

APR 30 2009

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HOWARD S. WRIGHT  
CONSTRUCTION COMPANY,

Plaintiff - Appellant,

v.

LABORERS INTERNATIONAL UNION  
OF NORTH AMERICA, LOCAL UNION  
NO. 169,

Defendant - Appellee.

No. 07-16446

D.C. No. CV-06-00456-BES/VPC

MEMORANDUM \*

Appeal from the United States District Court  
for the District of Nevada  
Brian E. Sandoval, District Judge, Presiding

Submitted April 17, 2009\*\*  
San Francisco, California

Before: T.G. NELSON and M. SMITH, Circuit Judges, and KING, \*\*\* District  
Judge.

---

\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without  
oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Samuel P. King, Senior United States District Judge  
for the District of Hawaii, sitting by designation.

Plaintiff-Appellant Howard S. Wright Construction Company (Wright) appeals the district court's dismissal of its action against the Laborer's International Union of North America, Local Union No. 169 (Union). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.<sup>1</sup>

Because the parties are familiar with the facts, we do not supply them here except as necessary to explain our decision. We review a district court's legal conclusion that Plaintiff's repudiation of the agreement was not valid *de novo*. *Laborers Health and Welfare for Northern California v. Westlake Development*, 53 F.3d 979 (9th Cir. 1995).

The National Labor Relations Board held in *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enf.* 843 F.2d 770 (3d Cir. 1988), that an employer cannot repudiate a Section 8(f) prehire agreement midterm. Wright does not fit into the limited "single employee exception" to this rule, as interpreted by the Ninth Circuit, because Wright has conceded that it employed two laborers contemporaneously during the term of the contract. *Laborers Health* holds that in

---

<sup>1</sup> The Union asserts in its brief that we should also review the trial court's order denying confirmation and vacating the arbitration award. The Union failed to appeal this order; it also failed to appeal or cross-appeal from the final judgment which was entered in this case. An appellee who fails to file a cross-appeal cannot attack a judgment with a view towards enlarging its own rights. *Turpen v. City of Corvallis*, 26 F.3d 978, 980 (9th Cir. 1994), cert. denied, 513 U.S. 963, 115 S.Ct. 426, 130 L.Ed.2d 339 (1994).

order to fit into the limited single employee exception, the employer must be “a ‘one-employee employer’ during the relevant time period.” *Laborers Health*, 53 F.3d at 982. The district court did not err in determining that Wright’s repudiation was not valid, and dismissing the case.

AFFIRMED.