When Union Contracts And Overtime Law Conflict: Court Provides Balance For Employers

Insights
4.01.19

The federal appeals court that oversees cases arising from California recently handed down an opinion that helps provide guidance to those employers trying to comply with collective bargaining agreements while simultaneously being challenged to apply potentially inconsistent definitions in California's overtime law. The 9th Circuit's January 29 decision in *Curtis et al v. Irwin Industries, Inc.* handed a victory to the employer in question, but you shouldn't necessarily think this case provides you with an automatic reprieve from state law in every situation. Read on in order to understand the nuances at play and whether federal preemption might work to provide clarity for your California operations.

The Framework: Preemption Should Be Narrowly Applied
Employers will often argue that certain employment claims brought against them should be preempted by the Labor Management Relations Act (LMRA), a federal law that provides parameters for unionized workplaces. The U.S. Supreme Court has emphasized that LMRA preemption cannot be read broadly, however, and various terms and conditions of employment should not necessarily be preempted even if the issue in question is governed by a collective bargaining agreement (CBA). As a result, courts apply a two-question test to ensure that preemption is applied only where necessary to keep the role of labor arbitration intact with resolving CBA disputes.

The first question is whether the claim seeks "purely to vindicate a right or duty created by the CBA itself." If yes, then the claim is preempted. If no, then the court examines the second question: whether the state law claim is "substantially dependent" on analysis of the CBA such that it requires interpretation of the meaning of the contract terms in the CBA.

In the past, California has seen a great deal of litigation regarding this two-part test, both in federal and state courts. In fact, we have seen these kinds of disputes originate in the state's Division of Labor Standard Enforcement, with a variety of differing results based on the facts and applicable law in each case. The issue arose once again in the *Curtis* case, this time with respect to the enforcement of state overtime law.

The Set-Up: Employee Claims Overtime Law Applies Independently Of His CBA Terms
Carl Curtis formerly worked for Irwin Industries on an oil platform on the Outer Continental Shelf. His employment was subject to two CBAs which contained detailed provisions on wages, overtime,

and work hours. Curtis's work schedule consisted of 12-hour shifts for a seven-day period, during which time he had to remain on the oil platform.

Curtis filed a putative class action complaint arguing that the 12 hours he was off-duty each day counted as "hours worked" under California's Labor Code because he was unable to leave the oil platform during those off-duty hours. He argued that because a 2015 California Supreme Court case found that security guards were entitled to be compensated for on-call hours at the worksite (*Mendiola v. CPS Sec. Sols., Inc.*), the same logic should apply to his off-duty hours. As a practical matter, he noted, he could not leave the oil platform, just as the security guards couldn't leave their worksite. Curtis sought unpaid wages, along with recovery based on several other alleged violations of California law.

Irwin filed a motion to dismiss the claims, arguing that the LMRA preempts Curtis's claims. In response, Curtis outlined a number of arguments; most critically after he contended that his claims were based on statutory rights which exist independently of the CBAs and do not require any interpretation of the CBAs, which should mean that the claims are not preempted. Ultimately, the dispute landed before the 9th Circuit, which issued its ruling in early 2019.

The Issue: Is California's Overtime Law Preempted By The LMRA?

Curtis cited to a 2003 case from the 9th Circuit where the appeals court held that a claim for overtime hours was not preempted by the LMRA (*Gregory v. SCIE, LLC*). In that case, the court concluded that section 510 of California's Labor Code determined what constitutes "overtime hours," and thus the claim rested on the interpretation of California law rather than a CBA. Because the analysis did not require an interpretation of the CBA, the claims were not preempted. Curtis said that the court should follow its own precedent and once again rule that overtime claims were not preempted by federal law.

However, the 9th Circuit noted that *Gregory* was determined without the benefit of any California cases on the subject. It went on to examine the applicable statutes and case law relating to overtime compensation before rendering a final ruling.

The court first pointed out that California's overtime law, Labor Code section 510, contains an express exception that "requirements of this section do not apply to the payment of overtime compensation to an employee working pursuant to … [a]n alternative workweek schedule adopted pursuant to a collective bargaining agreement pursuant to Section 514." Section 514 exempts an employer from California's overtime laws if a CBA "expressly provides for the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage." The court reasoned that, if the CBAs in this case meet the requirements of Labor Code Section 514, Curtis's right to overtime exists solely within the CBA and thus is preempted.

Curtis argued that the CBAs did not meet the requirements of Labor Code Section 514 because the CBAs definitions of overtime and overtime rates did not match the definitions in Labor Code Section 510. The 9th Circuit quickly dismissed this argument noting that if a CBA had to meet all of the requirements of Labor Code Section 510 in order to qualify, such an interpretation would make the exception superfluous. Thus, it rejected this reading of the law.

Next, the 9th Circuit went on to point out that California case law holds that if a CBA meets the requirements of Labor Code Section 514, the requirements of Labor Code Section 510(a) do not apply because unionized employees are permitted to bargain over both the rate of overtime pay as well as the point at which overtime pay begins.

Specifically, the 9th Circuit examined a 2014 California Appellate Court case wherein employees argued that because their CBA's definition of "overtime" was less generous than the provisions of Labor Code Section 510, the employer had to pay overtime in accordance with the Labor Code (*Vranish v. Exxon Mobil Corp*). In that case, the court found that as long as the CBA meets the requirements of Labor Code Section 514, the employer is only required to comply with the terms of the CBA. As a result, the 9th Circuit held, courts must examine the CBA to determine what constitutes "overtime."

The Bottom Line: LMRA Preemption Applies To Some Overtime Claims

After Curtis's claim that the CBAs did not meet the requirements of Labor Code Section 514 was soundly rejected, the 9th Circuit found that his claim for overtime pay was controlled by his CBAs because Labor Code Section 510 did not apply. Thus, because Curtis's right to overtime existed solely as a result of the CBAs, the 9th Circuit found that Curtis's claim for overtime pay was preempted by LMRA. It affirmed the dismissal of Curtis's overtime claims and handed a victory to Irwin.

What Does This Decision Mean For Employers?

You should seek always legal counsel when negotiating the terms of a CBA, specifically to help you navigate the waters related to LRMA preemption and overtime. This decision does not change prior Ninth Circuit decisions holding that a CBA cannot waive an employee's right to overtime under federal law (specifically, the Fair Labor Standards Act).

Although the application of this ruling is contingent on ensuring any CBA properly addresses the requirements of Labor Code Section 514, you can now be assured that they can structure a CBA so that you do not have to worry about compliance with both California's overtime requirements and the requirements of a CBA.

For more information, contact the author at RKing@fisherphillips.com or 949.798.2183.

Service Focus

Labor Relations

Labor Relations

Wage and Hour