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## AAA Employment Rules Give Arbitrator Right to Decide Gateway Issues

In *Universal Protection Serv., LP v. Superior Court*, No. CO785557 (Cal. App. 4th 2015), the court denied a mandamus petition that sought to set aside an order compelling the employer to arbitrate a dispute with its employees, including whether class action relief was available.

The plaintiffs, a group of armed security guards at the Yolo County Superior Court, were employed by Universal Protection, Service LP (UPS). Their complaint alleged that they were required to provide themselves with certain equipment (such as guns and handcuffs) and also to pay the costs of keeping themselves certified as armed guards, but that they were not reimbursed for their equipment or training costs. When they filed an administrative complaint, as required by law, all but one of them was fired and none were paid their wages. They then filed a class action complaint in state court. Their amended complaint sought to compel class-wide arbitration of their claims under [California's Labor Code Private Attorneys General Act of 2004](#).

The parties had signed an arbitration agreement that stated that the American Arbitration Association's National Rules for the Resolution of Employment Disputes (the [AAA Employment Rules](#)) would apply. UPS filed a cross-complaint seeking a declaration that (1) the trial court, not the arbitrator, should decide whether class relief was available under the parties' arbitration agreement and (2) the parties' arbitration agreement barred any class relief. UPS then moved to compel individual arbitration and to stay the court proceedings. The trial court stayed the court proceedings but referred the entire matter to arbitration. UPS filed a petition for mandamus arguing that only the court, not the arbitrator, had jurisdiction to decide if class relief was available.

The California appellate court held that the issue to be decided was whether the arbitration agreement "clearly and unmistakably" gave the arbitrator the right to decide whether the parties' agreement permitted class arbitration. Because this question turned on the language of the parties' agreement and the AAA Employment Rules, the court reviewed the trial court's decision *de novo*.

The court stated that the fact that the arbitration agreement did not mention class arbitration did not resolve whether the agreement "clearly and unmistakably" gave the arbitrator the power to decide jurisdictional questions, such as whether class action relief was available. It noted that Rule 6 of the AAA Employment Rules specifically stated that "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement." The court also noted that the AAA Supplementary Rules for Class Arbitrations applied to all cases that involved any AAA rules, directed the arbitrators to decide whether class arbitration is appropriate under the parties' arbitration agreement, and spelled out the procedures the arbitrators should follow in making that decision.

The court then joined the majority of decisions holding that the incorporation of arbitration rules that give the arbitrator jurisdiction to decide so-called gateway questions, such as the availability of class relief, should be considered to be part of the parties' arbitration agreement and given their intended effect. It quoted the Ninth Circuit's observation that "Virtually every circuit to have considered the issue has determined that incorporation of the [AAA] rules constitutes clear and unmistakable evidence that the parties agreed to arbitrate arbitrability." As a result, the court denied the petition for mandamus and allowed the matter to proceed to arbitration, including the plaintiffs' demand for class relief.

**Keywords:** class action, class arbitration, jurisdiction, gateway questions, employment, incorporation and AAA rules

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