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ADR Case Update 2022 - 12

Federal Circuit Courts

- **ARBITRATOR, NOT COURT, SHOULD DECIDE WHETHER JOINT PENSION COMMITTEE PROPERLY DETERMINED ITS SCOPE OF AUTHORITY**

United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO/CLC v National Grid

2022 WL 2313946

United States Court of Appeals, First Circuit

June 28, 2022

After acquiring the Boston Gas Company, National Grid (National) entered into a CBA with the Union. The CBA incorporated a Master Plan, which set forth pension plan provisions for all National employees, and the pre-existing Boston Gas pension plan (BGC Plan) applicable to former Boston Gas employees. The CBA provided that nothing in the CBA “will be construed” to “alter, amend, or in any way change the provisions of” the BGC Plan. When former Boston Gas employees Harry Barnard and Andrew Collieran (Claimants) claimed that their pensions were being underpaid, the Union followed the grievance process set forth in the BGC Plan. The Union submitted grievances on the Claimants’ behalf to the Joint Pension Committee (JPC) and, when the JPC reached deadlock, requested arbitration. National refused, stating that the JPC was not authorized to decide issues other than eligibility and that Claimants must submit their underpayment claims to the Plan Administrator according to the Master Plan’s grievance process. The Union sued to compel arbitration. The court granted National’s motion to dismiss, holding that the Plan Administrator had properly determined that the JPC lacked authority over the case, rendering the arbitration provision inapplicable. The Union appealed.

The United States Court of Appeals, First Circuit reversed and remanded with instructions for the lower court to compel arbitration. The Court held that the BGC Plan, “by its clear terms,” does not limit the JPC’s authority to eligibility claims but delegates the JPC to resolve questions “relating to” eligibility. This language – unique among the BGC Plan’s other delegation provisions – indicates that the parties intended a broad delegation of authority, particularly given that the BGC Plan also grants the JPC a range of discretionary authority to decide issues such as disability,

benefit distribution, and beneficiary incompetence. The BGC Plan likewise establishes that the JPC, not the Plan Administrator, has the authority to determine the scope of its own review. The BGC Plan requires the JPC to refer a case back to the parties if it lacks power to rule on that case – necessarily implying that the JPC will make that determination – and further provides that JPC decisions are binding upon the Plan Administrator. The arbitrator below should decide whether the JPC properly determined its scope of authority, keeping in mind the JPC’s range of authority beyond eligibility determinations.

- **OPEN FACTUAL QUESTIONS PRECLUDED RULING ON MOTION TO COMPEL ARBITRATION**

Knapke v PeopleConnect, Inc.
2022 WL 2336657
United States Court of Appeals, Ninth Circuit
June 29, 2022

Barbara Knapke retained attorney Christopher Reilly to sue PeopleConnect, the operator of the school yearbook database website Classmates.com, for using her name and likeness without her consent. Knapke was not a user of the site, but Reilly created a Classmates.com account which he used to confirm the presence of her name and likeness. During the registration process, Reilly agreed to the site’s Terms of Service, which included a mandatory arbitration agreement with a 30-day opt-out. When Knapke filed her complaint, PeopleConnect moved to compel arbitration, claiming that Reilly had created the account as Knapke’s agent and she, therefore, was bound by the site’s Terms. PeopleConnect offered no evidence that Reilly had been retained by Knapke, as an attorney or otherwise, before creating the account but stated that, if its motion were denied, it requested limited discovery as to Knapke’s “knowledge and acquiescence to counsel’s use of Classmates.com on her behalf.” Knapke opposed, claiming that Reilly had not acted at her direction and that a finding of agency would enable websites to force every plaintiff, including a non-user such as herself, into arbitration. The court denied the motion, concluding that there was “no evidence” to show agency; that the Terms prohibited any party from creating an account on behalf of another; and that Reilly had created the account to satisfy his Federal Rule of Civil Procedure 11(b) obligation to ensure that the suit was reasonably based on factual evidence. The court rejected PeopleConnect’s request for discovery, stating that Knapke’s opposition pleadings had disclosed the extent of her knowledge and acquiescence to Reilly’s use of the account. PeopleConnect appealed.

The United States Court of Appeals, Ninth Circuit vacated and remanded, holding that open factual questions precluded a determination of arbitrability and should be subject to discovery below. The lower court erred in relying on representations set forth in Knapke’s pleadings and the memorandum of her counsel without factual support in the form of her own declaration. While PeopleConnect had not met its burden of proof as to the existence of a binding arbitration agreement “at this initial state,” it “need not accept at face value the statements Knapke’s counsel made in a memorandum of law” and was entitled to its own discovery. The lower court’s finding that Reilly created the Classmate.com account to satisfy his Rule 11(b) obligations did not, of itself, resolve the question of agency under state law. Reilly’s declaration made no mention of his Rule 11(b) obligations, and he could have satisfied those obligations by creating the Classmates.com account and then opting out of arbitration within 30 days, retaining the right to judicial recourse. The Court rejected Knapke’s argument that PeopleConnect waived its right to discovery by failing to seek discovery before filing its motion to compel. PeopleConnect “conditionally and sufficiently” requested discovery within its motion to compel and was not required to seek discovery beforehand.

Florida

- **DURESS WAS VALIDITY ISSUE TO BE DECIDED BY ARBITRATOR**

Healy v Honorlock Incorporated
2022 WL 2352482
United States District Court, S.D. Florida

June 29, 2022

As part of its virtual learning program during the Covid-19 pandemic, Nicholas Healy's school required students to submit to webcam video surveillance during tests. Each student was required to download Honorlock's test proctoring software, submit to face and voice scans, and box-click a "Student Agreement" to Terms of Service that included a mandatory arbitration clause. Healy sued Honorlock under the Illinois Biometric Information Privacy Act for unlawfully profiting from biometric data and failing to provide required retention and destruction schedules. Honorlock moved to compel arbitration under the Terms' arbitration clause. Healy opposed on grounds of duress, claiming that he had been forced to use the software or fail his exam, which, in turn, would have prevented him from graduating, causing him to forfeit his school tuition.

The United States District Court, S.D. Florida granted Honorlock's motion to compel and denied Healy's motion to dismiss. Healy's duress claim constituted a challenge to the validity of the Student Agreement as a whole, not just the arbitration agreement. Validity is an issue of enforcement rather than formation and was therefore for the arbitrator, not the Court, to decide.

Minnesota

- **ARBITRATION DECISION REINSTATING STATE EMPLOYEE WAS FINAL AGENCY DECISION FOR PURPOSES OF APPELLATE REVIEW**

Minnesota Department of Corrections v Knutson
2022 WL 2336587
Supreme Court of Minnesota
June 29, 2022

After Nathan Knutson was terminated for cause from his managerial job with the Minnesota Department of Corrections (Department), he followed grievance procedures set forth by statute and in a Managerial Plan handbook (Handbook) which established the employment terms for managerial employees. Knutson filed a timely notice of appeal with the Bureau of Mediation Services (Bureau), which, in turn, provided him with a list of potential arbitrators. Knutson and the Department selected an arbitrator who determined that Knutson's termination lacked cause, reducing his discharge to a one-month suspension with reinstatement and back pay. The Department sought certiorari review from the court of appeals. Knutson opposed, arguing that the arbitration decision was not a final agency decision subject to the court of appeals' jurisdiction. The Bureau's only role had been to suggest possible arbitrators, Knutson argued, and the arbitration result was therefore not an "agency" decision attributable to the Bureau. Instead, Knutson claimed that an arbitration agreement had been formed by his agreement to the Handbook and, under the Uniform Arbitration Act (UAA), the arbitration decision could be enforced only in district court. The court of appeals rejected Knutson's UAA claim, holding that the arbitration decision constituted a final agency decision subject to appellate jurisdiction. Knutson petitioned for and was granted certiorari.

The Supreme Court of Minnesota affirmed that the arbitrator's decision constituted a final, appealable, agency decision. The UAA applies only to agreements enforceable under contract law. While an employee handbook may constitute an offer of unilateral contract, a promise to do something one is already legally required to do does not constitute consideration. Had the Handbook set forth more than the basic statutory employment requirements, Knutson's agreement would have constituted consideration sufficient to form a contract. It did not, however, and no contract was formed. The Court agreed with Knutson that the arbitration decision was not attributable to the Bureau but held it nonetheless subject to certiorari review. The writ of certiorari was designed to allow review of the final decision of an inferior tribunal "which, if unreversed, would constitute a final adjudication of some legal rights of the regulator." Absent certiorari review, the arbitrator's agreement would be final and constituted "precisely the kind of quasi-judicial adjudication of legal rights that the writ of certiorari was designed to review."

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