

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Howard S. Wright Construction Co. v. Laborers International Union
of North America, Local Union No. 169

325 F. App'x 553 (9th Cir. 2009) · Decided April 30, 2009

SUMMARY

The Ninth Circuit affirmed dismissal of Howard S. Wright Construction Company’s action against Laborers International Union of North America, Local Union No. 169. The court held that Wright could not repudiate its Section 8(f) prehire agreement midterm because it did not qualify for the limited single-employee exception, having employed two laborers contemporaneously.

CASE DETAILS

COURT	United States Court of Appeals for the Ninth Circuit
JURISDICTION	Federal
DECIDED	April 30, 2009
DISPOSITION	affirmed
PROCEDURAL POSTURE	Howard S. Wright Construction Company appealed the district court's dismissal of its action against the union. The union also urged review of an order denying confirmation and vacating an arbitration award, but had not appealed or cross-appealed from that order or the final judgment.
STANDARD OF REVIEW	De novo review of the district court's legal conclusion that Wright's repudiation of the agreement was invalid.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Howard S. Wright Construction Company v. Laborers International Union of North America, Local Union No. 169

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Wright's midterm repudiation of the Section 8(f) prehire agreement was valid under the single-employee exception.
2. Whether the union could obtain appellate review of the order denying confirmation and vacating the arbitration award without filing an appeal or cross-appeal.

HOLDINGS

1. An employer may not repudiate a Section 8(f) prehire agreement during the contract term unless it falls within the limited single-employee exception; Wright did not qualify because it employed two laborers contemporaneously during the relevant period.
2. An appellee that does not file a cross-appeal cannot attack a judgment for the purpose of enlarging its own rights.

KEY QUOTATIONS

“a ‘one-employee employer’ during the relevant time period.” (555)

FACTUAL BACKGROUND

Wright was party to a Section 8(f) prehire agreement with the union and attempted to repudiate the agreement during its term. Wright conceded that it employed two laborers contemporaneously during the relevant period. The Ninth Circuit concluded that this concession prevented Wright from qualifying for the limited single-employee exception to the rule barring midterm repudiation.

PROCEDURAL HISTORY

The district court determined that Wright's repudiation of the Section 8(f) prehire agreement was invalid and dismissed the action. Wright appealed. The Ninth Circuit affirmed, holding that Wright did not qualify for the single-employee exception because it conceded that it employed two laborers contemporaneously during the contract term.

DISPOSITION

affirmed

CASES CITED

- Laborers Health and Welfare for Northern California v. Westlake Development, 53 F.3d 979 (9th Cir. 1995)
- John Deklewa & Sons, 282 NLRB 1375 (1987), enforced, 843 F.2d 770 (3d Cir. 1988)
- Turpen v. City of Corvallis, 26 F.3d 978, 980 (9th Cir. 1994), cert. denied, 513 U.S. 963 (1994)

OPINION

PER CURIAM.

MEMORANDUM *** Plaintiff-Appellant Howard S. Wright Construction Company (Wright) appeals the district court's dismissal of its action against the Laborer's International Union of North America, Local Union No. 169 (Union).

We have jurisdiction under 28 U.S.C. § 1291, and we affirm.¹ Because the parties are familiar with the facts, we do not supply them here *555except as necessary to explain our decision. We review a district court's legal conclusion that Plaintiffs repudiation of the agreement was not valid de novo. *Laborers Health and Welfare for Northern California v. Westlake Development*, 53 F.3d 979 (9th Cir.1995).

The National Labor Relations Board held in *John Deklewa & Sons*, 282 NLRB 1375 (1987), enf. 843 F.2d 770 (3d Cir.1988), that an employer cannot repudiate a Section 8(f) prehire agreement midterm. Wright does not fit into the limited "single employee exception" to this rule, as interpreted by the Ninth Circuit, because Wright has conceded that it employed two laborers contemporaneously during the term of the contract.

Laborers Health holds that in order to fit into the limited single employee exception, the employer must be "a 'one-employee employer' during the relevant time period.' " *Laborers Health*, 53 F.3d at 982. The district court did not err in determining that Wright's repudiation was not valid, and dismissing the case. AFFIRMED. This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir.

R. 36-3.. The Union asserts in its brief that we should also review the trial court's order denying confirmation and vacating the arbitration award. The Union failed to appeal this order; it also failed to appeal or cross-appeal from the final judgment which was entered in this case. An appellee who fails to file a cross-appeal cannot attack a judgment with a view towards enlarging its own rights.

Turpen v. City of Corvallis, 26 F.3d 978, 980 (9th Cir. 1994), cert. denied, 513 U.S. 963, 115 S.Ct. 426, 130 L.Ed.2d 339 (1994).