable violations that fit within past historical understandings of equitable relief. Despite the reluctance of other courts, *Thryv* style remedies have been in the past awarded by administrative agencies using restitution orders to enforce public policy.⁶⁷

The Board also draws a clear line between pecuniary and non-pecuniary harms.⁶⁸ Emotional distress, other non-quantifiable losses, and speculative damages remain outside § 10(c)’s remedial scope.⁶⁹ *Thryv* locates the administration of these questions in the Board’s existing compliance proceedings, rather than in the initial unfair-labor-practice hearing.⁷⁰ Compliance proceedings are where backpay is already calculated, and disputes over interim earnings and similar issues are litigated.⁷¹ This structure further aligns the Board’s make-whole relief with the historical function of equitable remedies.⁷²

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at *15.

⁶³ *Id.* at *10.

⁶⁴ *Id.* at *17.

⁶⁵ *Id.* at *10 (citing *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 194–197 (1941)).

⁶⁶ *Id.* at *10 (quoting *Virginia Electric & Power Co. v. NLRB*, 319 U.S. 533, 539 (1943)).

⁶⁷ *Id.* at *10–13.

⁶⁸ *See id.*

⁶⁹ *Id.* at *20 n. 13.

⁷⁰ *Id.* at *17.

⁷¹ *See, Thryv*, 372 NLRB No. 22 at *18.

⁷² *Id.*

C. The Need To Protect Employers' Rights: Statutory and Constitutional Limits of *Thryv*.

The Ninth Circuit's decision in *International Union of Operating Engineers, Stationary Engineers Local 39 v. NLRB* is a useful lens for thinking about the limits of *Thryv* and how courts can protect employers' statutory and constitutional interests without discarding the make-whole framework.

In *International Union*, Macy's, the defendant, raised the statutory objection that if "direct or foreseeable pecuniary harms" are compensable, what stops the Board from morphing into a general damages tribunal, awarding full consequential damages for any harms stemming from an unfair labor practice?⁷³ Macy's argued that § 10(c)'s "affirmative action" power is merely incidental to stopping unfair labor practices and does not authorize "full compensatory damages for injuries caused by wrongful conduct."⁷⁴ The Ninth Circuit addressed that concern by tightening the fit between *Thryv* and § 10(c)'s traditional make-whole framework.⁷⁵

First, it emphasized that *Thryv* defines direct harms as losses that are the immediate result of the unlawful conduct, and foreseeable harms as those the employer knew or should have known were likely to result from the violation.⁷⁶ The court reasoned that these definitions keep the remedy tethered to the employment injury, rather than opening the door to remote or speculative harms.⁷⁷

Second, the court situates *Thryv* within a long line of cases that address the remedial history of § 10(c).⁷⁸ Like *Thryv*, the court cites *Phelps Dodge* and reiterates that Congress empowered the Board to order whatever affirmative action is necessary to "restore the situation, as nearly as possible, to that which would have occurred but for the violation."⁷⁹ The Ninth Circuit highlights language used in past cases, holding that courts may disturb such orders only if they are a "patent attempt to achieve ends other than those which can fairly

⁷³ See *Int'l Union of Operating Eng'rs*, 127 F.4th at 81.

⁷⁴ *Id.* (internal citation omitted).

⁷⁵ *Id.* at 81–84.

⁷⁶ *Id.*

⁷⁷ *Id.* at 84.

⁷⁸ *Id.* at 86–87.

⁷⁹ *Id.* at 77 (citing *Phelps Dodge*, 313 U.S. at 194).

be said to effectuate the policies of the Act.”⁸⁰ In that vein, compensating employees for concrete, provable harms stemming from the labor violation simply fulfills the existing make-whole remedy rather than creates a new category of damages.

Finally, the court answered the “consequential damages” objection by turning to *United States v. Burke*.⁸¹ There the Supreme Court distinguished between damages recoverable under tort law and make-whole relief.⁸² The Court determined “whether a settlement payment relating to a backpay claim arising under Title VII would be excludable from gross income under the federal Internal Revenue Code.”⁸³ The Court remarked that a key feature of tort liability is the availability of a “broad range of damages” that are not available under acts such as Title VII or the NLRA.⁸⁴ The Ninth Circuit reads *Thryv*’s framework as staying on the latter side of this line, only targeting concrete economic losses necessary to restore the status quo, not compensating pain, suffering, or other non-pecuniary harms, which are typical of broad damage awards.⁸⁵

A second set of concerns echoes the Sixth Circuit’s in *Starbucks*: if *Thryv* remedies look like compensatory damages, do they trigger a right to a jury under the Seventh Amendment? In *International Union*, those arguments were largely waived, since the company had not properly preserved a Seventh Amendment challenge.⁸⁶ However, we can look to the court’s framing of the Board’s role and of *Thryv* remedies as a response to these concerns.

The Ninth Circuit stressed that NLRB proceedings vindicate a public regulatory scheme, not private tort claims.⁸⁷ The court underscored that the Board does adjudicate private rights, but “acts in a public capacity to give effect to the declared public policy of the Act.”⁸⁸ Monetary awards like backpay and related make-whole relief may resemble compensation for private injury, but

⁸⁰ *Int’l Union of Operating Eng’rs*, 127 F.4th. at 80 (quoting *Virginia Elec. & Power Co. v. N.L.R.B.*, 319 U.S. 533, 540 (1943)).

⁸¹ *Id.* at 85.

⁸² *Id.*

⁸³ *Id.* at 85 (citing *United States v. Burke*, 504 U.S. 229, 230 (1992)).

⁸⁴ *Id.* at 85.

⁸⁵ *Id.*

⁸⁶ *Id.* at 87.

⁸⁷ *Id.* at 83.

⁸⁸ *Id.* at 81.

are created by statute, and aim to achieve the elimination of industrial conflict for the purpose of vindicating public rights.⁸⁹

Even under the *Thryv* framework, make-whole relief remains a tool of equity and public enforcement, so long as it is narrowly tailored to the goal of restoring the status quo necessary for the purpose of collective bargaining.⁹⁰ Protecting employers' Seventh Amendment interests does not require stripping the Board of all authority to address foreseeable economic harms; It requires making sure the relief stays on the equitable side of the public-rights line, not awarding open-ended tort damages for personal injuries.⁹¹

D. The Benefits and Effects of *Thryv* for Both Employees and Businesses.

Thryv can be mistakenly interpreted as a win for workers and a loss for employers. The emerging case law and commentary, however, suggest something more complicated. *Thryv* remedies can make NLRA enforcement more realistic for employees and more predictable and manageable for businesses.

Scholars have criticized NLRA remedies for undercompensating workers. Conventional backpay often leaves employees substantially short of the position they would have occupied absent the violation.⁹² Wage restoration alone does not account for the real fallout that accompanies losing one's job, such as medical bills, penalties for early withdrawals from retirement accounts, and interest accrued on consumer debt.⁹³ *Thryv* responds directly to this critique by standardizing relief for "all direct or foreseeable pecuniary harms."⁹⁴ Despite many courts' arguments, the post *Thryv* state did little to truly make employees whole. *Thryv* aligns the Board's remedial power with its stated goal of restoring as nearly as possible the status quo, rather than leaving workers permanently worse off after vindicating their rights.⁹⁵

⁸⁹ *Id.* at 83.

⁹⁰ *Int'l Union of Operating Eng'rs*, 127 F.4th at 79.

⁹¹ *See id.* at 81, 83–84.

⁹² Sam Salinger, *Fear and Loathing in the American Workplace: Paving the Bog of Logomachy*, 75 A.M. ADMIN. L. REV. 879, 884 (2023).

⁹³ *Id.* at 883–86.

⁹⁴ *Int'l Union of Operating Eng'rs*, 127 F.4th at 79.

⁹⁵ *See Thryv*, 372 NLRB No. 22 at *10–12.

For employers, *Thryv*'s key upside is that it channels liability for unfair labor practices into one specialized forum.⁹⁶ Though it may not limit liability for employers, it does not expand it either. *Thryv*'s framework confines recovery to economic harms that are directly or foreseeably caused by the unfair labor practice, quantifiable, and proven in compliance proceedings.⁹⁷ The alternative is a world where backpay is handled by the NLRB, while other economic harms are pursued through state tort and wage-and-hour suits. In this regime, employers can price the risk *ex ante*. Management-side analyses already advise that, post-*Thryv*, employers should expect claims for medical bills, moving expenses, job-search costs, and similar out-of-pocket losses.⁹⁸

More accurate make-whole relief also improves the incentives that shape labor relations. Critics of NLRA remedies stress that delay and under-compensation often made violations cheap, encouraging anti-union strategies.⁹⁹ If employers know that avoidable economic fallout can be part of the remedy, the balance shifts in favor of resolving meritorious cases sooner rather than later.¹⁰⁰ Under-deterrent remedies invite unfair labor practices, for those who can pay the low price.¹⁰¹ When the expected cost of a violation is limited to delayed backpay, often years later after the violation, employers can profit even when they will ultimately lose.¹⁰² A regime in which the employer is responsible for more reasonably foreseeable economic consequences pushes firms toward robust compliance programs and earlier engagement with unions. Businesses that invest in compliance and avoid unfair labor practices thus gain a competitive advantage over firms that rely on low-probability enforcement and weak remedies.¹⁰³

III. CONCLUSION

⁹⁶ See *id.* at *18.

⁹⁷ *Id.* at 19.

⁹⁸ See Jim Paretto & Dru Selden, *National Labor Relations Board Expands Make-Whole Remedy*, LITTLER MENDELSON P.C. (Dec. 15, 2022), <https://perma.cc/R8TV-YZYU>.

⁹⁹ See Michael H. Stephens, *Recent Developments in the Creation of Effective Remedies under the National Labor Relations Act*, 17 BUFF. L. REV. 830, 838 (1968); see also Michael Weiner, *Can the NLRB Deter Unfair Labor Practices? Reassessing the Punitive-Remedial Distinction in Labor Law Enforcement*, 52 UCLA L. REV. 1579, 1584–87 (2005) (contending that NLRA remedies fail to alter employer cost-benefit calculations and more meaningful remedies are necessary to change employer behavior).

¹⁰⁰ See Michael H. Stephens, *Recent Developments in the Creation of Effective Remedies under the National Labor Relations Act*, 17 BUFF. L. REV. 830, 838–840 (1968).

¹⁰¹ Weiner, *supra* note 99 at 846-847.

¹⁰² *Id.*

¹⁰³ See Robert C. Bird and Stephen Kim Park, *Turning Corporate Compliance Into Competitive Advantage*, 19 U. PA. J. BUS. L. 285, 330–32 (2017).

The current landscape leaves *Thryv* remedies standing on shaky ground. Though the Supreme Court has not ruled on the matter, the Third, Fifth, and Sixth Circuits now read § 10(c) narrowly.¹⁰⁴ This reading limits the Board to more standard relief like reinstatement and backpay, and treats anything more as impermissible consequential damages.¹⁰⁵ On the other side, the Ninth Circuit’s decision in *International Union* embraces *Thryv*’s “direct or foreseeable pecuniary harms” framework but grounds it within historic make-whole principles and emphasizes the public-rights character of NLRA enforcement.¹⁰⁶

The interpretation that ultimately wins out has major consequences for the vindication of workers’ rights and overall union bargaining.¹⁰⁷ For workers, the choice of circuit can determine whether they are restored to something close to their pre-violation position or left absorbing the fallout caused by unlawful discharge and other labor violations.¹⁰⁸ For employers, it determines whether all NLRA related liability is funneled into a single, specialized forum, or fragmented across Board proceedings and parallel state-law litigation.¹⁰⁹ For the Board, the scope of § 10(c) defines whether it remains a meaningful enforcer of workplace rights or a body confined to delayed wage restoration.

Thryv-style remedies are better aligned with the NLRA’s make-whole purpose and can ultimately benefit both employees and businesses. At the same time, there is a real need to take seriously the statutory and constitutional concerns raised in *Starbucks* and related cases. Employers’ Seventh Amendment interests and separation-of-powers limits cannot simply be brushed aside in the name of remedial innovation. However, the path forward is not to abandon *Thryv*, but to calibrate it. Courts should preserve realistic make-whole relief for provable economic harms while insisting that the Board remain within § 10(c)’s text and the boundaries of equitable, public-rights enforcement. A carefully constrained *Thryv* framework, of the kind outlined by the Ninth Circuit, does not undermine federal labor law.¹¹⁰ It strengthens its legitimacy and effectiveness by making remedies both more

¹⁰⁴ See generally *Starbucks*, WL 3089798; *Hiran*, 157 F.4th 719; *Starbucks*, 125 F.4th 78.

¹⁰⁵ See generally *Starbucks*, WL 3089798; *Hiran*, 157 F.4th 719; *Starbucks*, 125 F.4th 78.

¹⁰⁶ See generally *Int’l Union of Operating Eng’rs*, 127 F.4th 58.

¹⁰⁷ See Weiner, *supra* note 99.

¹⁰⁸ See Salinger, *supra* note 92 at 884.

¹⁰⁹ See *Thryv*, 372 NLRB No. 22 at *18.

¹¹⁰ See *Int’l Union of Operating Eng’rs*, 127 F.4th at 82.

faithful to the statute's purpose, and more transparent to the parties who must live under it.