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Arbitration Clause in Collective Bargaining Agreement Doesn't Cover Statutory Claims, Court of Appeal Rules

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In *Mendez v. Mid-Wilshire Health Care Center*, the California Court of Appeal for the Second Appellate District held that the arbitration provision in a collective bargaining agreement governing a plaintiff's employment did not apply to statutory discrimination claims.

Plaintiff, *Mendez*, was a nurse's assistant who filed a lawsuit against her employer, *Mid-Wilshire*, alleging several causes of action, including three statutory causes of action based on the California Fair Employment and Housing Act (FEHA). *Mid-Wilshire* filed a motion to compel arbitration and stay the action, arguing that all of Mendez's claims were subject to the grievance and arbitration procedure set forth in the collective bargaining agreement between Mid-Wilshire and the union to which she was a member.

The Court of Appeal held that, although Mendez was bound by the collective bargaining agreement (and thus, her non-statutory claims were subject to arbitration),

> "the presumption that disputes arising out of collective bargaining agreements are arbitrable does not apply to statutory violations and … a requirement to arbitrate statutory claims in a collective bargaining agreement must be 'particularly clear.'"

For this reason, the Court explained, "[b]road, general language is not sufficient to meet the level of clarity required to effect a waiver" in a collective bargaining agreement. In short, a collective bargaining agreement must contain a "clear and unmistakable provision" under which the employees agree to submit to arbitrate all state and federal causes of action arising out of their employment.

The collective bargaining agreement in the instant case, the Court noted, did not contain a clear and unmistakable agreement to arbitrate statutory discrimination claims. Rather, it contained very general language regarding grievances, not mentioning FEHA or any other statutory anti-discrimination laws, nor did it contain an explicit waiver of the right to seek judicial redress for statutory discrimination causes of action. Rather, it provided

that arbitration "shall be applied and relied upon by both par tie as the sole and exclusive means of adjustment of and settling grievances." As the Court held, this was simply not nearly specific or clear enough:

> "At a minimum, the agreement but specify the statutes for which claims of violation will be subject to arbitration."

Please contact the author if you have any further questions regarding arbitration agreements in employment contracts or collective bargaining agreements.

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