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Third Circuit Takes Supreme Court Cue and Rejects “Implied” Union Contracts

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On March 30, 2022, three judge panel of the Third Circuit Court of Appeals unanimously overruled prior precedent allowing “implied” contracts to survive the expiration of a written agreement. The instant panel held, instead, that “implied” contract provisions that “have no durational limit of their own” are “governed by the general durational clauses of the CBAs.” *Pittsburgh Mailers Union Local 22, et al., v. PG Publishing Co. Inc., No. 21-1249 at *9 (3d Cir. 2022) overruling Luden’s Inc. v. Local Union No. 6 of the Bakery, Confectionery & Tobacco Workers International Union* 28 F. 3d 347 (3d Cir. 1994). In upholding the District Court’s ruling granting summary judgment in favor of the Company, the panel refused to require the Pittsburgh Post-Gazette (“Post-Gazette”) to arbitrate a grievance with unions for its workers under their expired contract.

Factual and Procedural History

The Post-Gazette and the unions had a CBA which included an agreement to arbitrate disputes on a case-by-case basis. Two months before the contract expiration, the Company sent letters to the unions disavowing all contractual obligations at the CBAs expiration, other than established wages, hour and terms and condition of employment. While bargaining over a new contract, the Post-Gazette refused to cover a yearly increase in the unions’ health care costs, as it had under previous contracts. The unions claimed that the Post-Gazette violated the expired CBA by failing to provide these health benefits and sought to arbitrate the issue, citing *Luden* to support their claim that the Post-Gazette should still honor the arbitration clause in the expired contract.

After discovery, the unions and the Post-Gazette each moved for summary judgment. The District Court granted Post-Gazette’s motion for summary judgment, holding that the court could not compel the Company to arbitrate. The unions appealed.

The Third Circuit’s Analysis

In 1994, the Circuit held in *Luden's* that "an arbitration clause may survive the expiration of termination of a CBA intact as a term of a new implied-in-fact CBA unless (i) both parties in fact intend the term not to survive, or (ii) under the totality of the circumstances either party to the lapsed CBA objectively manifests to the other a particularized intent [], to disavow or repudiate that term." *Luden's*, 28 F.3d at 364.

However, the Supreme Court issued two decisions in 2015 and 2018 undercutting *Luden*. In both rulings, the Supreme Court held that CBAs do not "infer" lifetime benefits unless the language explicitly says otherwise and that courts should interpret CBAs "according to ordinary principles of contract law." *M&G Polymers USA, LCC v. Tackett*, 574 U.S. 427 (2015); *CHN Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018).

In its decision to overrule *Luden*, Judge Roth explained that in keeping with these Supreme Court precedents, if a specific provision does not have its own durational clause, the general durational clause of the CBA applies. Further, the Panel reasoned that as a matter of contract law the arbitration provisions had no durational limit, and as such, the obligation to arbitrate expired with the CBA.

Takeaways

This decision—driven by clear rulings from the Supreme Court– is consistent with those in the Eighth, Ninth and Seventh Circuits, indicating that the Circuits are moving towards a general consensus regarding whether provisions in a CBA survive the expiration of the CBA. Employers with operations in other circuits should take note that certain provisions of the expired CBA – such as arbitration provisions – may survive expiration,–until such circuits rule on the issue in light of the Supreme Court precedent.

We will continue to monitor these developments and keep you informed as to any updates in other circuits.

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