

“RECOGNITION CLAUSE” REQUIRES ARBITRATION, SUPREME COURT DECLINES REVIEW OF SEVENTH CIRCUIT FINDING

The Supreme Court declines to consider whether the interpretation of a recognition clause in a collective bargaining agreement could require arbitration of disputes not implicated anywhere else in the agreement. By denying review, the justices leave intact a Seventh Circuit decision finding that the recognition clause in a pact between Illinois Bell Telephone Co. and an International Brotherhood of Electrical Workers (IBEW) local could serve as a trigger for a broad arbitration agreement.

A year after the 2004 agreement was reached, Illinois Bell informed the IBEW local that it planned to implement new “consumer performance management guidelines” that would change how employees were evaluated. Upon notice of Illinois Bell’s plans, the union filed a grievance challenging the implementation of the guidelines. The parties engaged in a series of discussions and Illinois Bell made some changes to the program, but in the end, the parties could not resolve the dispute. The union requested that the grievance be submitted to arbitration, but Illinois Bell refused, asserting that the grievance was not arbitrable under the terms of the bargaining agreement.

In the 2-1 decision, the Seventh Circuit majority found that the recognition clause served multiple purposes in the collective bargaining agreement, including a prohibition against making significant changes to the terms and condition of employment without the consent of the union. If the arbitrator believed that this was the proper interpretation of the clause, the Seventh Circuit stated, then a court needed to compel arbitration where the union protested imposition of the new performance management system. “So long as the recognition clause is susceptible to an interpretation wherein the Company’s actions have breached its duties, and the recognition clause is encompassed by the arbitration provision, we must compel arbitration,” the Seventh Circuit ruled.

In its petition for review, the company argues the ruling created an “essentially limitless” duty to arbitrate any union objections even if there are limits on arbitration in the agreement. “Because recognition clauses and limited arbitration clauses are routine provisions in collective bargaining agreements, the impact of the decision below cannot be overstated, and the decision merits plenary review by this Court,” Illinois Bell states. It argues that recognition clauses were meant to serve as boilerplate provisions with a limited function and that the Seventh Circuit ignored the guidance of other courts and the National Labor Relations Board by allowing it to be used for such an expansive purpose. It also argues that the decision deviated from the tradition in labor cases that viewed arbitration as the product of a contract between the two parties. By allowing a boilerplate provision to create an agreement to arbitrate, where no other agreement exists, the company says the Seventh Circuit abandoned traditional principles of labor contract law.

The union in its opposition brief states that the Seventh Circuit’s ruling was not nearly as expansive as the company described and that the ruling was consistent with other interpretations of recognition clauses. The decision was “simply the latest in an unbroken string of circuit court precedents stretching back some fifty years” holding that grievances based on contract clauses are to be decided by the arbitrator and not federal courts.

(Source: *Ill. Bell Tel. Co. v. Int’l Bhd. Of Elec. Workers*, U.S., No. 07-734, *cert. denied*, March 17, 2008, as reported in BNA, *Daily Labor Report*, No. 52, March 18, 2008, pp. AA2-AA3, E1.)