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CBAs Must Specifically State Intent to Arbitrate Statutory Rights

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***Seyfarth Synopsis**: The Court of Appeal has held that unless a collective bargaining agreement includes an explicitly stated, clear and unmistakable, intent to waive the right to a judicial forum for statutory causes of action, arbitration of those statutory claims will not be compelled.* Vasserman v. Henry Mayo Newhall Memorial Hospital. *The CBA in* Vasserman *did not waive the right to a judicial forum, because the Grievance and Arbitration section of the CBA failed to specify the Labor Code provisions that would have to be arbitrated.*

The Facts

Tanya Vasserman, a registered nurse, worked for Henry Mayo Newhall Memorial Hospital, under a collective bargaining agreement ("CBA") between the Hospital and the California Nurses Association. The CBA's "Grievance and Arbitration Section" provided for grievances culminating in arbitration, and defined a grievance as any dispute "arising out of the interpretation or application of a specific Article and Section of this Agreement during the term of the Agreement … as to events or incidents arising only at the Hospital." The CBA outlined a three-step grievance procedure. Step three required the Hospital or the California Nurses Association to "file the grievance for binding arbitration pursuant to the rules of the Federal Mediation and Conciliation Service." The CBA included articles on compensation, including overtime, and meal and rest periods. None of these articles referred to the grievance procedure or to remedies for violations.

Vasserman, instead of filing a grievance, sued in state court for violation of the California Labor Code, including claims for a failure to pay all regular and overtime wages and a failure to provide meal and rest breaks. The Hospital moved to stay the case and compel arbitration. The Hospital argued that Vasserman and the other employees she sought to represent in her putative class action were all covered by a CBA that included a Grievance and Arbitration section that clearly required the Hospital or the union to file a grievance for mandatory arbitration as step three of the grievance procedure. The Hospital argued that the grievance procedure explicitly waived the right to pursue claims in a judicial forum and Vasserman had to arbitrate her claims. The trial court denied the Hospital's motion to compel arbitration and the Hospital appealed.

The Court of Appeal's Decision

The Court of Appeal affirmed the trial court's decision. It found that the Grievance and Arbitration section defined a grievance as "any complaint or dispute arising out of the interpretation or application of a specific Article or Section of this Agreement." The section also described a three step grievance procedure, including step three in which any unresolved grievances may be

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submitted to arbitration. But it also limited the power of the arbitrator. The section provided that the arbitrator "shall be without authority to decide matters specifically excluded or not included in this Agreement." The court held that because the Grievance and Arbitration section did not specifically refer to Labor Code or other state or federal statutes, or include any language suggesting that the union intended to waive employees' rights to bring statutory claims in court, the CBA contained no explicitly stated, clear and unmistakable waiver of a judicial forum.

The Court of Appeal also rejected the Hospital's argument that the parties, by including specific articles on pay and meal and rest breaks in the CBA, clearly and unmistakably intended to submit all disputes regarding those subjects to the grievance or arbitration process. The articles on pay and meal breaks did not refer to state laws. A waiver cannot be inferred from "broad, nonspecific language … not coupled with an explicit incorporation of statutory requirements."

What *Vasserman* Means for Employers

We are reminded that to preclude judicial litigation of statutory rights, CBAs should specify any statutory rights that will be subject to grievance and arbitration procedures. These grievance procedures should also be incorporated by reference in any other section of the CBA discussing statutory rights, to ensure that the parties clearly and unmistakably state their intent to submit all disputes regarding those subjects to the grievance and arbitration procedures set forth in the CBA.

If you would like additional information, please contact your Seyfarth attorney, David Kadue at dkadue@seyfarth.com or Rocio Herrera at rherrera@seyfarth.com.

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