California Court of Appeal Concludes That Unionized Employees and Their Employers Cannot Negotiate Away Compensation for Required Travel Time

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Faced with the question of whether unionized employees and their employer can bargain away the right to be compensated for employer-mandated travel time, a California Court of Appeal has ruled that they in fact may not do so. In Carlos Gutierrez v. Brand Energy Services of California, Inc., the Court concluded that Wage Order 16 (Cal. Code Regs., tit. 8, § 11160) requires that employees be paid for all employer-mandated travel time — and that it cannot be negotiated away by a union and the employer.

The plaintiff in the case was a journeyman scaffold worker at gasoline refineries. He and other employees were required to travel to and from work each day on the employer’s shuttle.
The plaintiff’s employment was governed by a collective bargaining agreement (“CBA”) negotiated with the company by the union representing the employees.

As part of the CBA, the union and the company had negotiated a provision by which the company would pay for mandatory post-shift travel time, but not mandatory pre-shift travel time. As a result, the employees were not paid for the 30 to 40 minutes spent traveling to work each work day on the company shuttle.

The plaintiff brought a putative class action for the failure to pay for the mandatory pre-shift travel time. The trial court concluded that such an agreement was permitted by the applicable Wage Order and entered summary judgment for employer.

Reversing the trial court’s decision, the Court of Appeal concluded that the applicable Wage Order allows an employer and a union to enter into a CBA that “expressly provides” for the waiver of the employees’ rights under section 5(A) to be compensated at the “regular rate of pay or, if applicable” the premium rate. The Court concluded that the provision does not override the requirement under section 4(B) that employees receive compensation not less than minimum wage for all hours worked. The Court further recognized that its interpretation was in harmony with Labor Code section 1194(a), which gives employees the right to minimum wage, as well as public policy considerations of protecting employees’ welfare and interests.

The Court reversed the grant of summary judgment and remanded the case for further consideration.

Only time will tell whether the company will seek review of the decision by the California Supreme Court, or how the California Supreme Court might resolve the issue.

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