In a Win for Agricultural Employers, Federal Appeals Court Gives Green Light To H-2A Laborer Arbitration Agreements

Insights
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A west coast federal appeals court just opened the door for H-2A employers to enforce arbitration agreements in employment disputes even outside the context of a collective bargaining agreement. The Ninth Circuit Court of Appeals – which has jurisdiction over most states on the west coast – found there was no "economic duress" or "undue influence" in the H-2A employer's use of an arbitration agreement that ensures disputes are resolved by arbitration rather than through litigation in the courts. The November 3 decision *in Martinez-Gonzalez v. Elkhorn Packing Co., LLC* is huge news for H-2A employers already using arbitration agreements or considering rolling out an arbitration policy. What does your business need to know about this critical ruling?

Brief History and Background

The H-2A temporary agricultural program allows agricultural employers who have a shortage of domestic workers to bring temporary nonimmigrant foreign workers to the United States to perform agricultural labor. In this case, a California-based Farm Labor Contractor (FLC) helped a worker get an H-2A visa in Mexico and provided him transportation to Monterey County, California, where he was hired to harvest lettuce for the FLC.

The FLC held an orientation for employees, including Dario Martinez-Gonzalez, after arrival in the United States. The orientation was conducted in the parking lot of a hotel where the workers were instructed to gather after a full day of harvesting in the field. At the orientation, the FLC provided Martinez-Gonzalez with new-hire documents, including an arbitration agreement. The arbitration agreement required employees to resolve all disputes with the FLC by arbitration. It was written in Spanish, Martinez-Gonzalez's native language.

He claims to have signed the agreement without reading it. The parties agreed that the FLC never told Martinez-Gonzalez he had to sign the agreement to keep working for the company. Martinez-Gonzalez further said the FLC did not explain the agreement to him and was not told he could consult an attorney before signing. He didn't ask for a copy of the agreement, ask for time to read it, or ask for time to talk to an attorney. Martinez-Gonzalez worked for the FLC for two seasons, in 2016 and 2017. During the 2017 season, he quit before the end of the H-2A certification period and returned to Mexico.

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Upon his return, he sued the FLC for alleged wage and hour violations. In a lower federal court, the FLC asked the court to enforce the arbitration agreement signed by Martinez-Gonzalez. He argued that, as an H-2A worker, he could not be bound by an arbitration agreement because of inherent unequal bargaining power between a foreign guestworker and an employer. Martinez-Gonzalez highlighted that an H-2A worker is traveling from another country, is dependent on the employer for housing, and is dependent on the employer for their work visa. He also claimed that he stood in line for about 40 minutes before he reached the table where the new-hire documents were located and the FLC's supervisors flipped through the pages of documents and directed him where to sign.

After a two-day trial, the district court found the company exerted "undue influence" over him and that he was the victim of "economic duress" and therefore ruled the agreement unenforceable.

The Court's Opinion

In a November 3 ruling, the Ninth Circuit Court of Appeals disagreed. The court said the FLC did not make any false claim or bad faith threat to force Martinez-Gonzalez to sign the agreement. The court also said that even though the agreement was signed after he traveled from Mexico to California for the job with the FLC, there was no evidence this sequence of events was done for a "coercive purpose" or in bad faith.

Further, the court ruled, Martinez-Gonzalez was not forced to sign the agreement. He could have asked whether he was required to sign the agreement to keep his job, and the agreement itself did not say it was mandatory. In fact, the agreement specifically allowed him to revoke agreement within 10 days. The court said that while the circumstances surrounding the signing of the agreements were "not ideal," that fact alone did not make the agreement unenforceable.

What Does this Decision Mean for Your Business?

H-2A employers who have been on the fence about using arbitration agreements now have guidance from the Ninth Circuit and a roadmap to consider for implementation of a lawful arbitration policy. This case is now binding precedent in states covered by the Ninth Circuit's reach – California, Washington, Oregon, Arizona, Nevada, Montana, Idaho, Alaska, and Hawaii – but it also could be used by courts across the country as helpful guidance on how to proceed elsewhere.

If you retain H-2A laborers, you should contact counsel and discuss the pros and cons of an arbitration policy for your operation. It is critical that you make this decision with counsel, as an arbitration roll-out can be a difficult process to navigate, particularly in agriculture and with a guestworker workforce. For example, an arbitration policy should be included in the job and work rules and included in the ETA 790 that must be provided to temporary foreign workers no later than the time they apply for their visas.

Additionally, there are pros and cons to requiring resolution of disputes via a grievance and arbitration process rather than through the courts. One negative point with respect to arbitration

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results is that there are very limited grounds for obtaining a court review and order setting aside an arbitration result. Of note for California employers, this does not impact the viability of claims under the Private Attorneys General Act of 2004 or PAGA, the statute that allows an employee to sue an employer for alleged Labor Code violations on behalf of themselves and other "aggrieved employees."

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