

NEWS RELEASES

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## Husch Blackwell Secures Appellate Victory for ConAgra in FLSA Litigation

Husch Blackwell prevailed in the U.S. Court of Appeals, Eighth Circuit, on behalf of ConAgra Foods, successfully ending a proposed class action that alleged violations of the Fair Labor Standards Act (FLSA) and Arkansas Minimum Wage Act (AMWA) regarding additional compensation for workers at the company's Russellville, Arkansas, plant for the time it took them to don and doff clothing and to check in and out tools before and after shifts.

ConAgra had previously prevailed on summary judgment in district court litigation in October 2013, September 2015, and August 2017.

At issue in the litigation was whether there existed an agreement between ConAgra and the employees' union not to compensate for time spent donning and doffing under a 2012 Collective Bargaining Agreement (CBA), and whether any such agreement complied with requirements of federal and state law. The appellate panel concluded that "ConAgra is not required to compensate employees for the time spent donning and doffing their protective equipment under either the Fair Labor Standards Act or the Arkansas Minimum Wage Act."

While this decision comports with decades of jurisprudence under the FLSA, it also came in the wake of turmoil under Arkansas case law and legislative changes in connection with the AMWA over the past two years. In 2016, the Arkansas Supreme Court held that the AMWA required employers to pay employees for donning and doffing time, despite the terms of a CBA (*Gerber Prods. Co. v. Hewitt*, 492 S.W.3d 856, 864) based on language found in § 218(b) of the AMWA; however, the Arkansas legislature later clarified Arkansas state law, spelling out that "Nothing in this subchapter, including the provisions of § 11-4-218(b), shall be deemed to interfere with, impede, or in

any way diminish the right of employers and employees to bargain collectively through representatives of their own choosing in order to establish wages or other conditions of work.” Because this amendment merely clarified the statute without creating a new substantive right, the district court and court of appeals determined that the Arkansas Supreme Court would have reached a different conclusion in Gerber than it did had the clarification been presented to it now.

The court went on to hold that time spent checking box cutters out at the beginning of the day and in at the end of the day was de minimis as a matter of law, and not compensable.

The decision should provide additional clarity for Arkansas employers and employees involved in wage and hour disputes that arise in the context of a CBA.

The Husch Blackwell team was led by Joe Glynias and included Brittany Falkowski, A.J. Weissler, Kayt Kopen, Scott Meyers, and Mark Arnold.