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July 2010

The U.S. Supreme Court held that courts, not arbitrators, must decide when a contract containing an arbitration clause was formed and provided critical guidance regarding when international unions can be held responsible for causing local unions to breach no-strike clauses in labor contracts.

U.S. Supreme Court Rules that Contract Formation Issues Are for Court Determination and Provides Guidance for Litigation Against International Union

By Garry Mathiason, Alan Levins, Adam J. Peters and Rachelle Wills

The U.S. Supreme Court has issued a pro-employer decision that addresses two key issues concerning arbitration and the enforceability of labor contracts. The Court's decision in *Granite Rock Company v. International Brotherhood of Teamsters et al.*, No. 08-1214, stemmed from a lawsuit brought by the employer against a local union and an international union because of a 2004 labor strike that, as alleged, violated the terms of a no-strike clause in the employer's valid and enforceable collective bargaining agreement with the local union. Littler represented Granite Rock in the litigation and before the Supreme Court.

In a majority opinion authored by Justice Thomas, the Court confirmed that courts, not arbitrators, should decide when a contract containing an arbitration clause was initially formed. The Court went on to explain that the date of the initial formation can be critical to determining formation and that the date of formation is also a question for courts, not arbitrators. The Court emphasized the importance of the scope of the arbitration clause in the judicial determination of what questions should be submitted to arbitration under both commercial and labor contracts. On the second issue of whether a non-signatory international union could be held responsible for causing a breach of its local union's collective bargaining agreement, the Court ruled that it was not necessary to create a federal common law tortious interference cause of action. The Court further ruled that the company had adequately preserved an agency and/or alter-ego claim against the International. Notably, this decision was the first time the Court provided a road map for holding an international union and local union jointly responsible for violation of a no-strike clause.

Background

Granite Rock and Teamsters Local 287 were parties to a collective bargaining agreement that expired in April 2004. In June 2004, Local 287's members went out on strike. On July 2, 2004, the parties reached agreement on the terms of a new contract, subject to ratification by Local 287's members. The parties later disputed

when that ratification vote occurred. Granite Rock argued that ratification occurred on July 2, 2004, but Local 287 contended that the ratification vote took place on August 22, 2004.

The employer alleged that, when the International learned about the new contract, it demanded that Local 287 make Granite Rock sign a separate "hold harmless" agreement benefiting the International. Upon Granite Rock's refusal to sign the hold harmless agreement, the International instigated a continued strike by Local 287 and its members, and, as alleged by Granite Rock, directed Local 287 to deny that the new labor contract had been ratified.

Granite Rock filed a complaint in federal district court against Local 287 and the International. Both unions moved to dismiss Granite Rock's complaint. The local argued that, pursuant to the arbitration provision of the parties' contract, an arbitrator, not the court, should decide all issues relating to Granite Rock's claims against Local 287, including the issue of when the contract had been formed. The International separately argued that no cause of action against a party not a signatory to the agreement existed under section 301 of the Labor Management Relations Act (LMRA). Granite Rock opposed these motions, arguing that the court, not an arbitrator, must decide when the contract had been formed and that a cause of action against the International should exist under section 301 when a non-signatory party directly causes a signatory to breach the contract.

The United States District Court for the Northern District of California agreed with Granite Rock that the court should decide when the contract was formed, and a jury unanimously held that the contract was ratified on July 2, 2004, before the strike resumed. On the second issue, the district court dismissed Granite Rock's claim against the International, reasoning that no claim for tortious contractual interference exists against a non-signatory party under section 301 of the LMRA. The Ninth Circuit Court of Appeals affirmed the district court's decision that no cause of action for contractual interference existed under section 301 against a non-signatory party, stating that any relief would have to come from Congress. In addition, it reversed the district court's decision that the court, not an arbitrator, should decide when the contract was formed. The Ninth Circuit reasoned that Granite Rock had "implicitly" consented to arbitrate that dispute when it sued to enforce the no-strike clause because the contract had an arbitration clause. The appellate court also stated the presumption of arbitrability applied because Granite Rock did not separately challenge the validity of the arbitration provision.

The Supreme Court's Decision

Issue One: The Court's Authority to Decide Issues of Arbitrability

In a decision that again reaffirmed the courts' central role in deciding issues of arbitrability, the Supreme Court concluded that the district court correctly decided when Local 287 and Granite Rock's contract was formed. The Supreme Court first rejected Local 287's argument that the arbitrator must decide all disputes without a specific challenge by Granite Rock to the validity of the contract's arbitration provision. The Supreme Court reasoned that, absent contractual language stating otherwise, a party cannot be forced to arbitrate a dispute over the date of initial formation of the arbitration agreement. The Court next rejected the argument that the presumption of arbitrability required that the formation dispute be submitted to arbitration, holding that the presumption does not "override[] the principle that a court may submit to arbitration 'only those disputes . . . that the parties have agreed to submit.'"

The Court went on to hold that the parties' arbitration clause did not evidence their consent to arbitrate the formation issue, recognizing that the arbitration clause pertained only to disputes that "arise under" the contract and that the language of that clause presupposed that a contract had been formed. The Court emphatically rejected the Ninth Circuit's reasoning that Granite Rock had "implicitly" consented to arbitration by suing under the contract, stating that Granite Rock's decision to sue for compliance "does not establish an agreement, 'implicit' or otherwise, to arbitrate an issue . . . that Granite Rock did not raise, and that Granite Rock has always (and rightly . . .) characterized as beyond the scope of the CBA's arbitration clause."

Issue Two: Labor-Management Relations Act Section 301(a) Claims against a Third Party

Turning to the parties' second issue, the Court unanimously held that it was not necessary at this time to create a separate, federal common-law tort cause of action for interference under LMRA Section 301(a). The Court added: "[t]hat we decline to do so does not mean that we approve of the IBT's alleged actions." The Court further stated that Granite Rock "describes a course of conduct that does indeed seem to strike at the heart of the collective bargaining process federal labor laws were designed to protect."

Toward this end, the Court acknowledged that a party to a labor contract that is breached in part by the actions of a third party may proceed on a federal breach of contract action against the third party under agency or alter-ego theories – claims that Granite Rock had preserved throughout the litigation. The Court further opined that state law might also provide a remedy, and that an unfair labor practice charge as well may be available from the National Labor Relations Board (NLRB) in response to an international union that causes "its affiliated local unions to 'impose extraneous non-bargaining unit considerations into the collective bargaining process.'" The Court specifically ruled that Granite Rock could proceed against the IBT on remand using an agency or alter-ego theory.

Significance of the *Granite Rock* Decision for Unionized and Non-Unionized Companies

On the arbitration question, the Court held that formation issues were treated the same for commercial contracts under the Federal Arbitration Act (FAA) as labor contracts. While it has long been the law that initial formation is an issue for the courts, not arbitrators, it was not clear whether this covered the date of formation when the legitimacy of the proposed arbitration clause was undisputed. The 7-2 majority held that the date of formation could be as important to or more important than formation. Accordingly, employers are empowered to go to court on issues closely associated with and central to the formation question. Companies should carefully review their existing and future arbitration clauses, as this is the doorway for entering arbitration – a doorway regulated by the courts.

Turning to the second issue, most observers have assumed that international unions not signatory to their local unions' contracts were immune from Section 301 litigation. Only the Third Circuit had clearly held that a federal common law tortious interference cause of action existed. The Supreme Court left open the door to finding such a cause of action in the future, and clarified how an interfering international union could be responsible for causing a local to breach its contract. Agency principles have historically been used. However, the Court also recognized that an alter-ego theory could apply to unions despite the fact that unions are normally unincorporated associations. Action in state court and before the NLRB were also left as possibilities. After a contract has been consummated (as in the *Granite Rock* case), concurrent Section 301 liability and coverage under the National Labor Relations Act (NLRA) are possible.

The willingness of the Court to find means of holding the international union responsible suggests strongly that the International in the case in issue can no longer claim the immunity it did before the Ninth Circuit. Consequently, it may be advantageous for employers seeking stronger application of contractual no-strike clauses to reference the international union and/or invite the international union to be a signatory to the agreement (although signatory status is most likely a non-mandatory bargaining subject).

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