



Business Law Section of the State Bar of California

## ADR Committee

### Case Law E-Bulletin

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*Hess Collection Winery v. California Agricultural Labor Relations Board*,  
2006 SOS 3490 (July 5, 2006)

<http://www.courtinfo.ca.gov/opinions/documents/C045405.PDF>

In *Hess Collection Winery v. California ALRB*, the Third Appellate District (Sacramento), in a 2 to 1 decision, addressed constitutional challenges to what one could call a “statutory med-arb procedure”, - a mandatory interest arbitration procedure applicable to agricultural employers and unions who fail to agree on their initial collective bargaining agreement. The Court of Appeal ruled that the challenges are without merit, holding that the procedure does not violate due process or the equal protection clause, nor does it invalidly delegate legislative authority to a private party.

Hess Collection Winery (“Hess”) and the United Food and Commercial Workers Union (the “Union”), the real party in interest, had failed to agree on the terms of an initial collective bargaining agreement. Pursuant to §1164 et seq. (Contract Dispute Resolution) of the California Labor Code, a private “mediator” determined the terms of a contract by which the parties would be bound. The Agricultural Labor Relations Board (the “Board”) denied Hess’s petition for review of the mediator’s decision.

Hess sought an order setting aside the Board’s decision, contending that the statutory scheme violates principles of due process by unreasonably interfering with the right of contract, denying the right of judicial review, and being aimed at protectionism. Hess also contended that the scheme violates equal protection, invalidly delegates legislative authority, and is vague and overbroad.

The Statutory Scheme. Section 1164 of the Labor Code (2002), provides for a “med-arb” procedure when parties fail to reach agreement. The parties must not previously have had a binding contract between them. (§1164.11) After either party files a declaration that they have failed to reach an agreement, the parties go to mandatory mediation. Immediately after a mediator has been selected, he schedules meetings over a 30-day period (extendable for another 30 days).

If the parties fail to agree, the mediator certifies that the mediation process has been exhausted. Within 21 days the mediator then files a report with the Board that establishes the final terms of a collective bargaining agreement. (§ 1164(d)) The report states the reasons for the mediator’s determinations, which are guided by

certain enumerated factors, including the employer's financial condition and wages under comparable collective bargaining agreements. (§ 1164(e))

Within 7 days of the mediator's report, either party can petition the Board for review. (§ 1164.3(a)) The grounds for review are limited to that a provision (1) is unrelated to wages, hours, or other conditions of employment, (2) is based on clearly erroneous findings of material fact, or (3) is arbitrary or capricious in light of the mediator's findings of fact. If the Board determines a *prima facie* ground exists it may grant review.

If, upon review, the Board finds that a ground for review exists, it orders the mediator to modify the agreement (§ 1164.3(c)), and the review process is repeated.

The parties also have the right to seek Board review of the mediator's report on traditional grounds for *vacatur*. (§ 1164.3(e)) If the Board vacates the report, it orders the appointment of a new mediator, and the mediation process is repeated.

After final Board review, either party may petition the Court of Appeal or the Supreme Court for a writ. (§ 1164.5(a)) Judicial review extends no further than to determine whether (1) the Board acted without, or in excess of, its powers or jurisdiction, (2) the Board did not proceed in the manner required by law, (3) the order or decision of the Board was procured by fraud or was an abuse of discretion, or (4) the order or decision violates a constitutional right of the petitioner. (§ 1164.5(b))

Interest Arbitration. As used in labor law, interest arbitration, unlike grievance arbitration, focuses on what the terms of a new agreement should be, rather than the meaning of the terms of any old agreement.

The legislature has clear authority to regulate the employment relationship. At issue here was whether the challenged legislation regulated in a constitutional manner when it compels parties to submit to interest arbitration. "Notwithstanding section 1164's use of the word 'mediator'," the Court noted correctly, "the process amounts to compulsory interest arbitration." Also, the word "agreement" is a misnomer, because its terms were imposed on Hess by force of law. The mediator's action was quasi-legislative rather than quasi-judicative in character.

Substantive Due Process. Turning to Hess's constitutional challenges, the Court found substantive due process was not violated by depriving Hess from the right to contract, as such right is not absolute. Courts defer to the legislature, and will not strike down a law on substantive due process grounds unless it is manifestly unreasonable, arbitrary or capricious, and has no real or substantial relation to public health, safety, morals or general welfare. The Court held that in view of the legislature's broad authority over employment and the limited role of the courts in reviewing legislative policy decisions, the statutory scheme of Section 1164 and following meets the constitutional test for substantive due process review.

Judicial Review. Hess also contended that the statutory scheme strips it of the right to judicial review of the state-imposed agreement. The Court observed that interest arbitration being quasi-legislative in character, the scope of judicial review of quasi-

legislative decisions is well established. A reviewing court will consider whether the agency acted within the scope of its authority, whether it employed fair procedures, and whether its action was arbitrary, capricious, or wholly lacking in evidentiary support. The Court held that here the actual review procedure is adequate and gives agricultural employers such as Hess what is constitutionally required.

Equal Protection. Hess further argued that the statutory scheme violates equal protection because it applies only to *agricultural* employers. The test was whether this classification bears a rational relationship to a legitimate state purpose. The legislature found there were peculiar problems with the collective bargaining process between agricultural employers and employees. This provides a rational basis for the enactment of interest arbitration legislation that applies to agricultural employers and employees but not to employees of other businesses or industries.

Delegation of Legislative Authority. Hess also contended that the statutory scheme invalidly delegates legislative authority. Unconstitutional delegation of legislative power occurs when the Legislature confers upon an administrative agency unrestricted authority to make fundamental policy decisions.

The Court held that here, the fundamental policy decisions are contained in the legislature's express declaration that it needed to ensure a more effective collective bargaining process between agricultural employers and employees, and thereby more fully attain certain identified purposes.

The Court also rejected Hess's argument that the 'vague' factors (now) set forth in § 1164(e), which the mediator '*may*' consider when determining the collective bargaining agreement, can be disregarded so that he was really free to make up an agreement "out of whole cloth." The Court held that the statutory use of the word '*may*' in situations in which persons or the public have an interest in having an act done by a public body means '*must*.' Another interpretation would make the criteria set forth in § 1164(e) illusory.

The Court found that the criteria set out in § 1164(e) are sufficiently concrete to provide lawful guidance to the mediator and the Board, and that there is no unlawful delegation of legislative power. Nor that such delegation of legislative power to a *private* mediator was unconstitutional, especially since the mediator's decisions are subject to the Board's review.

The Dissent. Judge Nicholson voiced a strong dissent, arguing that the rulemaking authority bestowed on the mediator is an unlawful delegation of legislative authority, made worse by the fact that the delegation is to a private person, and not protected by adequate controls of oversight, as the review powers of the Board are too limited to serve that purpose. Moreover, even if the statutory scheme did not involve an unlawful delegation, it would violate the equal protection clause to allow quasi-legislative rulemaking to apply just to one employer and one group of employees and not to everybody similarly situated.

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