98-940 A
Updated January 12, 2001

Enforceability of Mandatory Arbitration Agreements: *Wright v. Universal Maritime Service Corp.*

Jon O. Shimabukuro
Legislative Attorney
American Law Division

Summary

In *Wright v. Universal Maritime Service Corp.*, the U.S. Supreme Court found that a mandatory arbitration clause in a collective bargaining agreement was not enforceable because it failed to specify arbitration as the covered employees' sole method of obtaining relief for their statutory claims. Without such explicit language in the agreement, the union could not have made a "clear and unmistakable waiver" of the employees' rights to a judicial forum. Although the Court identified a "clear and unmistakable waiver" standard for determining whether a mandatory arbitration agreement could be enforced, it refrained from deciding whether a union could actually bargain for such a waiver.

Arbitration and other forms of alternative dispute resolution have become increasingly more common as employers and employees seek faster resolutions and lower litigation costs. In response to the rising number of discrimination claims brought under federal civil rights statutes, many employers now attempt to require arbitration or alternative dispute resolution by having their employees sign pre-dispute mandatory arbitration agreements. At minimum, these agreements require employees to arbitrate their claims before they may file charges with the Equal Employment Opportunity Commission (EEOC). However, other agreements are more expansive; they deny employees any opportunity to resolve their disputes outside of arbitration or alternative dispute resolution.

In November, 1998, the U.S. Supreme Court decided *Wright v. Universal Maritime Service Corp.*, a case from the Fourth Circuit involving the enforceability of a mandatory arbitration clause in a collective bargaining agreement.[1] Despite two prior Supreme Court decisions regarding mandatory arbitration, the U.S. circuit courts of appeals had continued

[1] *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998).

to differ in their recognition of mandatory arbitration agreements.[2] Although the Court's decision in *Wright* indicated that statutory claims would not be presumed to be arbitrable absent explicit language in an arbitration agreement, the Court did not resolve the question of whether a union may waive an employee's right to a judicial forum when such language exists.

Petitioner Ceasar Wright had been employed as a longshoreman in the Port of Charleston since 1970. In 1992, Wright shattered his right heel and injured his back when he fell from the top of a freight container. These injuries prevented Wright from engaging in any type of waterfront employment for an extended period. In May, 1994, Wright settled a workers' compensation claim and other claims for permanent and total disability. As part of this settlement, Wright received $250,000.

Wright had been a member of Local 1422 of the International Longshoremen's Association, AFL-CIO since the beginning of his employment. After his physical condition improved dramatically in July, 1994, Wright obtained permission from his physician to return to work. In January, 1995, Wright returned to the hiring hall of Local 1422 to obtain employment. He presented himself as having no restrictions and needing no accommodation. Between January 2, 1995 and January 11, 1995, Wright was referred by Local 1422 to work for several stevedoring companies, including respondents Universal Maritime Corp., Ryan-Walsh, Inc., Strachan Shipping Company, and Ceres Marine Terminals. Wright performed all of the duties assigned to him. None of the respondents complained or objected to Wright's performance. However, the respondents later informed the President of Local 1422 that they would no longer accept Wright on any work referrals from the local. In letters to the President of Local 1422, the respondents stated in nearly identical language that an individual is no longer qualified to perform longshore work of any kind once he has been certified as permanently and totally disabled.[3]

Wright argued that the respondents violated the Americans with Disabilities Act (ADA) by denying him employment based on their perception that he was physically unable to do stevedoring work. Wright maintained that he was able to perform the essential elements of the jobs that would be referred to him by Local 1422.

The respondents denied any violation of the ADA and contended that Wright failed to exhaust the remedies and procedures available to him under the collective bargaining agreement between Local 1422 and the South Carolina Stevedores Association (SCSA). The SCSA is the collective bargaining representative of the respondent stevedoring companies. Clause 15(B) of the collective bargaining agreement between Local 1422 and

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[2] *See Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974); *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991). *See also Pryner v. Tractor Supply Co.*, 109 F.3d 354 (7th Cir. 1997) (mandatory arbitration of statutory claims is impermissible when a union controls the grievance proceedings); *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437 (10th Cir. 1997) (union member did not have to follow a specified grievance procedure before filing a Title VII claim in federal court); *Martin v. Dana Corp.*, 1997 WL 313054 (3d Cir. 1997), *vacated for rehearing en banc*, 114 F.3d 421 (3d Cir. 1997) (Title VII suit dismissed because union member did not pursue mandatory arbitration of his claim).

[3] Brief for Petitioner at 3, *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998) (No. 97-889).

the SCSA provides for a three-tiered review process for employee grievances.[4] Grievances that cannot be resolved between the local and a covered employer are submitted first to a Port Grievance Committee. If the Committee cannot reach an agreement within a specified time, a written record of the dispute is referred to a Joint Negotiating Committee. If this Committee is unable to achieve a majority decision, it is directed by the agreement to employ a professional arbitrator. Clause 15(F) of the agreement states that it is intended to cover "all matters affecting wages, hours, and other terms and conditions of employment. . . ."[5] The respondents maintained that Wright's ADA claim was within the scope of matters that must be arbitrated in accordance with the agreement.[6]

On January 12, 1996, the President of Local 1422 wrote to Universal Maritime Service Corp. to express his concern over the interpretation of the agreement. A copy of this letter was sent to the SCSA. In his letter, the President characterized the respondents' refusal to employ Wright as a "lock-out" in violation of a separate provision of the agreement.[7] Nevertheless, the local did not file a grievance for Wright. Instead, Wright filed a complaint with the EEOC and sought relief in federal court after receiving a right to sue letter.

The District Court dismissed Wright's claim without prejudice. Relying heavily on the Fourth Circuit's holding in *Austin v. Owens-Brockway Glass*, the court found that it lacked jurisdiction to rule on Wright's claim.[8] The court reasoned that a valid agreement to arbitrate future disputes removes jurisdiction from a court. Wright had attempted to distinguish the agreement between Local 1422 and the SCSA from the agreement in *Austin* by arguing that the *Austin* agreement was enforceable only because it included a specific provision that required arbitration of all claims of gender and disability discrimination. In contrast, Wright's agreement made no specific reference to claims of disability discrimination. Despite Wright's argument, the court concluded that arbitration was appropriate even when an agreement does not identify specific statutes or grievances.

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[4] Joint Appendix at 43a, *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998) (No. 97-889).

[5] Joint Appendix at 45a, *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70 (1998) (No. 97-889).

[6] Wright was also subject to the Longshore Seniority Plan, which contained a similar grievance provision. Because this Plan's arbitration language resembles the language in the collective bargaining agreement, this piece will focus mainly on the agreement.

[7] *Wright v. Universal Maritime Service Corp.*, No. 2:96-0165-18AJ (D. S.C. 1996) (report and recommendation).

[8] 78 F.3d 875 (4th Cir. 1996). In *Austin*, the plaintiff attempted to sue her former employer for alleged violations of the ADA and Title VII. The employer maintained that the plaintiff was bound by the grievance-arbitration procedure set forth in the collective bargaining agreement between the employer and the union. The Fourth Circuit determined that the agreement was enforceable and that the union could bargain for mandatory arbitration.

The Fourth Circuit affirmed the District Court's decision. It found that an arbitration agreement does not need to specify every possible dispute to be binding.[9] The court compared Wright's agreement to a mandatory arbitration rule in *Gilmer v. Interstate/Johnson Lane Corp.*.[10] In *Gilmer*, an employer sought to compel arbitration of a terminated employee's claim under the Age Discrimination in Employment Act (ADEA). As a securities representative, Gilmer was bound by the rules of the New York Stock Exchange (NYSE). One NYSE rule required securities employees to arbitrate any controversy arising out of a registered representative's employment or termination of employment.[11] The rule made no specific reference to the ADEA or any other federal anti-discrimination statutes. Nevertheless, the Court concluded that Gilmer could be subject to compulsory arbitration. In finding Wright's agreement enforceable, the Fourth Circuit made a similar determination that an employer does not have to provide a "laundry list of potential disputes" for them to be covered by a mandatory arbitration clause.[12]

The Supreme Court reversed the decision of the Fourth Circuit. Writing for a unanimous Court, Justice Scalia indicated that the general arbitration clause in the agreement between Local 1422 and the SCSA did not require Wright to arbitrate his ADA claim. The Court found that the agreement did not create a presumption of arbitration for Wright's ADA claim; that is, the broad language of Clause 15(F) of the agreement could not support the notion that mandatory arbitration was the only option available for resolving statutory claims.

In reaching the Court's conclusion, Justice Scalia discussed the two lines of case law that have developed from the Court's prior decisions in *Gilmer* and *Alexander v. Gardner-Denver Co.*.[13] Where *Gilmer* compelled arbitration of a claim under the ADEA, *Gardner-Denver* permitted judicial review of a Title VII claim after arbitration. In *Gardner-Denver*, a terminated employee sought to bring his Title VII claim in federal court after receiving an adverse decision in arbitration. Alexander submitted his claim to arbitration pursuant to a nondiscrimination clause in a collective-bargaining agreement. The Court distinguished between "contractual" rights under a collective-bargaining agreement and "statutory" rights resulting from Title VII and other federal statutes. Although contractual rights could be subject to final arbitration, the Court held that statutory rights could be vindicated through both arbitration and judicial review. Because Alexander was seeking judgment on his statutory rights under Title VII, the Court concluded that he could pursue his claim in federal court.

Although the *Wright* Court recognized the tension between *Gilmer* and *Gardner-Denver*, it resisted any kind of reconciliation of the two cases. Instead, the Court chose to respond only to the facts presented by *Wright*. The Court provided little guidance for a situation in which an arbitration clause in a collective bargaining agreement explicitly requires arbitration of statutory claims. In this situation, it is unclear whether the union

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[9] *Wright v. Universal Maritime Service Corp.*, No. 96-2850, slip op. (4th Cir. 1997).

[10] 500 U.S. 20 (1990).

[11] *Id.*, at 23.

[12] *Wright*, No. 96-2850, slip op. at 4.

[13] 415 U.S. 36 (1974).

may waive a judicial forum for its members. While the Court did articulate a "clear and unmistakable waiver" standard for determining when statutory claims could be subject to arbitration, whether the union can agree to such a waiver on behalf of its members is a lingering question. The Court stated simply that because the agreement did not specify arbitration for statutory claims, there could not have been a clear and unmistakable waiver of the covered employees' rights to a judicial forum for federal claims of employment discrimination.[14]

[14] *Wright*, 525 U.S. at 81-2.