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High Court Ruling Sheds Light On Role Of Arbitration

By **Leigh Kamping-Carder**

Law360, New York (June 24, 2010) -- Handing a partial victory to Granite Rock Co. in a feud with an International Brotherhood of Teamsters chapter, the U.S. Supreme Court on Thursday further clarified its stance on arbitration jurisdiction, finding that courts — not arbitrators — must hear disputes over the formation of collective bargaining agreements.

In a 7-2 decision delivered by Justice Clarence Thomas, the high court decided that a dispute between the company and Teamsters Local 287 over the ratification date of a new collective bargaining agreement was a matter for the district court to resolve, since it went to the heart of whether the parties consented to a deal and formed the contract.

"It completes the picture of arbitration: when it goes to the court, when it goes to the arbitrator, what are all the rules and conditions to make that happen," said Granite Rock attorney Garry Mathiason of Littler Mendelson PC, noting that the ruling is the second this week to address arbitration in labor disputes, following the Rent-A-Center West v. Jackson decision.

The opinion, which overturns a U.S. Court of Appeals for the Ninth Circuit ruling, clarifies the balance between two competing principles: that courts have a presumption favoring arbitration in contract disputes between labor and management, and that courts must rule on the validity of the contract in the first place, lawyers said.

"There's certainly nothing new to the fundamental principle that determining whether or not there's an issue to arbitrate that's covered by a contract is for the court to decide," said Jeremy P. Sherman, a traditional labor lawyer and partner at Seyfarth Shaw LLP. "That has been the decision of the law for a long time. At the same time, what gets this more complicated is not only the facts, but the strong federal presumption favoring arbitrability."

Typically, management agrees to arbitration as a "quid pro quo" in exchange for a commitment from a union not to strike, Sherman said.

"Each side gives up something to have a third party decide its disputes," Sherman said. "The flip side of that is that neither party — neither management nor labor — should be required to submit something to arbitration unless they've entered into this contractual agreement."

Although the Supreme Court noted the presumption favoring arbitration, it specified that it has only applied this presumption in cases where a court has found the parties intended to arbitrate under a validly formed contract.

The ruling serves as a welcome reminder that courts play an important, if limited, role in these types of cases, said Michael Lebowich, co-head of Proskauer Rose LLP's labor management relations group, citing a tendency among some courts to let arbitrators handle as much as possible.

“It is continuing a long line of cases where the Supreme Court has gotten to the decision and had the opportunity to decide who makes the decision as far as an agreement to arbitrate — a court or an arbitrator,” he said.

In its October 2008 ruling, the Ninth Circuit held that Granite Rock and Local 287 should be compelled to arbitrate their dispute in its entirety.

The company and Local 287 had a collective bargaining agreement in place from 1999 through 2004, but talks to enter a new agreement broke down, and the union members went on strike. On July 2, 2002, Granite Rock and Local 287 reached a "tentative agreement" for a new deal.

The proposed contract had a no-strike clause, as well as a provision for arbitrating disputes that arose under the collective bargaining agreement. Local 287 demanded that, before the employees would return to work, Granite Rock must enter a separate “back-to-work” agreement that would hold the unions harmless for strike-related damages.

But the parties disagreed on when the union ratified the deal. Granite Rock claimed the new contract went into effect on July 2, but the chapter said it ratified the agreement on Aug. 22, following a second ratification vote.

Granite Rock sued Local 287 for breaching the no-strike provision of the new agreement and the Teamsters for tortious interference for its alleged role in instigating the strike. The company sought damages for breach of contract.

The district court ruled that Granite Rock and Local 287 must submit their contract dispute to arbitration if a contract existed as of July 2, and reserved the power to determine whether a contract actually existed. A jury later unanimously found that the contract had been formed.

But the Ninth Circuit reversed the district court's ruling that it had jurisdiction, finding that the parties were required to submit any contract disputes to an arbitrator — even a dispute over whether a contract exists — and rendering the jury verdict moot.

That ruling was akin to putting the cart before the horse, according to Archis Parasharami, a partner at Mayer Brown LLP who helped author an amicus brief on behalf of the U.S. Chamber of Commerce.

“It's hard to tell why the [Supreme Court] takes cases, but I think that it perceives that the Ninth Circuit had been at odds with where the other circuits were on this basic question of whether and when a contract arbitration has been formed,” he said, adding that he was speaking on his own behalf and not for the Chamber.

The Teamsters warned that the decision would lead to instability and an increase in labor disputes, calling it “an unfortunate retreat from long-settled federal labor policies favoring the arbitration of all labor disputes.”

In the second part of its Thursday opinion, the Supreme Court found that Granite Rock may not bring a federal tort claim against the Teamsters under the Labor Management Relations Act, dismissing the company's contention that a ruling barring its claim would allow international unions to interfere freely with local unions' collective bargaining agreements.

“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,” the opinion said. “As the record in this case demonstrates, however, a new federal tort claim is not the only possible remedy for this conduct.”

The high court left Granite Rock with a number of alternatives, including a claim under state tort law, a claim before the National Labor Relations Board or a claim against Teamsters as the alter ego of the local chapter.

Although labor lawyers said they would have to wait and see how those alternatives play out before ascertaining the significance of the ruling, Mathiason expressed his pleasure that the Supreme Court had provided a remedy for Granite Rock to pursue its damage claims.

"The Supreme Court has actually opened the door to additional legal steps that we can now take, and we will carefully evaluate those and decide on the best course of action,” Mathiason said.

Justices John G. Roberts, Antonin Scalia, Anthony Kennedy, Clarence Thomas, Stephen Breyer, Samuel Alito and Ruth Bader Ginsburg joined Justice Thomas in the majority. Justices Sonia Sotomayor and John Paul Stevens dissented in part.

Granite Rock is represented by Littler Mendelson PC.

Local 287 is represented by Beeson Tayer & Bodine.

The IBT is represented by Altshuler Berzon LLP.

The case is Granite Rock Co. v. International Brotherhood of Teamsters et al., case number 08-1214, in the U.S. Supreme Court.

--Additional reporting by Ben James