

In the
United States Court of Appeals
For the Seventh Circuit

No. 20-2482

JENNIFER A. HADSALL,

Petitioner-Appellee,

v.

SUNBELT RENTALS, INC.,

Respondent-Appellant.

Appeal from the United States District Court for the
Eastern District of Wisconsin.
No. 2:20-cv-00181-JPS — **J. P. Stadtmueller**, *Judge*.

ARGUED JANUARY 22, 2021 — DECIDED APRIL 12, 2021

Before RIPPLE, KANNE, and SCUDDER, *Circuit Judges*.

PER CURIAM. Jennifer Hadsall, Regional Director of the National Labor Relations Board, filed a petition in the district court for a temporary injunction under section 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j),¹ pending the

¹ 29 U.S.C. § 160(j) states:

Board's resolution of unfair labor practices charges against Sunbelt Rentals, Inc. After the Director's petition was filed, the administrative law judge in the Board proceeding issued its recommendation order, concluding that Sunbelt had violated sections 8(a)(1), (3), and (5) of the Act.

Before the district court, the Director submitted that Sunbelt had violated, and continued to violate, sections 8(a)(1), (3), and (5) of the Act, by interfering with, restraining, and coercing employees in the exercise of their rights under the Act; discriminatorily eliminating the bargaining unit; and failing and refusing to bargain collectively and in good faith. The Director requested a temporary injunction order requiring good faith interim bargaining and restoration of the bargaining unit work. On August 7, 2020, the district court granted the Director's petition for an injunction under section 10(j), ordering Sunbelt to cease and desist from certain unfair labor practices. Sunbelt appealed the district court's order to this court.

While this case was under advisement, the Board issued its decision and order on March 29, 2021. The Director then filed a motion to dismiss this appeal of the injunction as moot.

The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

In response, Sunbelt submitted that this appeal was not moot because the Board had severed and retained one issue for further consideration, and therefore had not yet issued a full and final resolution of the case.²

Our circuit's precedent is clear "that the Board's resolution of the unfair labor practices charge moots the appeal." *Kinney v. Fed. Sec., Inc.*, 272 F.3d 924, 925 (7th Cir. 2001); *see also Barbour v. Central Cartage, Inc.*, 583 F.2d 335, 336–37 (7th Cir. 1978) (concluding that, just as in the section 10(l) context, "an appeal from a Section 10(j) injunction is moot once the Board rules on the underlying charges").

The fact that the Board severed one issue from the case and retained it for further consideration does not affect the applicability of these principles to the present case. The severed issue was not one presented to the district court in the Director's petition for an injunction. The issues that were the subject of the injunction have been resolved fully by the Board's order, and the temporary relief authorized by the statute is no longer available. The Board's decision has rendered this action "a cause which no longer exists." *Sears, Roebuck & Co. v.*

² The Board's order stated:

Consistent with our notice and invitation to file briefs issued March 1, 2021, we sever and retain for further consideration the issue of whether the Respondent unlawfully prepared two employee witnesses to testify at the unfair labor practice hearing by not fully complying with all the safeguards required under *Johnnie's Poultry Co.*, 146 NLRB 770 (1964), enf. denied 344 F.2d 617 (8th Cir. 1965).

Sunbelt Rentals, Inc., 370 NLRB No. 102, at 1 n.4 (Mar. 29, 2021).

Carpet Layers Union, 397 U.S. 655, 657 (1970).

Accordingly, we dismiss the appeal as moot and remand the case to the district court with directions to vacate its judgment and to dismiss as moot the Director’s petition. *Kinney*, 272 F.3d at 925 (“We agree ... that the district court’s judgment should be vacated and the case dismissed because the appeal is moot.”); *Barbour*, 583 F.2d at 337 (“Therefore this appeal is dismissed as moot and the cause is remanded to the district court so that it can vacate its previous judgment.”); *see also United States v. Munsingwear, Inc.*, 340 U.S. 36, 39–41 (1950).

DISMISSED AND REMANDED