

# For Employee to Be Compelled to Pursue FLSA Claims Pursuant to Contract Grievance Procedures, Language of CBA Must be Clear and Unmistakable

## Labor & Employment Law Update

on June 6, 2017

On May 15, 2017, the seventh circuit ruled that unless the language in a collective bargaining agreement ("CBA") explicitly states that the employee must resolve his statutory and contractual rights through the grievance procedures in the contract, an employee is free to file suit in court to resolve his statutory claims.

After being terminated from employment, Luis Vega, a seasonal employee at Forest Home Cemetery, attempted to collect unpaid wages by resorting to the grievance procedures of his CBA. When these efforts proved futile, Vega filed a Fair Labor Standards Act (FLSA) claim in the United States District Court for the Northern District of Illinois. Vega's employer filed a motion to dismiss based on Vega's failure to exhaust the grievance procedures in the CBA. Judge Charles Norgle agreed with the employer's argument and entered judgment against Vega.

On appeal before the seventh circuit, the employer asserted that the CBA, by establishing a grievance procedure to resolve disputes over pay, compelled Vega to go through said procedure to resolve his FLSA claim. This argument prompted the question of whether the terms of the CBA required Vega to resolve his FLSA wage claims through its grievance procedures, or whether Vega could pursue a FLSA claim in court even if he had not yet exhausted his contractual remedies.

Writing for the court, Judge Ilana Rovner ruled in Vega's favor reversing the district court ruling. In the decision, the court noted that an employee has statutory as well as contractual rights and that the former are independent from any rights under the union contract. Moreover, citing *14 Penn Plaza LLC v. Pyett*, a 2009 Supreme Court case, the court also stated that an agreement to arbitrate *statutory* claims is enforceable against an aggrieved employee if the language of the agreement to that end is "clear and unmistakable." In Vega's case, the court found that generalized language regarding pay disputes was insufficient and that

the agreement could not be read to compel an employee to resolve his rights under FLSA through the grievance process. Accordingly, Vega did not have to exhaust his contractual remedies.

The *Vega* decision clearly establishes that employers looking to have statutory claims resolved through arbitration grievance procedures must pursue explicit language to that end. However, before doing so, employers should carefully consider if arbitration represents the best method for resolution of such claims. Grievance procedures may be suitable for resolution of some statutory rights, but not for others. And while arbitration may expedite claims and even limit remedies, vacating unfavorable awards can be an unsurmountable task. Bottom line, before bargaining for such language, employers should consult counsel to determine the proper course of action.

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