

California Correctional Peace Officers' Ass'n v. State of California

Case No. A112311 (CA Court of Appeal, 1st Dis., August 23, 2006)

<http://www.courtinfo.ca.gov/opinions/documents/A112311.PDF>

This decision is of interest because it raised for the first time in California the question whether a party opposing a petition to compel arbitration may defeat that petition by showing that the relief sought (by the petitioner in arbitration) is precluded by statute. The Court held it may not.

The plaintiff and appellant was the union that represents both rank-and-file correctional officers and their supervisors (the "Union"). Pursuant to written "ground rules" negotiated between the Union and the Department of Personnel Administration (the "Department"), for some 14 years supervisors had been permitted to sit in as observers during labor negotiations between the Department and the rank-and-file employees, and vice versa.

After rank-and-file observers had disrupted negotiations between the Department and supervisors, since March 2005 the Department refused to continue this practice. The Union sought to arbitrate its right to have observers present in accordance with a grievance procedure set forth in a binding 2001 Memorandum of Understanding ("MOU"). When the Department refused, the Union filed a petition to compel arbitration pursuant to Section 1281.2 Code of Civil Procedure.

The Department opposed the Union's petition to compel on the basis of a provision in the Government Code which states that supervisory employees "shall not participate in meet and confer sessions on behalf of" rank-and-file employees, and vice versa. Since this section precluded the presence of observers as a matter of law, it superseded anything to the contrary in the 'ground rules'.

The Department also argued that it should not be required to arbitrate this issue of statutory interpretation on the ground that only courts, not arbitrators, are permitted to interpret statutes.

The trial court accepted the Department's arguments and denied the Union's petition.

Section 1281.2 of the Code of Civil Procedure states in relevant part that "the court shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement to arbitrate the controversy exists, unless it determines that

- (a) The right to compel arbitration has been waived by the petitioner; or
- (b) Grounds exist for the revocation of the agreement."

In ruling on a petition to compel, the court must therefore determine whether the parties entered into an enforceable agreement to arbitrate that reaches the dispute in question. If such an agreement exists, the court *must* order the parties to arbitration, unless the arbitration has been waived or grounds exist to revoke the agreement.

Section 1281.2 expressly forbids the court from reaching the merits of the parties' dispute, instructing that if the court determines that a written agreement to arbitrate exists, an order to arbitrate such controversy may not be refused on the ground that the petitioner's contentions lack substantive merit.

In analyzing the agreement to arbitrate under the MOU, the Court found that the grievance was squarely within the applicable arbitration clause, even though the MOU does not discuss the ground rule that supervisors can attend meet-and-confer sessions for rank-and-file employees. Any other finding would constitute an impermissibly narrow interpretation of the clause, especially in light of the Court's obligation to construe the clause broadly in favor of arbitration.

The Department also argued that the ground rules were not intended as an exception to the statutory prohibitions in the Government Code. This, the Court found, was nothing more than a claim that the dispute should not be submitted to arbitration because the Union's position lacked merit.

The Department further argued that only the courts have the power to interpret and apply statutes. This argument was based on an explication of the separation of powers doctrine, between legislative, executive and judicial powers, a doctrine that the Court found was not intended to reach arbitrators' handling of state statutes. The Court pointed to *Broughton v. Cigna Healthplans*, 21 Cal.4th 1066 (1999), in which the California Supreme Court noted that the US Supreme Court had "repeatedly made clear that arbitration may resolve statutory claims as well as those purely contractual if the parties so intend, and that in doing so, the parties do not forego substantive rights, but merely agree to resolve them in a different forum." 21 Cal.4th at 1075. The Court also cited *Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83 (2000) in which the California Supreme Court defined the minimum procedural requirements that would permit arbitration of certain statutory claims.

The Appeals Court concluded that "[t]hese cases appear to assume, if not expressly hold that arbitrators are permitted to interpret statutes, since it is inevitable that an arbitrator asked to resolve a statutory claim will be required to engage in interpretation of the statute."

The Court opined that this conclusion is consistent with the Supreme Court's evolving jurisprudence regarding substantive appellate review of arbitration awards, pointing to *Moncharsh v. Heily & Blase*, 3 Cal.4th 1 (1992), in which the Court left open the possibility that an award could be reviewed "when according finality to the arbitrator's decision would be incompatible with the protection of a statutory right." 3 Cal.4th at 33. The Court concluded:

"This provision for appellate review of possible statutory violations appears to constitute an implicit recognition that, as an initial matter, arbitrators are empowered to consider statutory defenses and therefore to interpret statutes."

The Court also found that although the issue is new to California courts, several federal decisions had "rejected claims by parties to an agreement to arbitrate that they should be allowed to bypass arbitration because the claims made by the petitioner are inconsistent with statutory law or public policy."

Summarizing, the Court found that the Department was not entitled to skip arbitration for three reasons: (1) the body of case law recognizing that arbitrators are entitled to resolve issues of statutory interpretation, (2) the presence of a potentially dispositive statutory issue is not recognized as a defense under Section 1281.2, and (3) Section 1281.2 expressly *forbids* courts from denying arbitration on the ground that the petitioner's claim is meritless.

Thus, the order of the trial court was reversed, and the matter remanded for entry of an order granting the Union's petition and compelling arbitration of the Union's grievances.