



District Cannot Refuse To Arbitrate Dispute Based On Claim That CBA Provision Conflicts With State Law Regarding Charter Schools

In United Teachers Los Angeles v. Los Angeles Unified School District (2009) ___ Cal.Rptr.3d ___, WL 2963721, the California Court of Appeal for the Second Appellate District found that a school district cannot refuse to arbitrate a dispute based on its claim that the provisions of a collective bargaining agreement (“CBA”) that were allegedly violated by the district are inconsistent with and/or preempted by state law regarding charter schools.

The teachers’ union filed a grievance alleging that the school district violated provisions in the CBA establishing procedures for converting a district school into a charter school. The district denied the grievance and the union requested arbitration of the dispute, pursuant to a binding arbitration clause contained in the CBA. The school district refused to submit the grievance to arbitration, causing the union to file a petition in state court to compel the school district to arbitrate the dispute. The union argued that the arbitration provision of the CBA is valid and, therefore, there is no basis for the school district to refuse to arbitrate.

The school district contended that, in order to compel arbitration, a valid agreement to arbitrate must exist. The district reasoned that the charter school provisions of the CBA that it allegedly violated were preempted or invalidated by state law, specifically, the Charter School Act of 1992 (see Education Code § 47611.5), and, as a result, there was no valid agreement to arbitrate the alleged violations of the CBA. Education Code section 47611.5(e) provides that the approval or denial of a charter school petition shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board. The CBA provisions at issue set forth the duties of the union and its members in processing a conversion charter petition, as well as established disclosure requirements by the charter operator to employees of a proposed charter school. The district took the position that these terms of the CBA are in conflict with Education Code section 47611.5(e), and are therefore preempted by state law.

In support of its argument, the district relied on a California Supreme Court case, Board of Education v. Round Valley Teachers Association (1996) 13 Cal.4th 269 (“Round Valley”), which held that an arbitrator exceeded his powers when he enforced language in a CBA that granted a probationary employee additional protections that were in conflict with those afforded by state law. The school district argued that, under Round Valley, an arbitrator cannot enforce the charter school collective bargaining provisions at issue because they are preempted by state law and, therefore, the charter school provisions are not subject to review by an arbitrator.

The Court disagreed with the school district's position, finding instead that the question of whether the charter school provisions at issue are preempted by state law goes to the merits of the union's claim, and not to whether a legitimate agreement to arbitrate exists. The Court found that, since it was undisputed that the CBA contains an agreement to arbitrate such disputes, the grievance must first be resolved by an

arbitrator. The Court rejected the school district's Round Valley preemption argument, stating that the case only stands for the proposition that an arbitration award is subject to judicial review on preemption grounds; Round Valley did not hold that the dispute should never have reached the arbitrator in the first place. The Court went on to clarify, if the arbitrator concludes, despite the district's preemption argument, that the school district violated the CBA, the district can then challenge the arbitrator's decision in court on the ground that the arbitrator exceeded his or her power by enforcing CBA language that is contrary to state law. On the other hand, if the arbitrator finds no violation of the CBA, then there would be no need for a court to decide the preemption issue.

This decision ultimately means that, even if the CBA provision at issue is inconsistent with state law, an agency is not excused from its obligation to arbitrate the dispute under a binding arbitration agreement. An arbitrator must decide in the first instance the merits of a claim, including whether the CBA provision allegedly violated by the district is preempted by state law. Should you have any questions regarding this case and its impact, please contact one of our four offices.

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