

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

**Austin Bascom, Individually and for Others Similarly Situated v.
Kennecott Utah Copper LLC**

Bascom · No. 2:25-cv-00505-DBB-JCB · Decided February 4, 2026

SUMMARY

The United States District Court for the District of Utah denied Kennecott Utah Copper LLC’s motion for reconsideration of the court’s prior denial of its motion to dismiss. The court rejected arguments concerning NLRA Garmon preemption, the relevance of Chavez v. Albuquerque and Epic Systems, the interpretation of Barrentine, and LMRA Section 301 preemption. The court concluded that the plaintiff’s FLSA overtime claim, as pleaded, does not require interpretation of the collective bargaining agreement.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	February 4, 2026
DOCKET	2:25-cv-00505-DBB-JCB
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved under Federal Rule of Civil Procedure 54(b) for reconsideration of the court's prior interlocutory order denying its motion to dismiss the plaintiff's FLSA collective-action claims.
STANDARD OF REVIEW	A district court may reconsider an interlocutory order under Rule 54(b). Reconsideration is generally warranted only for an intervening change in controlling law, newly available evidence, or the need to correct clear error or prevent manifest injustice; it is not an appropriate vehicle to reargue issues or present arguments and facts previously available.
PRECEDENTIAL VALUE	unpublished district court memorandum decision and order; persuasive value only
PARTIES	Kennecott Utah Copper LLC v. Austin Bascom, individually and for others similarly situated

TOPICS

flsa wage and hour labor law civil procedure

PRACTICE AREAS

employment law federal employment law wage and hour flsa labor law civil procedure

QUESTIONS PRESENTED

1. Whether Kennecott established grounds for reconsideration of the prior interlocutory order under Rule 54(b).
2. Whether the FLSA overtime claims were arguably subject to Garmon preemption under the NLRA.
3. Whether the court's reliance on *Chavez v. Albuquerque* required reconsideration.
4. Whether the reasoning of *Epic Systems Corp. v. Lewis* was improperly applied by analogy.
5. Whether *Barrentine v. Arkansas-Best Freight System* remained valid authority for the proposition that FLSA rights are independent of the collective-bargaining process.
6. Whether the FLSA claims required interpretation of the collective bargaining agreement and were therefore preempted or barred by section 301 of the LMRA.

HOLDINGS

1. Reconsideration was not warranted because Kennecott identified no intervening change in controlling law, newly available evidence, clear error, or manifest injustice; its arguments largely reargued issues already addressed.
2. The FLSA claims did not arguably fall within the prohibitions of sections 7 or 8 of the NLRA, and the hypothetical possibility that a later remedy might create unequal pay did not trigger Garmon preemption.
3. The pleaded FLSA claims were not preempted or precluded by LMRA section 301 because they depended on the FLSA regular rate calculated from the amounts actually worked and paid, not on interpretation of the collective bargaining agreement.
4. *Barrentine* remained valid authority for its interpretation of the FLSA; *14 Penn Plaza* did not overrule or undermine that interpretation.

KEY QUOTATIONS

"As a general matter, Plaintiff's claims do not arguably fall within the prohibitions of Section 7 or 8 of the NLRA." (at 5)

"Regular rate under the FLSA is an "actual fact" that does not, on its own, require interpreting the CBA." (at 10)

"Accordingly, the opinion's LMRA decision is not a clear error nor a manifest injustice." (at 11)

FACTUAL BACKGROUND

Bascom, a haulage operator employed by Kennecott since 2021, frequently worked more than forty hours per week. Kennecott paid him an hourly wage, nondiscretionary production and safety bonuses, and shift differentials, but calculated overtime using only the hourly wage rather than including the bonuses and differentials in the regular rate. The terms of compensation were governed by a collective bargaining agreement, but Bascom did not allege that Kennecott breached the agreement or failed to pay what the agreement required.

PROCEDURAL HISTORY

Bascom filed an FLSA action alleging that Kennecott improperly excluded nondiscretionary bonuses and shift differentials from the regular rate used to calculate overtime. Kennecott moved to dismiss, arguing that the NLRA's Garmon preemption doctrine and section 301 of the LMRA preempted the claims; the court denied that motion on November 19, 2025. Kennecott then moved for reconsideration, which the court denied.

DISPOSITION

other

CASES CITED

- *Ysais v. Richardson*, 603 F.3d 1175, 1178 n.2 (10th Cir. 2010)
- *Been v. O.K. Industries, Inc.*, 495 F.3d 1217, 1225 (10th Cir. 2007)
- *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2000)
- *San Diego Building Trades Council v. Garmon*, 359 U.S. 236, 244-45 (1959)
- *United Ass'n of Journeymen & Apprentices of the Plumbing & Pipe Fitting Industry v. Bechtel Power Corp.*, 834 F.2d 884, 886 (10th Cir. 1987)
- *Chavez v. Albuquerque*, 630 F.3d 1300, 1304-05 (10th Cir. 2011)
- *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 515-16 (2018)
- *Barrentine v. Arkansas-Best Freight System, Inc.*, 450 U.S. 728, 729-30, 731 n.5, 742-45 (1981)
- *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 255, 264-65 (2009)
- *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 35 (1991)
- *Bell v. Southeastern Pennsylvania Transportation Authority*, 733 F.3d 490, 493-95 (3d Cir. 2013)
- *Moran v. John J. Picone, Inc.*, No. 24-cv-4095, 2025 WL 2783596, at *3, *5 (E.D.N.Y. Sept. 30, 2025)
- *Isaacs v. Central Parking Systems of N.Y., Inc.*, No. 10-cv-5636, 2012 WL 957494, at *3, *5 (E.D.N.Y. Feb. 27, 2012)
- *Allen v. BHP Navajo Coal Co.*, No. cv 09-692, 2011 WL 13266816, at *3 (D.N.M. Mar. 30, 2011)
- *Ramirez v. Riverbay Corp.*, 35 F. Supp. 3d 513, 523-24 (S.D.N.Y. 2014)
- *Johnson v. D.M. Rothman Co.*, 861 F. Supp. 2d 326, 333-35 (S.D.N.Y. 2012)
- *Moeck v. Gray Supply Corp.*, No. 03-1950, 2006 WL 42368, at *3 (D.N.J. Jan. 6, 2006)
- *Hoops v. Keyspan Energy*, 822 F. Supp. 2d 301 (E.D.N.Y. 2011)

