



## Recent Supreme Court Arbitration Decisions Affect Employers

By: Joshua R. Treece

Recently, the United States Supreme Court issued three (3) decisions affecting labor and employment arbitration clauses, *Stolt-Nielson S.A. v. AnimalFeeds International*, 130 S. Ct. 1758 (2010), *Rent-A-Center, West, Inc. v. Jackson*, 130 S. Ct. 2772 (2010), and *Granite Rock Co. v. International Brotherhood of Teamsters*, 130 S. Ct. 2847 (2010). In the first of these decisions, *Stolt-Nielson*, the Court held that an arbitrator cannot infer an agreement to authorize class arbitration “solely from the fact [that] the parties’ [agreed] to arbitrate [their bilateral disputes].” In *Rent-A-Center*, the Court, in a 5-4 decision, held that an arbitrator, not a court, must determine whether or not the employment arbitration agreement *as a whole* is unconscionable, and thus unenforceable. In the final arbitration decision, *Granite Rock*, the Court held that a dispute over a local union’s ratification of a collective bargaining agreement, which included an arbitration provision, must be decided by a court, not an arbitrator, because the dispute goes to whether or not the parties ever reached an agreement to arbitrate.

### Stolt-Nielson S.A. v. AnimalFeeds International

In *Stolt-Nielson*, Petitioners, a shipping company, entered into a contract with AnimalFeeds to ship its raw ingredients around the world via a cabin in one of Stolt-Nielson’s parcel tankers.

In a special maritime contract known as a “Charter Party,” Stolt-Nielson and AnimalFeeds agreed to arbitrate any dispute “arising from the making, performance or termination of [the] Charter Party.” In 2003, a criminal investigation revealed that Stolt-Nielson was engaged in an illegal price fixing conspiracy. After AnimalFeeds learned of the price fixing, it filed a class-action suit on behalf of Stolt-Nielson’s customers. In 2005, AnimalFeeds demanded class arbitration. In a subsequent agreement, the parties agreed to submit the issue of whether or not class arbitration was permitted under the arbitration agreement to a panel of three (3) arbitrators. Both parties agreed that the arbitration agreement was silent on the issue of class arbitration, that the agreement was not ambiguous, and therefore, that oral evidence was not required.

Without ruling on the parties’ intent and using public policy favoring arbitration as its sole guidepost, the arbitration panel held that the lack of a prohibition against class arbitration was enough to support an agreement to submit to class arbitration. In vacating the panel’s decision, the Supreme Court first held that arbitrators cannot make decisions based on public policy because their authority is restricted by the terms of the arbitration agreement; unlike a common-law court, an arbitrator “has no general charter to administer justice for a

community which transcends the parties [to the agreement].” Moreover, arbitration agreements must be enforced according to their terms, and although, in certain instances, terms reasonable under the circumstances can be supplied to determine the rights and duties of the parties, the decision to submit to class arbitration cannot be implied solely from the fact that the parties agreed to arbitrate. “This is so because class-action arbitration changes the nature of arbitration.” Unlike bilateral arbitration, class arbitration involves multiple disputes and multiple parties, the presumption of privacy and confidentiality does not apply, the rights of absent parties are adjudicated, and the stakes are higher. Accordingly, the Court reasoned, the shift from bilateral to class arbitration is too fundamental to imply an agreement to submit to class arbitration based solely on an agreement to arbitrate bilateral disputes.

In light of *Stolt-Nielson*, employers who want to take advantage of class arbitration should include an express provision to that effect in their arbitration agreements. Employers and lawyers alike should also be aware of the limited utility of public policy arguments in arbitration settings.

#### Rent-A-Center, West, Inc. v. Jackson

In *Rent-A-Center*, Jackson, an employee of Rent-A-Center, was required to sign an arbitration agreement as a condition of employment. Under the terms of the arbitration agreement, the parties agreed to present all disputes arising out of Jackson’s employment to an arbitrator, including “claims for discrimination” and “claims for violation of any federal . . . law.” In addition, the agreement stated that the “Arbitrator . . . shall have exclusive authority to resolve any dispute relating to the interpretation, applicability, enforceability or formation of this Agreement including, but not limited to any claim that all or any part of this Agreement is void or voidable.”

Jackson eventually filed a § 1981 discrimination claim in federal court and Rent-A-Center moved to compel arbitration. Jackson opposed the motion to compel arbitration on the grounds that the arbitration agreement *as a whole*

was procedurally and substantively unconscionable. Specifically, Jackson stated that the agreement was unconscionable because: (1) signing the arbitration agreement was a non-negotiable condition of employment; (2) the agreement required equal fee splitting between Jackson and Rent-A-Center in the event of arbitration; (3) the limited discovery procedures favored Rent-A-Center; and (4) Rent-A-Center reserved the right to bring its own intellectual property, trade secret and unfair competition claims in a court of law.

Relying on prior precedent, the Court stated that there are two types of challenges to invalidate arbitration contracts based on fraud, duress or unconscionability: (1) challenges to the specific agreement to delegate disputes to the arbitrator; and (2) challenges to the arbitration agreement *as a whole*. It is undisputed that the first type of challenge is within the ambit of the courts. Jackson’s challenge, however, attacked the agreement *as a whole*. The Court, therefore, was left to determine whether this type of challenge should be considered by the Court or the arbitrator.

The majority began by recognizing that arbitration agreements are severable from underlying employment contracts and, therefore, the Court reasoned that provisions *within* a single arbitration agreement are likewise severable. Under this reasoning, the majority held that although one provision may be unconscionable (for example fee-splitting or limited discovery), other provisions could remain enforceable (such as the agreement to delegate disputes to the arbitrator). Because Jackson challenged the arbitration agreement *as a whole*, and did not specifically challenge the provision delegating authority to the arbitrator, the Court held that the arbitrator must decide which provisions, if any, are unconscionable. If, on the other hand, Jackson had targeted the delegation provision itself as unconscionable, admittedly a difficult task, then a court, not an arbitrator would have to decide whether or not the parties’ agreement to submit disputes to an arbitrator was enforceable.

This decision has been criticized as circular because an arbitrator could find that the provision to delegate the parties’ disputes to the

arbitrator is unenforceable—thus removing the arbitrator’s power to decide any issue. Nonetheless, employers should recognize the benefits of this decision. If employers include an express delegation provision conferring power to an arbitrator to decide “all disputes relating to the interpretation, applicability, enforceability or formation of [the] Agreement including, but not limited to any claim that all or any part of [the] Agreement is void or voidable,” then employees will have the difficult task of challenging the enforceability of the delegation provision itself. Although, the Court did not pass judgment on the fee-splitting and limited discovery procedures, the District Court, in an alternative holding, held that fee-splitting was not unconscionable under Nevada law and the Ninth Circuit affirmed that alternative holding by the District Court. Although the results could be different under other state laws, the Supreme Court’s severability analysis should preserve all enforceable provisions, so employers have little to lose by including equal fee-splitting and limited discovery provisions.

#### Granite Rock Co. v. International Brotherhood of Teamsters

In *Granite Rock*, the local union and its parent organization, instituted a strike against Granite Rock following the expiration of the parties’ collective bargaining agreement (“CBA”) and subsequent failed negotiations. During the strike, the parties executed a new CBA that included a no-strike provision and an arbitration clause. The new CBA, however, did not include a hold-harmless provision insulating the union from damages related to its strike, and the union refused to end the strike until a hold-harmless agreement was entered. Following the execution of the new CBA, Granite Rock filed suit against the union and its parent organization for damages based on a breach of the new CBA’s no-strike provision and for tortious interference under § 301(a) the Labor Management Relations Act of 1974 (“LMRA”).

In response, the union and parent alleged that the new CBA was not properly ratified by its members and, therefore, no agreement on the new CBA, including the arbitration provision and no-strike provision, was reached. The union and parent also argued that tortious interference is not recognized under LMRA § 301(a). The District Court in *Granite Rock* held that the issue of ratification was a matter for the court, not an arbitrator, and a jury ultimately found that the new CBA was ratified. The District Court also found that no cause of action for tortious interference is available under LMRA § 301(a). The Ninth Circuit affirmed the tortious interference holding, but held that the arbitrator must decide the issue of ratification. The Supreme Court ultimately sided with the District Court, finding that a court must decide ratification under the well settled principle that courts must determine “whether parties have agreed to ‘submi[t] a particular dispute to arbitration.’” The Supreme Court also noted that *when* the CBA was ratified is an equally important decision that must be made by the court because the timing determines *which* disputes the parties intended to be covered under the arbitration clause. Finally, the Supreme Court agreed with the District Court’s and the Ninth Circuit’s finding that no cause of action for tortious interference exists under §301 (a).

*Granite Rock* is important to employers for two (2) reasons. First, *Granite Rock* makes clear that employers dealing with a union workforce cannot assert tortious interference claims under the LRMA. Second, if CBA ratification or ratification dates are at issue, and the CBA includes an arbitration provision, the Court, not the arbitrator, must decide whether the parties have agreed to submit their disputes to arbitration.

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### SAVE THE DATE—29th Annual Labor & Employment Seminars

Danville—November 30, 2010—8:00 am—12:00 pm  
Lynchburg—December 2, 2010—8:00 am—12:00 pm  
Roanoke—December 14, 2010—8:00 am—4:00 pm

More details to follow...

