

# Seventh Circuit Opinion Clarifies What Language is Necessary for Collective Bargaining Agreements to Require Arbitration of Statutory Claims

## Labor & Employment Law Update

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The seventh circuit recently clarified under what circumstance a collective bargaining agreement may restrict an employee's access to a judicial forum for purposes of resolving statutory claims. In Vega v. New Forest Home Cemetery, the appellate court reversed the lower court's dismissal of a Fair Labor and Standards Act (FLSA) claim brought by a former employee who had not complied with the grievance process provided in his collective bargaining agreement (CBA).

Luis Vega filed an FLSA lawsuit claiming New Forest failed to pay him for 54 hours of work. Vega was a union member and therefore subject to the union's CBA which included a mandatory grievance process culminating in arbitration. The district court dismissed Vega's claim because he had not exhausted his contractual remedies under the CBA.

The seventh circuit heard the appeal to answer a straightforward question: "Does the collective bargaining agreement require Vega to resolve his FLSA minimum wage claim through the specified grievance process, or does it allow him to ask a court to resolve that claim regardless of whether he has exhausted his contractual remedies?"

In answering this question, the seventh circuit confirmed several key points:

1. An employee's contractual obligations under a CBA are independent from an employee's statutory rights, such as those under the FLSA, and therefore, a CBA cannot waive an employee's statutory rights.
2. However, a contractual agreement to arbitrate a statutory claim does waive that statutory right. Accordingly, a CBA can compel a union employee to pursue statutory claims through arbitration instead of in court.
3. But, an arbitration provision in a CBA will only operate to compel arbitration of individual union member's statutory claims if its intent to do so is stated in

“clear and unmistakable terms.”

The court concluded that Vega’s CBA did not state in sufficiently “clear and unmistakable terms” that the grievance system, culminating in arbitration, was the exclusive remedy for alleged FLSA violations or pay disputes, and therefore, Vega’s failure to pursue a grievance was irrelevant and he was allowed to pursue his claim in court.

To add clarity, the court provided examples:

- An arbitration provision that lists a variety of statutory claims and states that all such claims “shall be subject to the grievance and arbitration provision [...] as the sole and exclusive remedy for violations” constitutes an explicit waiver of access to a judicial forum.
- On the other hand, arbitration provisions merely stating that disputes as to any provision of the agreement, pay, or working conditions must be resolved through arbitration is not a clear and unmistakable waiver, because an employee could read the provision as covering only disputes over the CBA requirements themselves as opposed to statutory violations.

Employers should take care when drafting mandatory arbitration provisions to ensure that provisions intended to mandate arbitration of statutory claims are stated in sufficiently “clear and unmistakable terms.”

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