

The Ultimate Backup

A Client News Bulletin

RAINS LUCIA STERN, PC

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STATEWIDE PUBLIC SAFETY BINDING ARBITRATION RULED UNCONSTITUTIONAL BY COURT OF APPEAL

By Rocky Lucia

On Friday, April 24, 2009, the California Court of Appeal (First Appellate District) issued a unanimous ruling in *County of Sonoma v. the Superior Court of Sonoma County* declaring a statewide binding arbitration statute for peace officers and firefighters to be unconstitutional. In its 35-page opinion, the Court considered the statutory arbitration framework adopted by the California Legislature when it enacted Senate Bill No. 440 (California Code of Civil Procedure Section 1299 *et. seq.*). The full text of the decision can be viewed at our website: www.rlslawyers.com.

Facts of the Case

The Sonoma County Law Enforcement Association (“the SCLEA”), a bargaining unit comprised primarily of correctional officers in Sonoma County, bargained to impasse with Sonoma County and ultimately demanded that the County comply with SB 440 and submit the impasse to binding arbitration. The County refused, and the SCLEA petitioned the Superior Court to compel the County to arbitrate the dispute, the trial court granted the SCLEA’s petition.

The County appealed the decision to the Court of Appeal. The trial court’s decision was the first in the State to affirm the

validity of the statute, as other superior courts had ruled SB 440 unconstitutional. While a number of our clients, such as Santa Rosa POA, Oakland POA, San Leandro POA, Gilroy POA, Modesto PMA and several others, have binding arbitration through adoption of local charter provisions, most of our association clients have no right to arbitrate and, therefore, had been following the challenges to SB 440 with great interest.

SB 402 and the Riverside Case Revisited

In ruling on the validity of SB 440, the court relied heavily on the 2003 California Supreme Court’s prior decision in *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278 where the Supreme Court considered SB 402, an earlier version of the binding arbitration framework set forth under CCP § 1299. The *Riverside* case held that SB 402 was unconstitutional.

In response to the Supreme Court’s determination that SB 402 was unconstitutional, local public safety associations, through the efforts of the Peace Officers Research Association of California and other labor groups, supported certain amendments to the statute, and ultimately

the revised version of CCP § 1299 (SB 440) was passed and signed into law.

Both SB 402 and 440 provided that after impasse had been declared following unsuccessful negotiations for a successor MOU, the labor association could compel the local employer to participate in binding interest arbitration. The arbitration would be heard by a panel of three arbitrators. The employer and the employee association would each select a representative, in addition to a mutually-agreed upon third panel member. The arbitrators would then consider all economic issues, including salaries, wages, benefits and other forms of remuneration (section 1299.3 subdivision (G)(g)).

The Court in the SCLEA case observed that SB 440 contained one significant modification to SB 402: the inclusion of a provision that permitted the local public employer to reject the binding arbitration award of the three-member panel. When the arbitration panel rendered its decision, the local employer could reject the award only by a unanimous vote of the governing body. It was this unanimity requirement that substantively distinguished SB 440 from SB 402. In the end, that additional component of SB 440 was the centerpiece of the Court's analysis and discussion.

The Arguments of the County

The Court's opinion indicated that Sonoma County presented many of the same arguments that were made in the prior *Riverside* case challenging SB 402. In essence, the County argued that the statute impermissibly infringed upon home rule powers reserved to local governments under Article XI of the California Constitution.

Specifically, the County argued that SB 440 intruded upon the employer's constitutional authority to establish compensation in terms of employment for County employees.

The Court agreed with Sonoma County that SB 440 violated two separate sections of Article XI of the Constitution. The statute violated section 1 subdivision (b), which provides that "the governing body shall...provide for the...compensation...of its employees." The court held, among other things, that the provision requiring a unanimous vote to negate the arbitration award deprived the governing body (acting through the majority) of providing for the compensation of employees.

The Court found the unanimous vote requirement would not set the compensation of employees, but would merely "prevent another *body* from establishing binding terms for the compensation of County employees." The Court stated the importance and long legal tradition of governing bodies ruling by a simple majority vote. It is interesting to note that in the Court's extensive analysis of the importance of "majority rule," it cited James Madison's writings in the Federalist Number 10, where Madison presented compelling arguments concerning the republican principle of majority rule.

The second prong of the County's argument against SB 440 concerned the violation of the California Constitution Article XI Section 11 Subdivision (a). The Court agreed with all of the arguments made by the County and conversely rejected all of the arguments by the SCLEA holding that SB 440 violated the California Constitution Article XI, section 11 subdivision (a)

because it impermissibly delegated to the arbitration panel “the power to interfere with County money (by potentially requiring the County to pay higher salaries than it chooses) and to perform municipal determining compensation for County employees.” (Citing to *Riverside*)

The Arguments of the SCLEA

While RLS did not participate in the litigation, and we are not aware of all the arguments made by the SCLEA, it appears from the Opinion that the Court rejected all of the legal and policy arguments of the SCLEA in support of SB 440. The Court flatly rejected the notion that SB 440 was valid because it addressed a matter of statewide concern. The Court noted that the same argument had been made in *Riverside* and rejected by the California Supreme Court. The Court simply stated that the compensation of local employees is not a matter of statewide concern. The Court also rejected the argument that the unanimous vote requirement was a “balance” or check upon the local governing body’s ability to unilaterally implement terms of working conditions once impasse is reached. The Court also disagreed with the SCLEA’s argument that “allowing a simple majority of a governing body to reject an arbitration panel’s decision makes the arbitration process meaningless.” The Court was not persuaded by the SCLEA’s contention that the “unanimity requirement insures that section 1299 *et seq.* is not used offensively against employee organizations.” Finally, the SCLEA argued “without an unanimity requirement, the cost and effort for an employee organization to challenge a governing body’s conduct during negotiations would substantially increase.” The Court did not support this assertion.

The SCLEA argued that the Court could consider removing the word “unanimous” from the section and therefore retain the other substantive provisions of the SB 440. The Court observed that there was no language in the statute that allowed it to sever any of the provisions, and moreover, found that there was no legislative intent to adopt SB 440 in the absence of the unanimity requirement.

Is There a Future for Local Binding Arbitration?

While many of us were disappointed when the California Supreme Court struck down statewide binding arbitration in the *Riverside* opinion, we were grateful that the Legislature revisited the issue by enacting SB 440. However, at the time the statute was enacted, many of us felt then that the construct of SB 440 would face significant Constitutional challenges. Injecting the unanimity requirement for rejecting the arbitration reward was certainly an attempt to strengthen the statute, but, in the end, it would not be enough to secure the much sought-after right of binding interest arbitration for all peace officers and firefighters throughout the state of California.

While collective bargaining laws across the country vary to a great degree, there are many states where legislatures have seen fit to grant peace officers and firefighters the right to arbitrate contract disputes. Unlike nearly all other employees, peace officers and firefighters do not have the right to strike.

Unfortunately the Legislature’s attempts to provide binding arbitration have been unsuccessful in overcoming the challenges

of the language of the California Constitution. That said, at the time of this writing, it is unknown if THE SCLEA will appeal the decision of the Court of Appeal to the California Supreme Court. In the meantime, we are encouraging all of our clients to continue to work with their legislators and state organizations, such as PORAC, to look for alternative ways to secure binding arbitration at the state level.

There are many associations throughout the state who have secured the right to binding arbitration at the local level. Make no mistake: decisions in the SCLEA case, as well as *Riverside*, do not preclude any local association from reaching out to its local community to secure the important right to submit contract disputes to binding arbitration. Let's not forget that the inability to strike results in an inequitable power shift in labor relations in favor of the employer.

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