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From: Chris Jordan on behalf of Public Law Group Information

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Subject: Public Law Alert: COURT OF APPEAL STRIKES DOWN INTEREST ARBITRATION UNDER SB 440, DECLARING STATUTE VIOLATES "HOME RULE" AND "MAJORITY VOTE" PRINCIPLES GUARANTEED UNDER CALIFORNIA CONSTITUTION



PUBLIC LAW ALERT

COURT OF APPEAL STRIKES DOWN INTEREST ARBITRATION UNDER SB 440, DECLARING STATUTE VIOLATES "HOME RULE" AND "MAJORITY VOTE" PRINCIPLES GUARANTEED UNDER CALIFORNIA CONSTITUTION

**Sonoma County Law Enforcement Assn. v. County of Sonoma
(Cal. Court of Appeal, 1st Appellate Dist., Case No. A122450)**

On April 24, 2009, the First District Court of Appeal issued a published decision finding interest arbitration under SB 440 unconstitutional. The Court of Appeal's decision is an important victory for local governments throughout the state and reaffirms the "home rule" principles articulated by the California Supreme Court in *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, which declared SB 440's predecessor unconstitutional.

WHAT IS INTEREST ARBITRATION?

"Interest arbitration" is a process in which a private and publicly unaccountable arbitration panel, acting in a purely legislative capacity, determines the terms and conditions of a new collective bargaining agreement when negotiations between an employer and employee organization reach impasse. "Interest arbitration" is distinguishable from the more commonly known "grievance arbitration," where an arbitrator acts as a judicial officer, interpreting the terms of an existing agreement.

FACTUAL SUMMARY

In 2000, the Legislature passed SB 402, which required local governments to submit labor disputes involving law enforcement officers and firefighters to interest arbitration upon receiving a request by an employee organization, after negotiations reached impasse. Under SB 402, the outcome of any arbitration was *final and binding* upon both the local government and employee organization.

In *County of Riverside v. Superior Court* (2003) 30 Cal.4th 278, the California Supreme Court declared SB 402 unconstitutional. The court found that SB 402 violated the plenary authority of counties to set terms and conditions of employment for their employees, including wages and other forms of compensation, in violation of Article XI, Section 1 (b) of the California Constitution. The court also found that SB 402 violated Article XI, Section 11(a), which prohibits the Legislature from delegating to any private body the power to appropriate local funds or to perform municipal functions.

In 2003, the Legislature enacted legislation aimed at reviving the core features of SB 402. The new bill – SB 440 – was identical to SB 402, with one exception. Rather than providing for "final and binding" arbitration, SB 440 allowed a local

government's governing body to overturn the arbitration panel's award through a unanimous vote of all members, within five days after the award is issued.

In 2007, after several months of negotiations, the County of Sonoma (County) and Sonoma County Law Enforcement Association (SCLEA) reached an impasse on the terms of a successor labor agreement. SCLEA demanded interest arbitration under SB 440. The County refused, prompting SCLEA to file a petition to compel arbitration with the Sonoma County Superior Court. The County opposed SCLEA's petition, arguing that SB 440 continued to violate the same constitutional provisions identified in *County of Riverside*. The superior court ultimately ruled that SB 440 was constitutional, becoming the first court in the state to do so. In its written order, the superior court acknowledged that the process imposed under the statute "is procedurally demanding" but concluded that the County's board of supervisors could convene and vote within five days to reject the arbitration panel's award. The court held the statute was thus constitutional on its face. The County, represented by Renne Sloan Holtzman Sakai LLP, filed a petition for writ of mandate with the First District Court of Appeal, challenging the superior court's order.

THE COURT OF APPEAL'S DECISION

In a 36-page opinion, the First District Court of Appeal granted the County's petition for writ of mandate, concluding that SB 440 impermissibly intrudes upon a county's constitutional authority to establish compensation and other terms of employment for county employees.

Initially, the court reaffirmed the holding in *County of Riverside* that the setting of compensation for county employees is a matter of local, not statewide, concern. The court went on to find that interest arbitration under SB 440 impermissibly interfered with a governing body's constitutional authority under Article XI, Section 1(b) to legislatively set employee compensation. The court explained that under SB 440, a governing body no longer possesses the authority to actually "provide for" employee compensation; instead, it may only reject the decision of the arbitration panel – similar to the veto power traditionally exercised by the executive branch of government.

The court further held that the unanimous vote requirement imposed under SB 440 violated the majority vote principles embodied in Article XI, Section 1(b). As the court explained, "[p]ermitt[ing] a minority of a governing body to set the compensation of county employees by making the arbitration panel's decision binding on the county would be inconsistent with both longstanding statutory rules of interpretation and established California case law, as well as deeply offensive basic principles of representative democracy." The court rejected SCLEA's attempt to analogize SB 440's unanimous vote requirement to other legislative enactments which imposed a supermajority vote requirement on a governing body. The court reasoned that unlike the statutes cited by SCLEA, SB 440 "imposes a unanimous vote requirement on local governing bodies *not* to approve their *own* measures, but to block the action of a wholly separate body." Thus, the court concluded, the statute "is a provision for minority rule."

Finally, the court held that, through the passage of SB 440, the Legislature had impermissibly delegated a county's powers to a private body, in violation of Article XI, Section 11(a). "The statute unequivocally places the authority to decide disputed compensation issues in the hands of the arbitration panel at the behest of the employee organization." The court rejected SCLEA's argument that SB 440's limited conferral of authority to a governing body to reject an arbitration panel's decision somehow cured this unconstitutional delegation: "the mere fact that the arbitration panel's decision will not become binding if the County's board of supervisors is able to muster the necessary unanimous vote to reject it does not mean no delegation has occurred."

PRACTICAL IMPACT

Unless the California Supreme Court decides to grant review (which, in our view, is unlikely), *County of Sonoma* will be precedential for courts throughout California, although courts in other appellate districts may reach contrary conclusions concerning the constitutionality of SB 440. Assuming courts in other appellate districts follow the line of reasoning laid out in *County of Sonoma*, the only avenue for imposing any effectively binding form of interest arbitration statewide would be an amendment to the California Constitution.

The decision does not affect the interest arbitration processes that have been enacted by local initiative in about 25 California charter cities and charter counties; nor does it prohibit future interest arbitration initiatives from being enacted through vote of the electorate in local charter jurisdictions.

For more information about this important decision, please contact Jeff Sloan (415.678.3806, or jsloan@rshslaw.com), Steve Cikes (415.678.3817, or scikes@rshslaw.com), or Todd Simonson (415.678.3831, or tsimonson@rshslaw.com).

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