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Supreme Court Rules Collective Bargaining Agreements Requiring Arbitration of Statutory Claims Enforceable

In *14 Penn Plaza LLC v. Pyett*, a divided US Supreme Court held 5-4 that a provision in a collective bargaining agreement (CBA) that clearly and unmistakably requires union members to arbitrate claims arising under the Age Discrimination in Employment Act of 1967 (ADEA) is enforceable as a matter of law.

Case Background

The plaintiffs were unionized night security guards hired to monitor the lobby of a New York City office building. The CBA between the union and the employer required union members to submit all claims of employment discrimination to binding arbitration including "claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act,...or any other similar laws, rules, or regulations." With the union's consent, 14 Penn Plaza contracted with a security services company affiliated with the plaintiffs' employer to provide licensed security guards to staff the lobby and entrances of its building. Since the plaintiffs' security services were no longer needed, they were reassigned to jobs as night porters and light duty cleaners in other areas of the building.

Contending that these reassignments were essentially demotions motivated by age discrimination in violation of the ADEA, the union filed grievances on behalf of the plaintiffs alleging workplace discrimination, among other things. After the grievances were denied, the union requested arbitration under the CBA. The union later withdrew the age-discrimination grievances on the ground that it could not legitimately argue that the reassignments were discriminatory when it in fact

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consented to the contract for new security personnel.

The plaintiffs then filed a complaint with the EEOC, and later brought suit in federal court alleging that the defendants violated their rights under the ADEA. In the ensuing lawsuit, the Second Circuit Court of Appeals affirmed the lower court's denial of the defendants' motion to compel arbitration, holding that the Supreme Court's previous decision in *Alexander v. Gardner-Denver Co.* precluded enforcement of collective-bargaining provisions waiving union employees' "rights to a judicial forum for causes of action created by Congress." The Second Circuit acknowledged that the *Gardner-Denver* decision was in tension with the Supreme Court's more recent opinion in *Gilmer v. Interstate/Johnson Lane Corp.*, but concluded that *Gardner-Denver* was controlling.

The 14 Penn Plaza Decision

In reversing the Second Circuit, the Supreme Court distinguished the *Gardner-Denver* decision and held that *Gilmer* was controlling under the particular facts and circumstances of this case. Justice Thomas, writing for the majority, pointed out that *Gardner-Denver* "did not involve the issue of the enforceability of an agreement to arbitrate statutory claims[,] but "the quite different issue [of] whether arbitration of contract-based claims precluded subsequent judicial resolution of statutory claims." The CBA at issue in *Gardner-Denver* prohibited "discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry" and called for mandatory arbitration, but did not expressly address discrimination claims brought under the federal statutes.

Here, unlike in *Gardner-Denver*, the CBA at issue expressly required that all claims of discrimination under the ADEA and other antidiscrimination statutes be subject to binding arbitration. Due to this important distinction, the Supreme Court turned to its previous ruling in *Gilmer*, where it held "that an individual employee who had agreed individually to waive his right to a federal forum *could* be compelled to arbitrate a federal age discrimination claim." The Court further explained that "[t]he decision to resolve ADEA claims by way of arbitration instead of litigation does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance."

In relying on *Gilmer* to reach its decision, the majority concluded that "[t]he *Gilmer* Court's interpretation of the ADEA fully applie[d] in the collective bargaining context" and "[n]othing in the law suggest[ed] a distinction between the status of arbitration agreements signed by an individual employee and those agreed to by a union representative." As a result, the Court held that the plaintiffs' ADEA claims were subject to mandatory arbitration because nothing in "the ADEA itself remove[d]

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this particular class of grievances from the NLRA's broad sweep."

In addition to its overall holding, there are two other significant aspects of the Supreme Court's decision. First, the Court addressed the plaintiffs' concern that in arbitration a union may subordinate an individual employee's interests to the collective interests of all employees in the bargaining unit. In rejecting this argument, the majority explained that Congress had accounted for this conflict of interest in several ways: (1) union members may bring a duty of fair representation claim against the union; (2) union members may file age-discrimination claims with the EEOC and the NLRB; and (3) a union is subject to direct liability under the ADEA if the union itself discriminates against its members on the basis of age. In addition, Justice Thomas reiterated that "[i]t was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty that this system necessarily demands."

Second, the plaintiffs argued for the first time that the CBA at issue operated as a substantive waiver of their ADEA rights because it not only precluded them from bringing a federal lawsuit, but also allowed the union to block the arbitration of their statutory claims. The Supreme Court, however, expressly refused to resolve this issue in the first instance because it had not been fully briefed in any court and required resolution of contested factual allegations.

Bottom Line

Many believe that the Supreme Court's decision in *14 Penn Plaza* will spark legislative activity in an attempt to overturn the Court's ruling. As for now, employers can freely enforce CBAs that require mandatory arbitration of statutory discrimination claims without having to defend against these same claims in federal court. Employers operating under CBAs that do not require arbitration of statutory discrimination claims may want to consider including such provisions during their next round of negotiations with each respective union. Employers should also carefully scrutinize the language used in CBAs and expressly state which statutory laws will be subject to binding arbitration, while including a "catch-all" provision. Finally, employers should be mindful of the fact that the Supreme Court has left unresolved how it will handle situations where unions preclude employees from arbitrating their statutory discrimination claims. In such situations, it is likely that union employees will be permitted to litigate these claims in federal court.

For further information regarding this decision or for best practices in drafting and enforcing collective bargaining agreements and arbitration provisions, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

related to individual situations or as legal opinions concerning such situations. Counsel should be consulted for legal planning and advice.

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