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City of Mesquite v. Eighth Jud. Dist. Ct., 135 Nev., Adv. Op. 33

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City of Mesquite v. Eighth Jud. Dist. Ct., 135 Nev., Adv. Op. 33 (Aug. 1, 2019)[1]

LABOR LAW: COLLECTIVE BARGAINING & THE DUTY OF FAIR REPRESENTATION

Summary

The City of Mesquite asked the Court to determine which statute of limitations ("SOL") applies to a local government employee's complaint alleging both that the employer breached the collective bargaining agreement and that the union breached its duty of fair representation. The City argued that the claims are subject to a six-month limitations period under Nevada's Local Government Employee-Management Relations Act ("EMRA"). The Court declined to answer the question. Instead, it clarified that there is no private cause of action to enforce a claim against a union for breach of the duty of fair representation in the first instance. But, exclusive original jurisdiction over a claim against a union for breach of the duty of fair representation is vested in the Employee-Management Relations Board ("EMRB"), and the district courts only have jurisdiction to review the EMRB's decision.

Background

In 2013, the City terminated Smaellie after his arrest while off duty, violating a collective bargaining agreement between the City and the Mesquite Police Officers Association ("the Union"). He filed a grievance with the union to request arbitration. The Union declined his request because its legal defense coverage did not cover off-duty conduct. A year after the termination, Smaellie filed a complaint against the City in district court alleging that the City breached the terms of the collective bargaining agreement by terminating him without cause. When this Court first heard the case, it held that Smaellie's failure to allege that the union had breached its duty of fair representation defeated his claim.[2] Instead, he had to maintain a "hybrid" action against his employer for breach of the collective bargaining agreement and his union for breach of the duty of fair representation in order for the district court to have jurisdiction.[3]

In 2017, Smaellie filed a new complaint, this time alleging a "hybrid" action. The City moved to dismiss for failure to state a claim upon which relief can be granted, arguing that the claim as to the union was time-barred by a six-month SOL, as required under the EMRA and federal labor law, and the claim against the City could not advance because it was dependent on the time-barred claim against the union. The district court denied the City's motion, citing that a six-year SOL for actions based in contract applied. The City petitioned the Nevada Supreme Court seeking a writ of prohibition or, alternatively, mandamus, for the Court to clarify which SOL applies to this "hybrid" action.

Discussion

The Court elected to exercise its discretion to consider the petition

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[1] By Dylan Lawter.

[2] *See* Smaellie v. City of Mesquite, 393 P.3d 660 at *1 (Nev. 2017).

[3] *See* Clark County v. Tansey, 390 P.3d 167 at *2 (Nev. 2017).

The City petitioned the Court, asking which SOL should apply in a local government employee's "hybrid" action. The City argued that the district court applied the wrong SOL for Smaellie's claim—a six-year SOL for contract claims—and the court should have instead found that the six-month SOL, used for unfair labor practice complaints under the EMRB, applied to this case.[4] The Court has never determined which SOL should apply, but the Court concluded that it may have misled the parties and the district court about the law surrounding "hybrid" actions in the state public-sector context. Accordingly, the Court decided to consider the petition and clarify what law should guide such "hybrid" actions.

No private cause of action exists to pursue a claim for breach of duty of fair representation brought in the district court in the first instance

The Court previously held that the EMRB has exclusive original jurisdiction over any unfair labor practice arising under the EMRA, including a claim that the union breached its duty of fair representation.[5] As such, an employee must exhaust the EMRA's administrative remedies before seeking relief in the district court.[6] This means that an employee must present a fair-representation claim to the EMRB within six months of it arising.[7] Thus, a district court's jurisdiction is limited to reviewing the EMRB's decision in such a claim.

Here, Smaellie filed a complaint directly with the district court concerning his employer's breach of a collective bargaining agreement and the Union's breach of its duty of fair representation, before seeking relief from the EMRB. Because the district court does not have original jurisdiction over fair-representation claims, Smaellie's claim failed.

Smaellie argued that the United States Supreme Court has ruled that an employee may bring a "hybrid" action in court without first exhausting administrative remedies.[8] In *Vaca*, the Court noted that, while federal labor statutes allowed an employee to sue his employer for breach of the collective bargaining agreement, no statutory provision allowed a court to enforce the union's duty of fair representation, and the National Labor Relations Board had unreviewable discretion to refuse to initiate a complaint.[9] Thus, to avoid leaving an employee remediless, the Court recognized a cause of action—known as a "hybrid" claim—whereby an employee could bring to court both an employer's breach of collective bargaining agreement and the union's breach of the duty of fair representation.[10]

The Nevada Supreme Court has precedent rejecting *Vaca*, and its judicially created "hybrid" cause of action, with respect to claims arising from the EMRA. Nevada's EMRA requires the EMRB to consider a timely filed unfair labor practices complaint and provides judicial review of the EMRB's decisions.[11] Therefore, under *Rosequist*, the concerns underlying the Supreme Court's holding in *Vaca* are not present in Nevada's public-sector labor law.

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[4] *See* NEV. REV. STAT. 288.110(4) (2017).

[5] Rosequist v. Int'l Ass'n of Firefighters Local 1908, 118 Nev. 444, 447–49, 49 P.3d 651, 653–54 (2002) (citing NEV. REV. STAT. 288.110 and NEV. REV. STAT. 288.270(2)(a)), *overruled on other grounds by* Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 573 n.22, 170 P.3d 989, 995 n.22 (2007).

[6] *See* City of Henderson v. Kilgore, 122 Nev. 331, 336–37 & n.10, 131 P.3d 11, 14–15 & n.10 (2006).

[7] NEV. REV. STAT. 288.110(4) (2017); see also *Rosequist*, 118 Nev. at 450–51, 49 P.3d at 655.

[8] Vaca v. Sipes, 386 U.S. 171, 173 (1967).

[9] *Id.* at 181–84.

[10] *Id.* at 185–86.

[11] *Rosequist*, 118 Nev. at 447, 49 P.3d at 653.

However, in an unpublished order, the Nevada Supreme Court applied *Vaca* to find that the district court had jurisdiction to adjudicate a public employee's "hybrid" action.[12] The Court recognized its citation to Tansey in resolving Smaellie's first appeal implied that the district court could entertain such an action. So, the Court took the opportunity here to disavow *Tansey* and clarify that a district court can only exercise judicial review over an adverse decision by the EMRB.[13]

Because Smaellie did not raise his claim for breach of the duty of fair representation before the EMRB, he could not have properly brought the breach of contract claim before the district court in the first instance.

Conclusion

The Court held that a local government employee does not have a private right to pursue a fair representation claim in the district court initially. Instead, the EMRB exercises original jurisdiction over such claims, and an employee can seek relief in the district court only after exhausting the administrative remedies set forth in the EMRA. The Court granted the City's petition and issued a writ of mandamus instructing the district court to vacate its order denying the City's motion to dismiss.

[12] *Tansey*, 390 P.3d 167 at *2.
[13] *See* NEV. REV. STAT. 288.130 (2017).