Labor/Employment

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Some of state's attorneys don't want to return to office

In a tentative ruling, Sacramento County Judge Timothy W. Salter found the Department of Human Resources had failed to show the "telework dispute" was not subject to arbitration under a memorandum of understanding.

Do attorneys working for the state have to return to work? It could come down to what a Sacramento County judge thinks about the contract their union signed with the state last year — well into the COVID-19 pandemic.

On Valentine's Day, the California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) moved to compel the California Department of Human Resources into arbitration. Their motion was based on a memorandum of understanding CASE signed with the state in 2022.

The union represents 4,500 attorneys working for the state. California Attorneys, Administrative Law Judges and Hearing Officers in State Employment vs. Californ Department of Human Resources, 34-2023-00334685-CU-PT-GDS (Sac. Super. C

Whalen

filed Feb. 14, 2023).

That MOU came months after state departments began telling attorneys they needed to come to work again after over a year of working remotely because of pandemic restrictions. Representing the union, Sacramento attorney Patrick J. Whalen wrote that "CalHR's repeated refusal to arbitrate multiple grievances is arbitrary and capricious." He also wrote that the state's decision to no longer allow "telework flexibility" was arbitrary and of "questionable operational need."

In a tentative ruling issued Monday, Judge Timothy W. Salter agreed. He found the department had failed to show the "telework dispute" was not subject to arbitration under the MOU. Salter rejected the department's claims the grievance process would only cover "individual employee requests" and not "wholesale changes to the state's telework policies."

"The court further notes, in the context of disputes arising under collective bargaining agreements, such as the case here, there is a presumption of arbitrability," he wrote, citing City of Los Angeles v. Superior Court (2013) 56 Cal. 4th 1086, 1097. A retired Stanislaus County Superior Court Judge, Salter is sitting on temporary assignment.

David M. Villalba argued for a more expansive interpretation of the MOU. Villalba is the principal labor relations counsel with the department. "It is the job of the court to at least provisionally entertain all credible evidence," Villalba argued, while, ironically, appearing over a scratchy Zoom connection.

He added the tentative ruling contains "a reversible error. ... This rule has been reiterated by multiple courts of appeal." Villalba said the MOU was plausibly ambiguous on the question of whether the union could force arbitration and the court should look more deeply at the evidence of what each "party intended at the time."

Whalen responded by pointing to the portion of the agreement stating, “This MOU sets forth the full and entire understanding of the parties regarding the matters contained herein. ... it is agreed and understood that each party to this MOU voluntarily waives its right to negotiate with respect to any matter raised in negotiations or covered in this MOU.” He added that similar language has appeared in every agreement between the parties for two decades and has rarely been questioned.

“It is standard contract language that says this agreement is the sum total of the agreement,” Whalen said. “It may seem like boilerplate, but it has meaning.”

He added, “I would suggest that the best way to determine what the parties intended in 2022 is to look at the MOU.”

Villalba responded that the agreement “does not prohibit the parties from offering additional evidence of intent.” Salter took the case under submission.

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