

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Murphy v. Hogan Transports, Inc.

607 F. App'x 70 (2d Cir. 2015) · No. 15-317-cv · Decided June 9, 2015

SUMMARY

The Second Circuit affirmed a district court order granting an interim bargaining order and additional temporary injunctive relief under Section 10(j) of the National Labor Relations Act. The court held that the district court acted consistently with the appellate court's prior remand and did not abuse its discretion in finding the relief just and proper.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Robert D. Sack; Peter W. Hall; Susan L. Carney
JURISDICTION	Federal
DECIDED	June 9, 2015
DOCKET	15-317-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Hogan Transports, Inc. appealed the Northern District of New York's order granting the Acting Regional Director of the National Labor Relations Board an interim bargaining order and additional temporary injunctive relief under § 10(j) of the National Labor Relations Act.
STANDARD OF REVIEW	Abuse of discretion. The district court's determination whether relief under § 10(j) is just and proper is reviewed for abuse of discretion; such an abuse occurs when the decision rests on an error of law or clearly erroneous factual finding, or when the decision falls outside the range of permissible decisions.
PRECEDENTIAL VALUE	Nonprecedential summary order
PARTIES	Hogan Transports, Inc. v. Paul J. Murphy, Acting Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board

TOPICS

unfair labor practices

labor law

administrative law

equitable relief

appellate procedure

PRACTICE AREAS

labor law

administrative law

appellate procedure

remedies

QUESTIONS PRESENTED

1. Whether the district court abused its discretion by issuing an interim bargaining order and additional temporary injunctive relief under § 10(j) of the National Labor Relations Act.
2. Whether the interim bargaining order was just and proper in light of the serious violations, the administrative law judge's findings, and the expected duration of the NLRB proceedings.

HOLDINGS

1. The district court did not abuse its discretion and acted within the range of permissible decisions by issuing the interim bargaining order in favor of the NLRB.

KEY QUOTATIONS

“We conclude that the district court acted in accord with our October 14, 2014 summary order and did not exceed the bounds of its discretion by issuing an interim bargaining order in favor of the NLRB.”

“A district court abuses its discretion “when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions.””

FACTUAL BACKGROUND

The NLRB's Acting Regional Director sought interim relief under § 10(j) of the National Labor Relations Act based on serious labor-law violations found by the district court. The requested relief included an interim bargaining order and additional temporary injunctive relief while the NLRB proceedings continued. After remand, the district court reconsidered the bargaining order in light of the prior appellate instructions and subsequent administrative law judge findings.

PROCEDURAL HISTORY

The district court granted interim bargaining and other temporary injunctive relief in favor of the NLRB's Acting Regional Director. In an earlier appeal, the Second Circuit remanded for the district court to reconsider and explain whether an interim bargaining order was just and proper in light of the serious violations, the administrative law judge's findings, and the timing of the NLRB proceedings. On remand, the district court again issued the interim bargaining order, and the Second Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- Murphy ex rel. N.L.R.B. v. Hogan Transports, Inc., 581 F. App'x 36, 38 (2d Cir. 2014)
- Hoffman ex rel. N.L.R.B. v. Inn Credible Caterers, Ltd., 247 F.3d 360, 364 (2d Cir. 2001)
- In re Holocaust Victim Assets Litig., 424 F.3d 158, 165 (2d Cir. 2005)

OPINION

PER CURIAM.

15-317-cv Murphy v. Hogan Transports, Inc. UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION ASUMMARY ORDER@).

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 9th day of June, two thousand fifteen. PRESENT: ROBERT D. SACK, PETER W. HALL, SUSAN L. CARNEY, Circuit Judges.

____ Paul J. Murphy, Acting Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of National Labor Relations Board, Petitioner-Appellee, v. 15-317-cv Hogan Transports, Inc., Respondent-Appellant.

____ FOR PETITIONER-APPELLEE: KYLE ANDREW MOHR, Attorney (Elinor L. Merberg, Laura T. Vazquez, on the briefs) National Labor Relations Board, Washington, DC.

1 FOR RESPONDENT-APPELLANT: JEDD MENDELSON, Esq., Littler Mendelson, PC, Newark, NJ. Appeal from the judgment of the United States District Court for the Northern District of New York (Sharpe, C.J.). UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of the district court is AFFIRMED. Appellant Hogan Transports, Inc., appeals from an order of the district court granting an interim bargaining order and additional temporary injunctive relief pursuant to § 10(j) of the National Labor Relations Act, 29 U.S.C. § 160(j), in favor of Paul J. Murphy, Acting Regional Director of the Third Region of the National Labor Relations Board, for and on behalf of the National Labor Relations Board (“NLRB”).

We assume the parties’ familiarity with the underlying facts, the procedural history of the case, and the issues on appeal.¹ 1 On October 14, 2014 this Court remanded this case for further

proceedings on the precise issue now on appeal.

We explained in relevant part: [T]he district court is free to revise its decision or again conclude that an interim bargaining order is not “just and proper” relief pursuant to Section 10(j). However, in order to appropriately exercise its discretion, the district court should explain, beyond simply stating that an interim bargaining order “goes too far,” why such relief is warranted or unwarranted in light of the serious violations it found, and the apparent disconnect between these violations and the other interim relief afforded.

In addition, “[o]n remand, the district court should consider not only the transcript of the hearing which was before the court at the time of its initial decision, but also the findings which have since been made by the administrative law judge.” The district court may also consider the time the NLRB might take to resolve this matter, and it may seek reasonable assurances of timely disposition.

Murphy ex rel. N.L.R.B. v. Hogan Transports, Inc., 581 F. App'x 36, 38 (2d Cir. 2014) (internal citation omitted).² We review for abuse of discretion the district court’s determination of whether relief is just and proper. Hoffman ex rel. N.L.R.B. v. Inn Credible Caterers, Ltd., 247 F.3d 360, 364 (2d Cir. 2001). A district court abuses its discretion “when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions.” *In re Holocaust Victim Assets Litig.*, 424 F.3d 158, 165 (2d Cir.

2005) (internal quotation marks omitted). We conclude that the district court acted in accord with our October 14, 2014 summary order and did not exceed the bounds of its discretion by issuing an interim bargaining order in favor of the NLRB.

We have considered Hogan’s remaining arguments and find them to be without merit. Accordingly, we AFFIRM the order of the district court. FOR THE COURT: Catherine O’Hagan Wolfe, Clerk 3