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Lockyer defends inquiry

State official's probe of store pact draws fire

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Attorney General Bill Lockyer is being criticized for political cronyism after launching an investigation into a revenue-sharing pact between Ralphs, Vons and Albertson's, a probe that could undermine the companies' bargaining position in the eighth week of the United Food and Commercial Workers labor dispute.

The attorney general, an outspoken labor proponent who received more than $35,000 in contributions from the UFCW in his 2002 re-election campaign, says his office "will seek to determine whether the stores are playing fair."

But anti-union lawyers say that Lockyer's own investigation is unfair, claiming it is without legal merit and suspicious in its timing.

"This investigation is designed to burden the employers with the hope of getting them to compromise on their position," said Scott Witlin, a labor lawyer and partner at law firm Proskauer Rose.

"Lockyer needs to stop playing politics with federal labor law and allow the employers as well as the union members to resolve their dispute how the federal law intends it to be resolved," said Adam Abrahms, chairman of the Los Angeles County Chapter of the California Republicans Association.

Lockyer harshly refuted claims of a political bias, pointing out that he has also received campaign contributions from Vons' parent company, Safeway Inc.

"I don't deny sympathy for the striking men and women on those picket lines, but I can separate those sympathies from the duty to do my job in a careful and prudent way," Lockyer said. "The main point is this: It's a secret agreement, so no one knows exactly what they've agreed to and how that agreement works. The first task is to have independent experts examine those documents and e-mails."

Lockyer sent subpoenas for documentation of the pact to the grocery store corporate headquarters in Cincinnati, Boise, Idaho, and Pleasanton. Such an agreement could violate antitrust laws barring unfair business practices, Lockyer said.

The Southern California supermarket strike began Oct. 11 after last-ditch contract talks between 70,000 UFCW employees and the region's three largest grocery chains failed. The workers struck Vons stores, and the next day Ralphs and Albertson's locked out their employees. Federally mediated negotiations are ongoing, but the sides remain at odds over proposed cuts to medical benefits.

As the strike wears on, 859 stores from San Diego to Santa Barbara have been choked out of their regular holiday business. In order to soften the blow, the three chains entered into a profit- and loss-sharing pact to ease the pain to any single company.

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The mutual-aid tactic was particularly useful to the companies after the UFCW removed its picket lines from 300 Ralphs stores Oct. 31 in order to focus the pressure on Vons and Albertson's, which was largely ineffective in light of the pact.

According to Witlin, revenue-sharing agreements are common practice in labor disputes, and there is nothing unique about the supermarkets' agreement. Furthermore, Witlin said, in labor disputes such as this one, federal law pre-empts state law and there are federal exemptions for profit-sharing.

"There have been cases involving mutual assistance pacts going back 30 to 40 years ... the U.S. Congress has been aware of these things and has never chosen to outlaw or regulate them -- states are not allowed to step in," Witlin said.

But Lockyer claims that although some exemptions do exist, not all such pacts are necessarily immune to federal or state law.

"There are some exceptions allowed, but not as explicitly chains have been claiming," Lockyer said. "I want people to understand what the issues are. These companies cannot fix prices under ordinary circumstances. The question is, are they allowed to do that by a secret agreement that maintains prices in a way that violates a free and open market."

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