

S245607



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**IN THE
SUPREME COURT OF CALIFORNIA**

GEORGE MELENDEZ, et al.,

Plaintiffs and Appellants,

v.

SAN FRANCISCO BASEBALL ASSOCIATES, LLC

Defendant and Respondent.

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION 3

CASE NO. A149482

SAN FRANCISCO SUPERIOR COURT, No. CGC-13-530672

HONORABLE CURTIS E.A. KARNOW

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I. ISSUE PRESENTED

“Whether plaintiffs’ statutory wage claim under Labor Code section 201 requires the interpretation of a collective bargaining agreement and is therefore preempted by section 301 of the Labor Management Relations Act.” (Order Granting Petition for Review)

II. INTRODUCTION

This case is about vindication of an important public policy of the State of California that has existed for over 100 years, the policy requiring prompt payment of earned wages to working men and women who find themselves out of work. See *Smith v. Superior Court (L’Oreal)* (2006) 39 Cal.4th 77. It has nothing to do with collectively bargained rights and obligations.

Given the text and Legislative history of Labor Code §§ 201, 203 and 219, and this Court’s decision in *Smith, supra* (2006) 39 Cal.4th 77, collectively bargained rights and obligations cannot undermine the protections individual employees enjoy in California to prompt payment of wages owed when their employers release them from work whether by layoff or permanent discharge.

The unwaivable statutory wage claims Plaintiffs assert do not require interpretation of a collective bargaining agreement (“CBA”);

and therefore the Court of Appeal's finding of LMRA section 301 (29 U.S.C. §185) preemption is not warranted.

In *Smith, supra*, 39 Cal.4th 77, this Court provided the roadmap for interpretation and application of the word "discharge" as it appears in Labor Code § 201, logically and painstakingly applying tenets of statutory construction. *Smith, supra* passim.

This Court in *Smith* ultimately found that the purpose of Labor Code §§ 201 and 203 is to compel the prompt payment of wages to people released from employment irrespective of whether they were fired from long term employment or released from a one-day assignment. The nature of the hiring or work relationship was a non-issue, immediate payment of wages is required when periods of employment end. *Smith, supra*, 39 Cal.4th at 92.

The Court of Appeal opinion herein ignored the letter and intent of Labor Code §§ 201 and 203, as found in *Smith, supra*. The opinion adopted the position that preemption was warranted because, irrespective of the needs and out of work status of employees released from work addressed by the Legislature in Labor Code § 201, the nature of the relationship at hiring was of paramount importance. To discern what that relationship is, the Court of Appeal then found the

CBA must be interpreted. Slip Op. pg.7-8. It took this position in a context where nothing in the Agreement was in dispute and had to be interpreted, and where given *Smith, supra*, the CBA was irrelevant.

Had the Court of Appeal paid close attention to the letter and purpose of Labor Code § 201, and followed *Smith, supra*, 39 Cal.4th 77, resort to the CBA would not have been required.

The lesson of *Smith* is that releases from employment, whether permanent or temporary, are "discharges" irrespective of the nature of the initial hiring or an ongoing CBA relationship. Release from work into the ranks of the unemployed through layoff or permanent termination is the key factor in analysis and application of Labor Code § 201, not the undisputed text or fact of a CBA.

III. STATEMENT OF FACTS AND PROCEEDINGS BELOW

George Melendez, as well as those he seeks to represent, have worked intermittently for the Respondent San Francisco Baseball Associates LLC ("the Giants") for years. Mr. Melendez worked as a security guard. The Giants' guards, and other stadium employees are paid from several days to up to two weeks after the end of each period of intermittent employment. (Operative Complaint AA 0135-0137, and 0140).

Nothing in the record refutes the foregoing allegations. There is no evidence establishing that laid off employees are paid the wages owed to them immediately upon layoff, whether a layoff lasts several weeks or months.¹

Melendez filed a class action complaint on November 25, 2015, and a First Amended Complaint on January 13, 2016 ("Complaint"). The Complaint asserts statutory claims on behalf of a class of all persons who have been intermittently employed by the Giants for limited duration assignments, claiming their wages, when they are periodically released from such assignments, are not timely paid. (AA 135-142) The class definition embraces all intermittently employed stadium workers, not just security guards.

The Complaint contains two causes of action: (1) A Class Claim for Violation of Labor Code § 201, seeking penalties pursuant to Labor Code § 203; and a (2) Claim for Penalties under PAGA Labor Code §§ 2698 and 2699, as a private attorney general. (AA0134-142).

The Complaint alleges, in relevant part:

¹ Contrary to the suggestion in the Court of Appeal Opinion (Slip Op. p.7), Plaintiffs have never asserted there is a layoff at the conclusion of each baseball game.

“1. This case arises out of the failure of defendant San Francisco Baseball Associates, LLC (“San Francisco Giants”) to pay intermittently employed individuals immediately upon discharge from employment periods of limited duration.

2. Pursuant to Labor Code Section 201 and *Smith v. Superior Court* (2006) 39 Cal.4th 77, the San Francisco Giants employ a number of person (across of variety of job classifications) intermittently during the baseball season and throughout the rest of the calendar year. Defendants are required to pay such persons immediately at the end of each limited duration assignment. Defendants, in violation of Labor Code Section 201 paid these employees late, typically between five (5) and fifteen (15) days late. For himself and other similarly situated intermittent employees of the San Francisco Giants, Plaintiff seeks damages for continuation wages under Labor Code Section 203.

3. The San Francisco Giants’ non-compliance with Labor Code Section 201 manifests itself in no less than three (3) ways. (1) At the end of the baseball season Defendants do not pay intermittently employed persons on the last day they work during the season. (2) During the baseball season, Defendants do not immediately pay intermittently employed employees on the last day they work during a home-stand. (3) Between baseball seasons, when intermittently employed persons are employed for events such as concerts, college football games, theatrical performances, fan appreciation days, a run of Cirque du Soleil shows, etc., Defendants do not immediately pay intermittently employed employees at the end of their work at these events.

16. Plaintiff and other members of the Class were “discharged” at the end of each period of intermittent employment within the meaning of Labor Code Section 201 (*Smith v. Superior Court, supra*).

17. Pursuant to Labor Code Sections 201, the San Francisco Giants owed to Plaintiff and members of the Class immediate payment of their final wages at the time

of each discharge. The immediate payment of said wages was due when the Giants discharged intermittently employed person (e.g. Plaintiff and the Class) at the end of a homestand, at the end of a baseball season, at the end of an inter-season event like a fan fest, college football game, a concert, a series of shows, or other events.

19. Defendants' failure to pay Plaintiff and members of the Class wages in accordance with Labor Code Sections 201 was willful. Defendants had the ability to pay final wages in accordance with Labor Code Sections 201, but intentionally adopted policies or practices incompatible with the requirements of Labor Code Section 201.

20. Pursuant to Labor Code Section 203, Plaintiff and members of the Class are entitled to continuation of their wages, from the day of each discharge they experienced until the wages were paid, up to a maximum of thirty (30) days per discharge. "²

The guards are represented by a union that has a collective bargaining agreement ("CBA") with the Giants. (AA 0160-176) The CBA gives the Giants absolute discretion in scheduling guards (AA 0165 Section 8). There is no provision in the CBA that addresses the timing of wage payments to laid off workers or otherwise. There is no dispute over the meaning of any terms in the CBA, nor over Respondent's position that there is an ongoing relationship between

² As used in the complaint, a "discharge" from a period of intermittent employment was meant to represent temporary and/or indefinite layoffs that occur for vast numbers of employees when the baseball season ends, when home stands are over, and when off season events end.

the Giants and the employees covered by the CBA, even when those employees are laid off, not gainfully/actively employed by the Giants.

The Giants in their Opening Brief in the Court of Appeal acknowledged that, given the intermittent nature of stadium work, there are periods when guards in the putative class will not be scheduled for work, will be laid off in fact:

“While the CBA gives certain employee classifications scheduling priority, it does not require that the Giants schedule any employee to work any specified number of hours, days, weeks, or months, or any specific number of games, homestands or seasons.”³

The facts will show that the Giants have exercised their discretion under the scheduling provisions of the CBA to not schedule Melendez (or other security guards) to work when AT&T Park is closed.” AOB Ct. of Appeal. 25-26, 28.

A. Trial Court Proceedings

The Giants moved to compel arbitration arguing that Melendez was required to arbitrate his statutory claims pursuant to the arbitration provisions of the CBA. The motion separately claimed preemption applied pursuant to LMRA section 301 (29 U.S.C. §185).

(AA 0091-0176)

³ This conforms with practical reality. A baseball game with 40,000 fans is going to need more security guards at work than a private wedding at the stadium in the off-season when there may be only 400 guests.

Following a hearing, the trial court issued a written ruling denying the Giants' motion to compel arbitration. (AA 0255-0259) The court first found that the claims in the Complaint that statutory rights had been violated were not subject to the CBA's arbitration provisions:

“[There is no language in the agreement [CBA] requiring arbitration of the claims in this case. The CBAs here require arbitration of claims involving the application or ‘alleged violation of any of the terms of the Agreement’ ... The suit here claims a violation of state statutes not a violation of the CBA.” (AA 0255).⁴

On the preemption issue, the Superior Court found, inter alia:

"Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 211 (1985) makes the point that ‘not every dispute concerning employment, or tangentially involving provisions of a collective-bargaining agreement, is preempted by § 301 or other provisions of the federal labor law.’ There is no ‘suggestion that Congress, in adopting § 301, wished to give the substantive provisions of private agreements the force of federal law, ousting any inconsistent state regulation.’ Id. at 212. ‘Clearly, § 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law. In extending the pre-emptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that section to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.’ Id." (AA0256)

⁴ The Court of Appeal agreed with this ruling. (Slip Op. p. 4-5)

The Trial court then quoted the United States Supreme Court opinion in *Livadas v. Bradshaw* 512 U.S. 107, 123 (1994):

“ ‘In *Lueck* and in *Lingle* [] we underscored the point that § 301 cannot be read broadly to pre-empt nonnegotiable rights conferred on individual employees as a matter of state law, and we stressed that it is the legal character of a claim, as 'independent' of rights under the collective-bargaining agreement [citation] and not whether a grievance arising from 'precisely the same set of facts could be pursued [citation] that decides whether a state cause of action may go forward'." (AA0256)

On the "interpretation" issue raised by Section 301 preemption, the trial court found that Defendants' papers do not demonstrate that resolution of the state law claim requires interpretation of the CBA. (AA O255). Further the trial court stated:

"Finally, I note the Ninth Circuit's cautious wielding of the interpretation requirement: there is no preemption unless the use of the CBA is more than just a consideration or reference to the CBA:

'We have stressed that, in the context of § 301 complete preemption, the term "interpret" is defined narrowly---it means something more than "consider", "refer to", or "apply". *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1108 (9th cir. 2000)." (AA 0257)

The Giants timely appealed.

B. Decision of The Court of Appeal

The Court of Appeal acknowledged the parameters of preemption doctrine, citing *Levy v. Skywalker Sound* (2003) 108

Cal.App.4th 753, 762-769 for the proposition that for Federal preemption to apply the need to interpret the CBA must inhere in the nature of the plaintiff's claim. Slip Op. at 5.

However, the Court then found, apropos to the issue posed in the grant of review here, "While resolution of the controversy may not turn on the interpretation of any specific language in the CBA, it does not follow that the meaning of the CBA is irrelevant to the outcome of the dispute."

Without assessing Legislative intent, the Court then found that reference to the CBA was necessary to determine whether employees were "discharged". The Court set up an irrelevant dichotomy. The Court found that "discharge" under the Code turned on an answer to the question of whether employees were hired into a long-term relationship, or alternatively, were separately hired after layoffs each time they received a new assignment? (Slip Op. p. 7-8). To answer the irrelevant question it posed, the court then took the position that resort to the CBA was necessary.

The Court of Appeal found that if guards were initially *hired* for periods of time that extended beyond the layoffs they experienced, they were not "discharged" when laid off. The Court then concluded

that since determining the nature of the initial hiring will necessarily entail review of the CBA, preemption is warranted. Slip Op. 7-9.

Emphasizing an ongoing CBA relationship between out of work guards and the Giants, the Court of Appeal failed to consider whether, as a matter of law, “layoffs” experienced by the guards are “discharges” irrespective of any long term contractual relationships that remained in effect between the Giants and their out of work employees.

Pursuant to the Court of Appeal decision, a CBA that contemplates an ongoing relationship between laid off worker and their employers can trump Labor Code § 201's policy for dealing with the harsh reality of unemployment. As will be demonstrated *infra*, the premise upon which the Court of Appeal position relies is inapplicable to the analysis this case requires. "Layoffs" are a form of discharge under Labor Code § 201 irrespective of any relationship between the laid off employees and their employers; therefore, resort to a CBA to determine the nature of that relationship is completely unnecessary.

SUMMARY OF THE ARGUMENT

1. Labor Code § 219 and applicable precedent preclude waiver of the rights created by Labor Code § 201.

2. Only when interpretation of a collective bargaining agreement is required, does LMRA 301 preemption apply to a statutory claim. Interpretation of a CBA is not required here.
3. Interpretation of the CBA is not required in this case because:
 - A. None of the CBA provisions are in dispute and the CBA is irrelevant to the outcome of this case.
 - B. The reference to “layoffs” in § 201 makes clear that “layoffs are form of “discharge.
 - C. The statutory scheme, the purpose of the law, and the meaning of “layoff” support the conclusion that the term "discharge" as used in Labor Code § 201 contemplates "layoffs" as a form of discharge irrespective of CBA terms.
 - D. With "layoffs" a form of “discharge”, and the periodic releases from employment experienced by the Giants’ stadium workers, by definition, “layoffs”, there is no cause to interpret the CBA.
 - E. The holdings and rationale of *Smith v. Superior Court (L’Oreal)* (2006) 39 Cal.4th 77 are dispositive.

IV. ARGUMENT

A. Labor Code § 201 Rights Cannot Be Waived.

In determining whether interpretation of the CBA is required in this case, recognition of the inability of parties to a CBA to alter the rights created by Labor Code § 201 is a necessary starting point.

Labor Code § 201 provides in relevant part: that “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately....”

Pursuant to Labor Code § 203, an employer’s willful failure to pay wages to a “discharged” employee in accordance with § 201 subjects the employer to penalties.

Labor Code § 219 provides that the rights and obligations set forth in the foregoing sections cannot be altered by agreement:

“[N]o provision of this article [which includes Labor Code § § 201 and 203] can in any way be contravened or set aside by a private agreement, whether written, oral, or implied.” See also *Balcorta v. Twentieth Century-Fox Film Corp.*, 208 F.3d 1102, 1112 (9th Cir. 2000), and *Livadas v. Bradshaw*, 512 U.S. 107, at 110 (1994).⁵

⁵ Both the 9th Circuit decision in *Balcorta*, *supra*, 208 F.3d 1102, and the Supreme Court decision in *Livadas*, *supra* 512 U.S. 107 addressed issue

Even if Labor Code § 219 had never been enacted, the Giants and the guards' union could not contract around the rights created by §§ 201 and 203:

“ ‘Under settled Supreme Court precedent, ‘[LMRA section] 301 does not grant the parties to a collective-bargaining agreement the ability to contract for what is illegal under state law.’ [Citations.]’ *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 695 (9th Cir.2001).” *Sciborski v. Pacific Bell* (2012) 205 CA 4th 1152, 1172.

B. LMRA Section 301 "Interpretation" Preemption Does Not Apply Absent A Genuine Need to Interpret a CBA

The issue as posed by this court in granting review asks whether the CBA between the Giants and the guards' union needs to be interpreted in order for there to be a determination of whether the statutory rights afforded by Labor Code § 201 have been violated.

While it is true that to further the goal of uniform interpretation of CBA's, the preemptive effect of LMRA Section 301(29 U.S.C. § 185) has been extended beyond suits that allege the violation of collective bargaining agreements, the breadth of that extension is limited.

arising from application of Labor Code § 201 in collective bargaining agreement contexts.

Allis-Chalmers Corp. v. Lueck, 471 U.S. 202, 210–11 (1985) provides: “The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a [CBA] contract phrase or term be subject to uniform federal interpretation”.

Thus, a state law claim will be preempted if it is so “inextricably intertwined” with the terms of a labor contract that its resolution will require judicial interpretation of those terms. *Id.* at 213.

In this matter, the rights of guards under Labor Code § 201 are not “inextricably intertwined” with the terms of the CBA. The interests of interpretive uniformity and predictability that require labor-contract disputes be resolved by reference to federal law are simply not involved in the adjudication of the immutable statutory rights at issue here.

“If the claim is plainly based on state law, § 301 preemption is not mandated simply because the defendant refers to the CBA in mounting a defense.” *Cramer v. Consolidated Freightways, Inc.*, 255 F.3d 683, 691 (9th Cir.2001) (en banc), cert. denied 534 U.S. 1078 (2002).

Nor can a defendant invoke preemption merely by alleging a

“hypothetical connection between the claim and the terms of the CBA,” or a “creative linkage” between the subject matter of the suit and the wording of the CBA. *Id.* at 691–92. To prevail, “the proffered interpretation argument must reach a reasonable level of credibility.” *Id.* at 692. “[L]ook[ing] to’ the CBA merely to discern that none of its terms is reasonably in dispute does not require preemption.” *Id.* quoting *Livadas*, 512 U.S. at 125.

In *Cramer*, the Ninth Circuit clarified the scope of the LMRA’s preemptive effect as follows:

“A state law claim is not preempted under § 301 unless it necessarily requires the court to interpret an existing provision of a CBA that can reasonably be said to be relevant to the resolution of the dispute.” *Id.* at 693.

The above constraints on invocation of preemption doctrine are applicable here. Resort to the CBA to determine whether the statutory rights at issue have been violated is completely unnecessary. The defense raised by the Giants that invokes the CBA is completely meritless. It cannot “reasonably be said”, given the language and intent of Labor Code § 201, that any of the CBA provisions referenced by the Court of Appeal and Giants are relevant to a determination of whether the statutory rights at issue have been violated.

The CBA does not have to be interpreted in order to assess whether a violation of Labor Code §201 occurs when employees are laid off, “released” from intermittent periods of employment. The language of the statute and its legislative history as applied to laid off employees of the Giants will control the outcome of this case, not whether they can only be permanently discharged for cause, do not have to reapply after a layoff, do not have to turn in their uniforms at the end of the baseball season, or enjoy benefits if, despite their periodic layoffs, in consecutive years they work over 300 hours a year. (CBA provisions the Court of Appeal and Giants conclude require preemption).

None of the CBA provisions have to be interpreted to adjudicate the applicability of Labor Code § 201 to the facts of this case. The CBA is irrelevant, and the meaning of its terms are not in dispute. *Lujan v. Southern California Gas Co.* (2002) 96 CA 4th 1200, 1206 – 1207, 1210.

C. Interpretation of the CBA is Not Required Because “Layoffs” In the Midst of Long Term Employment Relationships Are A Form Of “Discharge” Under Labor Code § 201 As A Matter of Law.

Even if this Court never decided *Smith, supra*, interpretation of the CBA would not be warranted here because the letter and intent of

the word “discharge” in Labor Code § 201 extends to layoffs, irrespective of what the court of appeal focuses on, the nature of employment relationship within which the layoffs occur.

As *Lujan, supra* (2002) 96 CA 4th 1200, 1206-1207, 1210 and *Sciborski, supra* (2012) 205 CA4th 1152, 1168-1174 make clear through their extensive discussion and application of Federal preemption principles, when the terms of a CBA are “irrelevant” to the outcome of a case, and where none of the terms of a CBA require interpretation, LMRA 301 preemption is inappropriate.

Here, as will be demonstrated below the meaning and application of Labor Code § 201 is completely a function of the law and tenets of statutory construction, therefore, the CBA is irrelevant, and the undisputed terms contained therein do not have to be interpreted.

Even if the CBA contained an undisputed term providing that security guards are employed for life, the layoffs they endure would still trigger the employer obligations contained in Labor Code § 201.

1. *Smith, supra* (2006) 39 Cal.4th 77 Establishes the Framework for Analyzing Whether Particular Separations from Employment Constitute “Discharges” Under Labor Code § 201, A Framework the Court of Appeal Ignored.

The Court in *Smith, supra*, was confronted with the question of whether the release of an employee who was hired for a one-day assignment, and completed that assignment was “discharged” as the term is used in Labor Code § 201. The Defendant argued, as the Giants in this case, that only permanent terminations from ongoing employment constituted “discharges” under § 201. The court rejected the Defendant’s position, finding that releases from a period of employment or upon completion of an assignment qualify as “discharges” under the law. *Id*, 39 Cal.4th at 92. In reaching that conclusion, *Smith, supra* laid out the statutory construction analysis model that should have been used by the Court of Appeal in deciding this case.

Smith established that the task of the Court in determining the applicability of Labor Code § 201 to a set of facts is to ascertain Legislative intent, and in doing so, to look to the meaning of the words of the statute and read the statute “with reference to the entire scheme of law of which it is part so that the whole may be harmonized and retain effectiveness” *Id*, at 83.

This Court went on to point out:

“If the statutory terms are ambiguous, we may examine extrinsic sources, including the ostensible objects to be achieved and the legislative history... In such circumstances, we choose the construction that comports most closely with the Legislature’s apparent intent, endeavoring to promote rather than defeat the statute’s general purpose, and avoiding a construction that would lead to absurd consequences.” *Id.*

Clearly, a 21st century CBA covering a discrete group of one employer's workers is not the type of extrinsic source this Court had in mind, in trying to discern the meaning of a hundred-year-old law.

In ascertaining the meaning of any Labor Code provision, this Court has also repeatedly emphasized:

“[I]n light of the remedial nature of the legislative enactments authorizing the regulation of wages, hours and working conditions for the protection and benefit of employees, the statutory provisions are to be liberally construed with an eye to promoting such protection.”

Ramirez v. Yosemite Water Co. (1999) 20 Cal.4th 785, 794, quoting *Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702.

It is patently clear, that the Court of Appeal did not “liberally construe” the statute, nor engage in any of the steps laid out in *Smith, supra*, nor heed *Smith’s* findings regarding the “entire scheme of the law”, the “legislature’s apparent intent”, and the “statute’s general

purpose” even though the meaning of “discharge” as used in Labor Code §201 is the central issue in this case as it was in *Smith*.

Had the Court of Appeal followed *Smith*'s approach to Labor Code §201, it would have found that the terms of the CBA are irrelevant and do not have to be interpreted, that the seasonal and other releases from intermittent employment/layoffs alleged herein are, irrespective of CBA terms, “discharges” under Labor Code §201.

2. Interpretation of The CBA Is Not Required Because the Inclusion of A "Seasonal Layoff" Exception in Labor Code §201 Establishes That the Legislature Considers “Layoffs” A Form Of “Discharge” As A Matter of Law.

The first step in statutory construction is to examine the words of the statute. Here, the use of the word “layoff” in Labor Code § 201 is telling.

The complete text of Labor Code § 201 (a) provides:

(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who **lays off** a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.