Who Decides What? A Review of Last Week's U.S. Supreme Court Decisions Affecting Employers

I. *Rent-A-Center, West, Inc. v. Jackson*

On June, 21, 2010, in *Rent-A-Center, West, Inc. v. Jackson*, the United States Supreme Court held that when an employee signs an arbitration agreement that contains an "express, unequivocal agreement to arbitrate" an arbitrator gets to determine the overall enforceability of the agreement (e.g., whether there was "duress," "a meeting of the minds," "sufficient consideration," etc.). In this disappointing decision for plaintiffs' employment lawyers nationwide, the Court held 5 to 4 that the only question a court will be permitted to consider regarding an arbitration agreement is whether the agreement contains an "express, unequivocal agreement to arbitrate." If such an agreement is deemed to exist, all other issues, including the overall enforceability of the agreement, must be resolved by an arbitrator.

In *Rent-A-Center, West, Inc. v. Jackson*, Rent-A-Center required its employees to sign mandatory arbitration agreements. The Rent-A-Center agreement expressly stated that "[t]he Arbitrator … shall have exclusive authority to resolve any dispute relating to the … enforceability … of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable."

The plaintiff, Mr. Jackson, had signed one of these agreements during his employment with Rent-A-Center, but after his employment ended, he sued Rent-A-Center for discrimination in federal court anyway. His attorneys argued (successfully) before the Ninth Circuit Court of Appeals that Rent-A-Center's mandatory arbitration agreement was "as a whole, unconscionable" and therefore unenforceable. However, they did not contend that the agreement failed to create an "express, unequivocal agreement to arbitrate."

The Supreme Court reasoned that because the express, unequivocal agreement to arbitrate was not challenged by Mr. Jackson, the enforceability of the agreement as a whole (e.g., whether there was duress, a meeting of the minds, sufficient consideration, etc.) was a matter for the arbitrator to resolve – because "it was clear" from the face of the agreement that the parties had intended for all issues between them, including but not limited to the enforceability of the agreement as a whole, to be resolved by an arbitrator.

In making this decision, the Court emphasized that arbitration provisions are severable from agreements as a whole. In light of this characteristic of these provisions, the Court held that only a challenge to the validity of them (i.e., is there an express, unequivocal agreement to arbitrate?) is "relevant to a court's determination of whether the arbitration agreement at issue is enforceable." (Emphasis supplied). Because Mr. Jackson failed to challenge the validity of the provision of his arbitration agreement which gave the arbitrator exclusive authority to determine all issues between the parties, including the arbitration agreement's enforceability, (i.e., he did not challenge whether there was an express, unequivocal agreement to arbitrate), the arbitration agreement was upheld under Section 2 of the FAA.

What this Decision Means for Employers

After reading the *Rent-A-Center, West, Inc. v. Jackson* opinion, plaintiffs' attorneys will not

make the same mistake Mr. Jackson's attorneys did in believing that challenging an arbitration agreement as a whole as simply being "unconscionable" is a valid attack which will provide sufficient grounds to challenge the agreement in court. The only viable court challenge – and the one plaintiffs' attorneys will now know to make after *Rent-A-Center, West, Inc. v. Jackson* -- is whether there is an "express, unequivocal agreement to arbitrate." So make sure there is one! We can help!

II. *Granite Rock Co. v. International Brotherhood of Teamsters*

On June 24, 2010, in *Granite Rock Co. v. International Brotherhood of Teamsters*, the Supreme Court issued the final labor and employment law decision for its 2009-2010 term, declining to recognize a federal tort cause of action against an international union for inciting a local union to violate the terms of its collective bargaining agreement. In addition, the Court ruled that a dispute between an employer and a union regarding the ratification date of a bargaining agreement ("CBA") is a matter for a federal court, not an arbitrator, to decide.

In early June 2004, concrete ready-mix drivers represented by Teamsters Local 287 ("Local") went on strike against Granite Rock, uprooting more than 450 employees from their jobs after negotiations concerning a new CBA hit an impasse. On July 2, 2004, the parties reached an agreement on the terms and ratified the new CBA, which contained a no-strike clause. Following ratification, the union refused to allow its members to return to work until Granite Rock agreed to release and hold harmless the Local, and its parent, the International Brotherhood of Teamsters ("IBT"), from any damages and unfair labor practice charges incurred during the strike. The proposed release was not a "condition of the newly-ratified CBA, or of the Local's decision to cease picketing;" indeed, the Local did not have either a back-to-work or a hold-harmless agreement in place when it ratified the CBA. Nonetheless, IBT instructed the Local to continue striking even though the new CBA had been ratified, in effort to induce Granite Rock to provide the release. Granite Rock refused to provide any such release and cited the new CBA in support of its position that any continued strike activity would violate the no-strike clause which currently was in effect.

In response, IBT and the Local announced a company-wide strike, prompting Granite Rock to file suit against both entities, invoking federal jurisdiction under § 301 of the Labor Management Relations Act ("LMRA"), "seeking strike-related damages for the unions' alleged breach of contract, and asking for an injunction against the ongoing strike because the hold-harmless dispute was an arbitrable grievance under the new CBA." Granite Rock later amended its complaint to add federal inducement of breach and interference with a contract (tortuous interference) claims against IBT. "According to Granite Rock, IBT not only instigated [the] strike; it supported and directed it. IBT provided pay and benefits to union members who refused to return to work, directed the Local's negotiations with Granite Rock, supported the Local financially during the strike period with a $1.2 million loan, and represented to Granite Rock that IBT had unilateral authority to end the work stoppage in exchange for a hold-harmless agreement covering IBT members within and outside the Local's bargaining unit." The District Court dismissed Granite Rock's tortious interference claims, and the jury reached a unanimous verdict that the CBA was indeed ratified on July 2, 2004. The Court of Appeals (again!) for the Ninth Circuit affirmed the dismissal of the tort claims against IBT but disagreed with the District Court's determination that the date of the CBA's ratification was a matter of "judicial resolution." The Ninth Circuit held instead that the ratification issue should have been submitted to arbitration.

The Supreme Court reversed the Ninth Circuit's decision as to the arbitration issue, but upheld the jury verdict dismissing Granite Rock's tortious interference claims. Noting the federal policy favoring arbitration, the Court explained that such a policy could not override "the principal that a court may submit to arbitration only those disputes … that the parties have agreed to submit." The Court went on to note in dicta that the dispute regarding the

ratification (and thereby, the formation) of the CBA fell outside the scope of the arbitration provision to further bolster its holding.

Finally, the Court refused to recognize a new federal tort claim under the LMRA, but noted that Granite Rock might pursue other causes of action against IBT in its quest for damages, including state law remedies and an administrative claim before the NLRB on the premise that IBT acted as an agent or alter ego of the Local.

What this Decision Means for Employers

To those who are dealing with a union workforce, note that this opinion is restricting an employer's remedies when faced with an international union inciting local unions to violate their CBA's to state law remedies and filing unfair labor practice charges. It also leaves courts as the exclusive decisionmakers regarding the ratification dates of CBA's.

If you have questions concerning these U.S. Supreme Court decisions or other labor and employment law matters, please contact Kyle Young, Sarah Maxwell, or any other member of Miller & Martin's Labor & Employment Practice Group.

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