June 14, 2018

ADR Case Update 2018 - 12

Federal Circuit Courts

- **NO GROUNDS TO VACATE ARBITRATION AWARD**

  Delek Refining, Ltd. v. Local 202, et al.
  2018 WL 2465479
  United States Court of Appeals, Fifth Circuit
  June 1, 2018

  Delek and Local 202 (Union) had a collective bargaining agreement (CBA) that required Delek to give employees a first crack at new work unless certain exceptions applied (Article 8.1). The CBA also included an arbitration provision. After Delek used contract workers instead of employees for a project at Delek's refinery, the Union filed a grievance. The arbitrator sustained the Union's grievance and awarded overtime to the employees who were not assigned to the project. The Union sought clarity from the arbitrator regarding the timeframe for overtime pay. Responding via email, the arbitrator referenced some language from 8.1 (not the exceptions) and explained that his decision applied to preparation and replacement phases of the project. Delek sued to vacate the arbitration award. The Union counterclaimed, seeking compliance with the award and attorneys' fees. The court denied Delek's motion, granted the Union's, and awarded attorneys' fees. Delek appealed.

  The United States Court of Appeals for the Fifth Circuit affirmed. Delek contended that the arbitrator ignored the exceptions to 8.1 in his email response to the Union's question about timeframe. The Court found nothing in the exchange to vacate the award. That the arbitrator did not reference exceptions in his email was understandable, given that he responded to a question having nothing to do with the exceptions. Even if the email clarifications created doubt about whether the arbitrator recognized the exceptions, ambiguity was not enough to vacate an award. The Supreme Court has cautioned that overturning awards based on ambiguities in explanations arbitrators provide could discourage arbitrators from providing explanations, a concern amplified if the court relied on lack of clarity in an email to justify undoing an award. Regarding attorneys' fees, the Court found that the lower court did not abuse its discretion in finding the Union entitled to attorneys' fees for having to fight back a court challenge to the award it obtained in the parties' chosen forum (arbitration).

California

- **EMPLOYEE INVOLVED IN PRIOR CLASS ACTION AGAINST EMPLOYER COLLATERALLY ESTOPPED FROM NEW ACTION AGAINST EMPLOYER**

  Shine v. Williams-Sonoma, Inc.
  2018 WL 2411008
  Court of Appeal, Second District, Division 4, California
  May 29, 2018

  Mr. Shine, who was a member of a settlement class in a prior class action (Morales settlement) against Williams-Sonoma, filed a putative class action, alleging failure to pay prospective class members reporting-time pay, in violation of Industrial Welfare Commission (IWC) wage order and related claims. Williams-Sonoma demurred to the entire complaint, alleging, in part, that by participating in the Morales settlement agreement and receiving damages for failure to pay wages due, Mr. Shine was barred under res judicata from bringing a second suit against Williams-Sonoma for failure to pay reporting-time pay, which is a form of wages. The court sustained the demurrer and Shine appealed.

  The Court of Appeal, Second District, Division 4, California affirmed. One aspect of res judicata is issue preclusion/collateral estoppel, which precludes the litigation of a claim related to the subject matter of the first action that could have been raised in that action. The Morales complaint sought recovery of unpaid wages on behalf of class members employed by Williams-Sonoma since June 2009 and included claims of failure to provide meal and rest periods, overtime and minimum wages, timely wages, and final paychecks. Shine's complaint sought reporting-time pay for on-call shifts, a form of wages, over the same time period and could have been raised in the Morales action. Shine also alleged that the Morales settlement agreement included a waiver by Williams-Sonoma of the right to assert a res judicata defense to wage claims which, like Shine's claim, were dependent on facts not mentioned in the Morales complaint. The first clause of the release provided a general release of all claims and the subsequent phrase was "pled in the complaint." Williams-Sonoma argued that the phrase "pled in the complaint" should be read to modify only the phrase immediately preceding it. Shine argued that the phrase imposed a natural limitation on the scope of the entire release. The Court found Williams-Sonoma's reading to provide the more accurate and natural construction of the release. The release was clear and unambiguous.

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