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California Supreme Court: Unions Lack Standing to Assert Unfair Competition and Private Attorneys General Act Claims

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On June 29, 2009, the same day that it issued its highly anticipated opinion in *Arias v. Superior Court*, holding that employees need not bring representative actions under the Labor Code Private Attorneys General Act ("PAGA") as class actions, the California Supreme Court also affirmed the Court of Appeal's decision in *Amalgamated Transit Union, Local 1756, AFLCIO v. Superior Court (First Transit, Inc.)*. In *Amalgamated Transit*, the Court concluded that a labor union that had not suffered actual injury under California's Unfair Competition Law ("UCL") and that was not an "aggrieved employee" under PAGA could not bring a representative action under either of those laws.

While the decision would seem to suggest that there will be fewer UCL and PAGA lawsuits because unions may not bring them, the practicalities are very different. It would seem that unions, instead of bringing UCL or PAGA claims themselves, need only find a single employee to act as the named plaintiff in such actions in order to proceed with identical claims. As such, an apparent victory for employers may not be any victory at all.

Case Overview

California's UCL allows a private party to bring an unfair competition action on behalf of others, but only if the person "has suffered injury in fact and has lost money or property as a result of the unfair competition." Similarly, PAGA provides that an "aggrieved employee" may bring an action to recover civil penalties for violations of the Labor Code "on behalf of himself or herself and other current or former employees… ."

Amalgamated Transit presented the question whether a labor union that has not suffered actual injury under the UCL and is not an "aggrieved employee" under PAGA may nevertheless bring a representative action under those laws, either as the

assignee of employees who have suffered an actual injury and who are aggrieved employees, or as an association whose members have suffered actual injury and are aggrieved employees. The California Supreme Court has confirmed that a union may not do so.

The UCL prohibits "any unlawful, unfair or fraudulent business act or practice… ." Before 2004, the UCL allowed "any person acting for the interests of itself, its members or the general public" to seek restitution or injunctive relief against unfair acts or practices. But California voters changed the law in 2004 by passing Proposition 64. The law now requires that a representative claim seeking relief on behalf of others may be brought only by a "person who has suffered injury in fact and has lost money or property as a result of the unfair competition."

In *Amalgamated Transit*, the union conceded that it did not suffer any actual injury, but instead contended that employees who had suffered an actual injury could assign their claims to the union. The Court reasoned that allowing employees to assign such claims to a labor union would defeat the entire purpose of Proposition 64, which was specifically amended to require that a person asserting an unfair competition claim must have suffered an actual injury or have lost money as a result of the alleged unfair competition.

In September 2003, California's Legislature enacted PAGA. PAGA permits a civil action "by an aggrieved employee on behalf of himself or herself and other current or former employees" to recover civil penalties for violations of other provisions of the Labor Code. An "'aggrieved employee'" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was [sic] committed." Again, the union conceded that it was not an "aggrieved employee," but argued that an aggrieved employee's claim could be assigned to the union. The Court noted that an individual may assign a legal claim to another only when the claim arises out of a legal obligation or a violation of a property right. The Court observed that PAGA does not create property rights or any other substantive rights. Rather, it is simply a procedural statute allowing an aggrieved employee to recover civil penalties for Labor Code violations that otherwise would be sought by state labor law enforcement agencies. Under existing case law, the right to recover a statutory penalty may not be assigned.

The union next argued that unions may maintain the actions as entities in their own right based on the legal concept of associational standing. Under this concept, an association, such as a labor union, may bring an action on behalf of its members when the association itself would not otherwise have standing. Associational standing exists when: (a) the association's members would otherwise have standing to sue in their own right; (b) the interests the association seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. The Court reiterated, however, that a plaintiff has standing to bring an UCL action only if the plaintiff has suffered "injury in fact" and a plaintiff has standing to bring an action under the PAGA

only if the plaintiff is an "aggrieved employee." The court concluded that associations suing under either law are not exempt from these express requirements.

Looking Ahead: What Does This Case Mean To Employers?

While many may believe *Amalgamated Transit* to be a major victory for employers, the practicalities may be otherwise. While unions may not bring UCL or PAGA lawsuits themselves, it may not be difficult for them to find employees willing to act as the named plaintiffs in such actions.

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