



November 20, 2003

Collective Bargaining Agreements Must Contain Clear and Unmistakable Waivers of Employees' Rights to Sue

On November 17, 2003, the Second Appellate District held that the findings of a labor arbitrator are not binding on other civil claims where a collective bargaining agreement does not contain a clear and unmistakable waiver of the employee's right to sue on a particular statutory claim.

In *Taylor v. Lockheed Martin Corporation*, the plaintiff was employed as a rocket engine mechanic at Vandenberg Air Force Base. The plaintiff's employment was pursuant to a collective bargaining agreement which provided for the arbitration of employment grievances. In the course of his employment, the plaintiff allegedly threatened co-workers. He was placed on an unpaid leave and was told that he could not return to work unless he went to counseling. The plaintiff refused to go to counseling and eventually was terminated.

The plaintiff claimed that his termination was racially motivated and in retaliation for filing an earlier complaint with Cal OSHA. The plaintiff filed a grievance with the union and a separate civil complaint alleging wrongful termination, retaliation, and race discrimination claims.

Meanwhile, in the arbitration that resulted from the plaintiff's grievance, the arbitrator found that the plaintiff had been terminated for "just cause." Following the arbitrator's decision, Lockheed moved for summary judgment, arguing that the arbitrator's finding of "just cause" precluded the plaintiff from arguing that he had been terminated for improper reasons. The trial court agreed and granted summary judgment in Lockheed's favor.

The plaintiff appealed, and the Second District Court of Appeal reversed summary judgment, holding that the arbitration decision did not preclude the plaintiff from pursuing his statutory claims. The court reasoned that under both state and federal law, a labor arbitration can have preclusive effect on a subsequent statutory claim **only** if the collective bargaining agreement contains a clear and unmistakable waiver of the employee's right to file a lawsuit on the statutory claim. The court found that there was no evidence that the collective bargaining agreement in question contained a clear and unmistakable waiver of the union members' individual right to sue for statutory claims.

For clients with collective bargaining agreements, it would be prudent to consult with legal counsel to review the breadth of the collective bargaining agreements. If the waivers of the union members' rights to sue are not "unmistakably" clear, this should be remedied when the collective bargaining agreement comes up for renegotiation.

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