

# California Court Holds Arbitrator Decides Class Arbitrability Where Agreement Specifies AAA Rules

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An employment arbitration agreement that incorporated the American Arbitration Association's National Rules for the Resolution of Employment Disputes vested the arbitrator with the power to decide whether the agreement authorized class-wide relief, the California Court of Appeal has ruled. [\*Universal Protection Service LP v. Superior Court\*](#), No. C078557 (Cal. Ct. App. Aug. 18, 2015). The Court denied an employer's petition to set aside the trial court's order compelling class arbitration and ordered that the arbitrator should determine the class issue.

## Background

Michael Parnow and others worked as armed security guards for Universal Protection Service, LP. The guards provided their own equipment, such as guns, handcuffs, and radios, and paid the costs of maintaining their professional certifications. Universal did not reimburse the guards for their equipment or training costs.

The guards signed an employment arbitration agreement covering all claims related to their employment. The arbitration agreement did not expressly address class arbitration or the arbitrator's authority to decide jurisdictional and arbitrability issues. However, the agreement provided that the American Arbitration Association's National Rules for the Resolution of Employment Disputes would apply to any arbitration.

Under the AAA Rules, 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 AAA Rules also state that, with respect to class claims, the arbitrator must first determine whether the applicable arbitration clause permits arbitration to proceed on behalf of or against a class.

The guards filed a class action against Universal for unreimbursed business and training expenses, among other things. Universal asked the trial court to order individual arbitration, and the trial court denied the motion and ordered class arbitration. Universal petitioned the appellate court to set aside the order as unauthorized under the arbitration agreement.

## Applicable Law

Generally, courts, not arbitrators, decide disputes about arbitrability. *BG Group, PLC v. Republic of Argentina*, 572 U.S. \_\_\_, 188 L. Ed.2d 220, 228 (2014); see also *Oxford Health Plans LLC v. Sutter*, 569 U.S. \_\_\_, 186 L. Ed.2d 113, 119 n.2 (2013) (questions of arbitrability are “presumptively for courts to decide” absent “‘clear[] and unmistakabl[e]’ evidence that the parties wanted an arbitrator to resolve the dispute”).

However, when parties explicitly incorporate rules that empower an arbitrator to decide issues of arbitrability, it serves as clear and unmistakable evidence of the parties’ intent to delegate such issues to an arbitrator. *Hartley v. Superior Court*, 196 Cal. App. 4th 1249, 1256-57 (Cal. Ct. App. 2011).

### **Arbitrator Decides Arbitrability**

Universal argued that, because the arbitration agreement was silent about class actions, the arbitrator did not have the authority to decide whether class arbitration was permitted. The appellate court rejected Universal’s argument.

The Court noted that Universal drafted the arbitration agreement and specifically referenced the AAA rules. The AAA rules granted the arbitrator the authority to decide threshold jurisdictional issues, including whether class arbitration is permitted. Accordingly, the arbitration agreement was not silent on the issue of the arbitrability of class actions. The Court concluded that the parties’ “agreement to conduct their arbitration under the AAA Rules constitute[d] clear and unmistakable evidence of their shared intent that the arbitrator decide whether it permits arbitration of class claims.”

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Employers who incorporate the AAA Rules into an employment arbitration agreement are giving the arbitrator the authority to decide threshold jurisdictional issues, including the arbitrability of class claims. To preclude class arbitration, include a well-drafted class action waiver in arbitration agreements. To give authority to a court to decide these threshold issues, include the specific language in arbitrations agreements.

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