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U. S. Supreme Court Rules in Favor of Mandatory Arbitration of Discrimination Claims under Collective Bargaining Agreements

On April 1, 2009, the U. S. Supreme Court ruled that provisions in collective bargaining agreements requiring individual union members to arbitrate Age Discrimination in Employment Act (“ADEA”) claims are enforceable as a matter of federal law. 14 Penn Plaza LLC v. Pyett, No. 07-581, 2009 U.S. LEXIS 2497 (April 1, 2009). The Court held, in a 5-4 decision, that individual union members must arbitrate claims of federal age discrimination, otherwise actionable in federal court, where a collective bargaining agreement “clearly and unmistakably” states that such statutory claims are subject to the grievance and arbitration procedure. Id. at *48.

The 14 Penn Plaza decision is a sharp change in the law, potentially favorable to employers. Previously, lower courts in the majority of circuits have held that unions cannot waive the rights of individual union members to a judicial forum for statutory discrimination claims in a collective bargaining agreement.¹ The U. S. Supreme Court’s decision changes the law in the Seventh Circuit, where such union-negotiated arbitration provisions had been held unenforceable.²

Key Facts and Points of Law

Steven Pyett and two other night watchmen (“Pyett”) filed grievances with their union alleging both contractual and statutory age discrimination claims, after they were replaced by licensed security guards. When the union declined to pursue and submit the age discrimination claim to arbitration, Pyett filed a charge with the EEOC and then a lawsuit under the ADEA. The employer sought to compel arbitration pursuant to the collective bargaining agreement’s provision that all claims of employment discrimination must be submitted to binding arbitration.

Both the U. S. District Court for the Southern District of New York and the Second Circuit Court of Appeals refused to compel arbitration and held “that mandatory arbitration clauses in collective bargaining agreements are unenforceable to the extent they waive the rights of covered workers to a judicial forum for federal statutory causes of action.” Pyett v. 14 Penn Plaza LLC, 498 F.3d 88, 90 (2nd Cir. 2007).

¹ Previously, the Second, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and D.C. Circuits have held that provisions in collective bargaining agreements that require arbitration of statutory discrimination claims are unenforceable. Only the Fourth Circuit found such provisions enforceable. The First, Third and Fifth Circuits had not directly addressed the issue.

² Overruling Pryner v. Tractor Supply Co., 109 F.3d 354, 363 (7th Cir. 1997) (refusing to compel arbitration of statutory discrimination claims, stating: “the union cannot consent for the employee by signing a collective bargaining agreement that consigns the enforcement of statutory rights to the union-controlled grievance and arbitration machinery created by the agreement”).

The U. S. Supreme Court reversed and remanded, noting that the statutory text of the ADEA “encourages the use of arbitration for dispute resolution without imposing any constraints on collective bargaining,” 14 Penn Plaza LLC, 2009 U.S. LEXIS 2497 at *24, and “[n]othing in the law suggests a distinction between the status of arbitration agreements signed by an individual employee and those agreed to by a union representative.” Id. at *21. In order for the arbitration forum to apply exclusively, the collective bargaining agreement must expressly, “clearly and unmistakably,” require union members to arbitrate ADEA claims. Id. at *48.

Importantly, the Court’s decision reflects its validation of arbitration of workplace claims. In endorsing arbitration, the Court also stated that an enforceable arbitration provision in a collective bargaining agreement does not diminish an employee’s substantive rights under the ADEA: “The 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.” Id. at *34.

Implications for Employers

- The U. S. Supreme Court’s holding addressed whether ADEA claims are subject to arbitration agreements, but there is nothing in the Court’s opinion to suggest the decision will not apply to other federal statutory employment discrimination claims, such as Title VII, the FMLA and the ADA.
- The Court’s decision brings consistency between the non-union and union settings in the treatment of arbitration provisions governing federal statutory discrimination claims: now such provisions are enforceable in both individual employment contracts and collective bargaining agreements.
- Employers with unionized workforces may benefit from the more efficient resolution of statutory discrimination claims through the arbitration process, rather than more costly and lengthy court litigation.
- Employees will no longer have two bites at the apple, once under the contractual grievance and arbitration process and again in a discrimination lawsuit filed in federal court – all claims can be resolved in arbitration.
- Arbitration provisions governing statutory discrimination claims will play a more prominent role in collective bargaining negotiations now that employers and unions may rely on their enforceability.

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