

**LOCAL 670, UNITED RUBBER, CORK, LINOLEUM AND PLASTIC
WORKERS OF AMERICA, AFL-CIO v. INTERNATIONAL UNION,
UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS
OF AMERICA, AFL-CIO v. ARMSTRONG RUBBER COMPANY**

United States Court of Appeals for the Sixth Circuit, 1987.
822 F.2d 613.

RALPH B. GUY, JR., Circuit Judge.

Local 670 of the United Rubber, Cork, Linoleum and Plastic Workers of America (URW) appeals the dismissal of its hybrid breach of contract/duty of fair representation claim pursuant to section 301 of the Labor Management Relations Act, 29 U.S.C. §§ 185 and 159(a). The district court, after a hearing on the matter, specifically found Local 670's grievance to be arbitrable but dismissed the suit in its entirety due to its inability to join a sister local out of California (Local 703), which the court found to be an indispensable party under Fed.R.Civ.P. 19 without which the court could not, in equity and good conscience, proceed. The employer, Armstrong Rubber Company (company) cross-appeals the finding of arbitrability. Although we agree that Local 670's claim is properly arbitrable, we find the district court's dismissal due to the absence of Local 703 improper under the circumstances of this case. Therefore, the decision below is affirmed in part and reversed in part, and the case is hereby remanded to the district court for further proceedings in accordance with this opinion.

I.

The facts relative to this appeal are simple and largely undisputed. Local 670, an unincorporated labor organization with principal offices in Madison, Tennessee, is one of five URW locals signatory to a master collective bargaining agreement with the company. Together the five locals comprise what is known as the "Armstrong chain," a nationwide group of local unions bargaining in concert with a common employer. The actual contract negotiating is conducted through the International Policy Committee (IPC), on which each local has at least one representative. In addition to the single master agreement, each local union also enters into local supplemental agreements addressing issues specific to that local and supplementing, but not contradicting or amending, the master agreement.

The underlying dispute centers on events during and just after negotiations for the parties' 1985 master agreement. A few weeks after all parties had signed both the master agreement and all five local supplemental agreements, the company approached Local 703 of Hanford, California, in an attempt to enter into a wage reduction agreement with that local due to the unprofitability of the California plant. The company contended that, due to excess production capacity, the Hanford operation would be closed unless significant wage reductions were accepted. The company and Local 703 drafted two versions of the wage reduction agreement (the Hanford memoranda). The first Hanford memorandum provided that the agreement was "subject to approval by a majority of the local unions representing a majority of the membership and the International Executive Board." This memorandum was then submitted to a vote of the entire Armstrong chain and was soundly defeated. Immediately thereafter, the parties prepared the second Hanford memorandum with an even larger wage reduction objective than the first. In this memo, however, there was no longer a statement regarding the necessity of majority approval. The agreement was framed as one involving "labor grade changes," stating as follows:

[I]n accordance with longstanding and clearly established practices by the parties and consistent with the Collective Bargaining Agreement, the Company and Union have negotiated the following labor grade changes for each specific job classification listed below * * * .

Despite deletion of the approval language, the International again submitted this memo-

randum to a majority vote. It was again defeated by a majority vote of all five locals, although it was approved by a majority of the members of Local 703. At this point, and with the approval of the vice-president of the International, the company implemented the agreement.

It was and is Local 670's contention that, by the express terms of the 1985 master agreement, the company had no right to alter the basic wage structure of one local in a local supplemental agreement, and, further, that the only way that *any* local supplemental agreement can be altered is upon approval by a majority of the local unions representing a majority of the union membership in the Armstrong chain.³ Because the International had been active in effecting the implementation of the Hanford agreement, Local 670 filed an internal union appeal against it for violations of Local 670's rights under the union constitution. The International Executive Board denied the appeal, stating in part that, since their "argument as to the proper interpretation of Paragraph 56 is obviously one of contract and not Constitutional interpretation ... the proper remedy is to pursue the matter through the grievance procedure."

On the day its internal union appeal was denied, the company laid off 64 members of Local 670. It is Local 670's contention that these layoffs were a direct result of the implementation of the drastic wage reductions accomplished by agreement with Local 703 in California. Local 670 then filed a grievance challenging the implementation of the Hanford memorandum and the attendant layoffs pursuant to Article VI of the master agreement. The company refused to process the grievance, stating in part, "we do not think that Local 670, as a representative of the International, is in a position to claim that a breach has occurred." Local 670 then initiated the instant suit, after which the company furloughed an additional 141 employees from the Madison, Tennessee plant, bringing the number of displaced workers to over two hundred.

Defendants interposed motions to dismiss for failure to state a claim and failure to join an indispensable party, Local 703. Although the court found that the complaint stated a claim and that the company should be ordered to submit the grievance to arbitration, it further found that Local 703 was an indispensable party within the meaning of Fed.R.Civ.P. 19(a) since "it is the other contracting party with the defendant, Armstrong Rubber Company, in the contract which is the subject of the grievance which the court is directing to be arbitrated." It therefore ordered Local 670 to join Local 703 within ten days. Local 670 issued a summons and complaint to Local 703, along with a letter in which it offered to arbitrate the grievance in California at Local 703's customary site for arbitrations. Although Local 703 did not respond to the offer to arbitrate in California, they did file a motion to quash the service of summons due to lack of personal jurisdiction.

After a further hearing, the district court issued its second order, concluding that the court lacked personal jurisdiction over Local 703 and that its presence was so essential to the proceedings that the court was unable to satisfactorily resolve the issues or fashion an adequate remedy in its absence. Noting that "it appears that Local 670 has the ability to pursue its claims elsewhere," the court dismissed the suit.

³ This argument is based on Article VIII, Section 18, which provides, in relevant part: "The Basic Wage Rates in effect as of the effective date of this agreement shall remain in effect for the duration of this agreement;" and on Article XIV, Section 56 which reads, in pertinent part:

Section 56—Effective Date, Amendment and Termination

(a) This Agreement and each location's Supplemental Agreement, including any agreed upon changes, shall become effective at each plant at the time of ratification by the Local Union, provided this Agreement has been approved by a majority of the Local Unions representing a majority of the membership and the International Executive Board of the Union * * * .

(b) This Agreement and the Local Supplements thereto, may be amended by mutual agreement between the parties.

II.

Arbitrability of the Grievance

[The court concurred with the district judge that the grievance subject to arbitration.]

III.

Joinder of Local 703 and Rule 19 Dismissal

Assessment of the question of joinder under Rule 19 involves a three-step process. Initially, the court determines whether a person who is not a party should be joined in the action if possible. * * *

If the court determines that the person or entity does not fall within one of these provisions, joinder, as well as further analysis, is unnecessary. However, if the court finds one of the criteria is satisfied, the person is one to be joined if feasible and the issue of the existence of personal jurisdiction arises. If personal jurisdiction is present, the party *shall* be joined; however, in the absence of personal jurisdiction (or if venue as to the joined party is improper), the party cannot properly be brought before the court. If such is the case, the court proceeds to the third step, which involves an analysis of the factors set forth in Rule 19(b) to determine whether the court may proceed without the absent party or, to the contrary, must dismiss the case due to the indispensability of that party. * * *

The rule is not to be applied in a rigid manner but should instead be governed by the practicalities of the individual case. This court has noted that “[i]deally, all [the] parties would be before the court. Yet Rule 19 calls for a pragmatic approach; simply because some forms of relief might not be available due to the absence of certain parties, the entire suit should not be dismissed if meaningful relief can still be accorded.”

* * *

A. Is Local 703 a “Party to be Joined if Feasible”?

This is an extremely close issue. Local 703 clearly does not satisfy the criteria of Rule 19(a)(1) because complete relief (*i.e.*, an order either compelling or denying arbitration) can be accorded to the parties before the court. However, under Rule 19(a)(2), Local 703’s interest in upholding the validity of its wage reduction agreement and, thereby, the continuation of its workers jobs, is sufficiently “related to” the subject of the action (the question of arbitrability) to make its joinder desirable. Further, we find that the company’s risk of incurring inconsistent obligations as a result of arbitrating the question of the validity of its subsequent bilateral agreement without Local 703’s presence also renders joinder the preferable course. Local 670 argues persuasively that the company’s risk would *not* be substantial, due to the deference traditionally accorded previous arbitration findings as well as principles of collateral estoppel potentially applicable to local 703 in the face of its refusal to intervene in a proceeding which affects its interest in the contract and of which it clearly had notice. However, we do not consider it wise to subject the company to even this level of risk where, as here, it is easily avoided.⁸

B. Could the Court Obtain Personal Jurisdiction Over Local 703?

We answer this question in the negative.

* * *

⁸ We stress that we consider it highly questionable whether Local 703 even qualifies as a person to be joined if feasible under Rule 19(a). However, Local 670 has voluntarily offered to participate in the arbitration proceeding in California, Local 703’s home state. Therefore, due to the ease of fashioning relief under Rule 19(b) which will serve the interests of all the parties involved, we assume, without deciding, that Local 703 qualifies for joinder under Rule 19(a).

C. Was Local 703 an Indispensable Party?

Analysis of the four factors of Rule 19(b) compels the conclusion that Local 703 was *not* an indispensable party to this action. In this regard, it is crucial to understand that Local 703's interest is its presence, not in the federal district court proceeding to compel arbitration, but in the actual arbitration that may affect any substantive rights it has regarding the Hanford agreement. This is the point which was misapprehended by the district court and which led it to conclude that Local 703 was an indispensable party to *this* action. The contract between Local 703 and Armstrong is *not* the contract which is the subject of Local 670's grievance here. Rather, the company's negotiation of that side agreement is merely the factual predicate for its claim that the company breached its master collective bargaining agreement *with Local 670*. So understood, it becomes clear that the contract between Local 703 and Armstrong is wholly collateral to the issue in this proceeding, which is the arbitrability of the alleged breach of the contract between the company and Local 670.

As counsel for Local 670 pointed out in oral argument, this is a two-tiered proceeding. In this first tier, no conclusion is reached as to the substantive rights of *any* of the parties. Our *sole* task is to determine whether Local 670 has succeeded in demonstrating that it and the company intended that this breach of contract claim be resolved through the process of arbitration. While Local 703's presence at the arbitration proceeding may arguably be deemed "indispensable," that is not a question before the court at this time. Local 703's interest in *this* proceeding is adequately represented by the company, which has the identical interest in not only avoiding arbitration, with its attendant risk of voiding the Hanford agreement, but also in proceeding to arbitration, if necessary, in a location where Local 703 may participate so that the rights and duties of the company with respect to both locals can be effectively determined. Clearly, then, the district court erred in this portion of its analysis by looking solely to the consequences of the substantive outcome of an arbitration hearing conducted in Local 703's absence.¹³

The second provision of Rule 19(b) specifically confers upon the court the power to include "protective provisions in the judgment" to lessen or avoid any prejudice. Here, any prejudice to Local 703 of participating in an arbitration proceeding in Tennessee can be totally eliminated by ordering that the arbitration be held in California, a proposal already advanced by Local 670. Such an order would be adequate to insure that the interests of all three parties are protected in the subsequent arbitration proceeding, thereby satisfying the third Rule 19(b) factor.

Finally, although it appears that Local 670 did have an alternate forum available at the time of the district court's dismissal, which occurred approximately four and one-half months after the likely accrual date of its cause of action, that possibility was not clearly established. Upon filing in another court, Local 670 could have been subjected to claims of a statute of limitations bar depending on the date on which its claim was held to have begun accruing. Moreover, the potential existence of another forum does not, in and of itself, outweigh a plaintiff's right to the forum of his or her choice. Some additional interest of either the absent party, the other properly joined parties or entities, or the judicial system must also be present.

Based on the foregoing, this case is REMANDED to the district court for the entry of an appropriate order compelling arbitration under circumstances which will protect the interests of all involved parties. It will further be necessary for the district court to address Local 670's other contentions and claims for relief, *e.g.*, its requests for the production of docu-

¹³ Illustratively, the court stated that: "Although concerned with the loss of jobs by the workers represented by Local 670, the Court shares the same concern for the welfare of the workers at Armstrong's Hanford, California plant. Specifically, this Court is concerned that a ruling in Tennessee may result in job losses at the Hanford plant, despite the lack of any participation by Local 703 in the Tennessee decision-making process."

ments, injunctive relief, and damages, in conjunction with its order. We leave resolution of these ancillary matters to the district court's discretion.

