

## CASE SUMMARIES

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Below is the summary of an interesting case that was release in December of 2008, from the Federal Court of Appeals (9th Circuit). The case involves a portion of a collective bargaining agreement (CBA) with the International Brotherhood of Electrical Workers (IBEW) and their Employer, Citizens Communication. The case centered around the issue of whether the Union had standing to arbitrate a portion of the CBA that dealt with retired union members. The Federal Appellate Court held in favor of the union.

#### ***Union Can Arbitrate Retire Dispute Without First Obtaining Consent of Retirees.***

*A union attempted to arbitrate an employer's changes to its medical plan, effectively eliminating retiree benefits. The collective bargaining agreement provided retirees medical benefits under a medical plan provision which covered all eligible employees. The union claimed that the employer could not make changes to the plan that would result in an overall reduction in retiree medical benefits. The employer refused to arbitrate on the grounds that the union lacked standing to represent the interests of the former employees who were no longer members of the union. The Ninth Circuit Court of Appeals held that the union had standing over the claim, reasoning that a denial of the right to arbitration affected the union in a "personal and individual way," and would require the expense of either suing in federal court to compel arbitration or litigating the alleged violation of the collective bargaining agreement. The court therefore refused to require the union to obtain retiree consent, on the grounds that the possibility the employer may have to re-litigate a favorable arbitral claim in suits by individual retirees was an insufficient reason to justify the creation of a "consent rule." International Brotherhood of Electrical Workers, AFL-CIO Local 1245 v. Citizens Telecommunications Company of California, 549 F.3d 781 (9th Cir. 2008)*

It was also interesting to note that the Appellate Court referred to a prior U.S. Supreme Court case and noted: "As the Supreme Court has pointed out, **"the future retirement benefits of active workers are part and parcel of their overall compensation."** *Allied Chem. & Alkali Workers Local Union No. 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157, 180 (1971). Thus, when IBEW seeks an arbitration order to determine whether Citizens has impermissibly reduced retirement benefits, it does so, at least in part, on behalf of current employees. After all, in order for a current employee to make a prudent decision about when to retire, accurate information about his entitlement to retirement benefits is crucial."

If you have any questions or would like a full copy of the Federal Appellate Court decision, e-mail Jeff Ortinau at [map.legal@sbcglobal.net](mailto:map.legal@sbcglobal.net).