

Arbitrator's Award Given Preclusive Effect in Racial Discrimination Case

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In *Wade v. Ports America Management Corp.*, the [California Court of Appeal, Second Appellate District](#) held that an arbitration award, pursuant to a collective bargaining agreement, had *res judicata* effect on a plaintiff's subsequent common law racial discrimination claim.

Wade, an African-American longshoreman, was laid off in September of 2008, even though he had more seniority than other employees who were retained. The effective collective bargaining agreement (CBA) required union members to submit any grievances related to their employment to binding arbitration.

Following his release, Wade filed a grievance alleging that he had been laid off in violation of certain CBA provisions relating to seniority. Wade also alleged he was singled out because the employer demonstrated unfair discriminatory practices against minorities.

The arbitrator ruled against Wade on both counts. Wade then filed an action in Superior Court alleging a single common law cause of action for retaliation and wrongful termination in violation of public policy. The trial court granted the employer's motion for summary judgment, determining that plaintiff's cause of action was barred because the arbitrator's decision on the issue of racial discrimination was final.

The Court of Appeal affirmed. In so holding, the court noted no federal or California court had addressed the preclusive effect of a labor arbitration award on a non-statutory discrimination claim. Other cases have held that arbitration awards may have a preclusive effect on statutory claims under the Fair Employment and Housing Act and [Title VII](#) in limited circumstances.

"Accordingly, we conclude that a labor arbitration award, pursuant to a CBA, may bar the employee from bringing a common law claim alleging retaliation and wrongful termination of public policy if the arbitration award addressed the same cause of action," the court held.

With respect to Wade's specific case, the Court of Appeal held that *res judicata* applied to bar Wade's single cause of action because the arbitration award encompassed his common law racial discrimination claim.

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