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Subject: Federal appellate court orders a rehearing of earlier appeals decision

In grocers' antitrust fight, federal appellate court orders a rehearing of earlier appeals decision

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A U.S. appellate court has tossed out a previous ruling and ordered that the appeal of an antitrust lawsuit brought by the state of California against three major grocery chains be reheard.

The 9th Circuit Court of Appeals issued its decision Friday. The court did not give a reason that a larger panel of appellate judges will rehear the case March 21 in San Francisco.

The lawsuit focused on an agreement in 2003 by Safeway Inc., Albertsons Inc. and Ralphs Grocery Co. to share profits among themselves -- and with Food 4 Less -- if any of the three supermarket chains was targeted by strikers.

The state of California sued the three grocers and Food 4 Less in 2004, arguing that this mutual strike assistance agreement was a violation of federal antitrust law and led to higher food prices. (The lengthy labor strike and lockout at the retailers' Southern California locations -- a fight that revolved around healthcare and tiered pay system issues -- was the longest in the retail grocery industry's history.)

A lower court had sided with the grocery chains' arguments that the agreement didn't violate antitrust laws because food prices would be cheaper because labor costs were less.

But last year a three-judge panel of the federal appeals court in San Francisco overturned that ruling.

The grocery chains petitioned to have the appeals court rehear the case, arguing that it was exceptionally important and might have far-reaching effects. The state countered that the situation was unusual and not part of industry norms: "Because profit-pooling is unnecessary and, indeed, unrelated to labor negotiations, the mixture here is almost idiosyncratic," the state argued in a court filing.

"We are pleased the 9th Circuit has agreed to hear the case," Mike Siemienas, a spokesman for Supervalu Inc., the parent company of Albertson's, said Friday.

-- P.J. Huffstutter

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