



High Court Says Unions Must Arbitrate ADEA Claims

By Shannon Henson

Law360, New York (April 01, 2009) -- In a 5-4 decision Wednesday, the U.S. Supreme Court ruled that collective bargaining agreements that require union members to arbitrate Age Discrimination in Employment Act claims are enforceable.

In *14 Penn Plaza LLC v. Pyett*, the high court said that the U.S. Congress has chosen to allow arbitration of ADEA claims and that the courts must respect that choice.

Employment lawyers said the decision, penned by Justice Clarence Thomas, could mean the number of discrimination lawsuits filed in the U.S. will drop significantly.

Jeffrey Webb, a partner at [McDermott Will & Emery LLP](#) who wasn't involved in the litigation, said the case was a victory for those who believe that arbitration is preferable to the courts for resolving disputes.

"Before this decision, companies were often subjected to double jeopardy — first, they would have to defend against a discrimination claim in an arbitration with a union, and then they could be subjected to the very same claim again in a discrimination case in court, even if they had prevailed in an arbitration," Webb said. "Enhancing the power of arbitration also benefits employees who can seek recourse without having to risk or raise the large sums required for litigation."

The case pitted a group of night watchmen, members of the Service Employees International Union, who were hired to monitor the lobby of a New York skyscraper, against the building's owners and their employer. The defendants claimed the workers' grievances had to be arbitrated, not litigated, as expressly stipulated in their employment contract.

The employees, who were transferred to different duties after licensed security officers replaced them to watch the building, sued employer Temco Services Industries Inc. and property owner 14 Penn Plaza LLC in the U.S. District Court for the Southern District of New York, claiming their transfer was motivated by age discrimination.

The defendants moved to compel arbitration, but both the federal court and the U.S. Court of Appeals for the Second Circuit ruled that no union-negotiated arbitration agreement — no matter how unequivocal — was enforceable.

In its decision, the appellate court said that the U.S. Supreme Court's decision in 1974 in *Alexander v. Gardner-Denver Co.* held that a collective bargaining agreement could not waive covered workers' rights to a judicial forum.

But the high court's majority — Chief Justice John Roberts with Justices Thomas, Antonin Scalia, Anthony Kennedy and Samuel Alito — said Wednesday that the Supreme Court had previously held that the ADEA does not preclude arbitration of claims.

"There is no legal basis for the court to strike down the arbitration clause in the CBA, which was freely negotiated by the union and the [Realty Advisory Board on Labor Relations Inc.], and which clearly and unmistakably requires respondents to arbitrate the age discrimination claims at issue in this appeal," the majority said.

The high court said in its 1991 decision in *Gilmer v. Interstate/Johnson Lange Corp.* that if Congress intended the substantive protection afforded by the ADEA to include protection against waiver of the right to a judicial forum, then such an inclusion would be clear in the text of the law or the legislative history, according to the majority.

The court decided then that nothing in the legislative history or text of the act precluded arbitration, the majority said.

“The *Gilmer* court's interpretation of the ADEA fully applies in the collective bargaining context,” the majority said. “Nothing 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.”

The majority also said that *Alexander v. Gardner-Denver Co.* was not applicable to the case at hand. The case and its progeny “do not control the outcome where, as is the case here, the collective bargaining agreement's arbitration provision expressly covers both statutory and contractual discrimination claims.”

A dissent written by Justice David Souter said the majority misinterpreted *Alexander v. Gardner-Denver Co.*, which in the minority's view, says that employees subject to a collective bargaining agreement do not lose their statutory right to bring an ADEA claim.

“Congress has unsurprisingly understood *Gardner-Denver* the way we have repeatedly explained it and has operated on the assumption that a CBA cannot waive employees' rights to a judicial forum to enforce anti-discrimination statutes,” the minority said.

Paul Salvatore, a partner with [Proskauer Rose](#) LLP and counsel for 14 Penn Plaza LLC, said the decision was a win for employers, who had their rights vindicated; unions, which had their bargaining rights recognized; and workers, who no longer have to split claims between courts and arbitration.

“This decision firmly enshrines in the law the important principle that collectively bargained arbitration agreements are every bit as valid and enforceable as nonunion-workplace arbitration agreements,” Salvatore said.

Law professors and lawyers were unanimous in stating Wednesday that the case will decrease the number of cases pending in federal court.

“If employers and unions representing workers adopt valid arbitration clauses, it may help reduce the logjam of court cases involving workplace discrimination claims,” said [Kaye Scholer](#) LLP Partner Jay Waks.

Merrick Rossein, a professor at the City University of New York School of Law, also said the decision could mean that cases once headed to federal and state court will now be decided in arbitration. But he wondered if the decision would be allowed to have that impact.

“This decision will certainly fuel legislative activity,” Rossein said.

Charles Schanor, a professor at Emory University School of Law, said it would be interesting to see what could happen with any legislation introduced in connection with the ruling.

“It's hard to say with a Democratic administration. Unions have a lot of sway, but at the same time civil rights organizations have a fair amount of sway and, to some extent, they are on opposite sides of this one,” Schanor said.

Don Schroeder, a labor attorney with [Mintz Levin](#) Cohn Ferris Glovsky and Popeo PC, said the case comes at an interesting time in light of the introduction of the Employee Free Choice Act, which would allow unions to more easily unionize work forces.

“This will have ripple effects with respect to pending legislation including the EFCA and Arbitration Fairness Act,” he said. “The Arbitration Fairness Act is another piece of Obama’s proposed legislation which would prohibit private arbitration agreements between companies and their employees, with the exception of collective bargaining agreements.”

Charles Craver, a professor at George Washington University School of Law, said the result Wednesday was unsurprising because the courts have clearly been moving in favor of arbitration.

“They are trying to get cases out of federal courts, there's no question,” he said.

Counsel for the workers did not immediately respond to a request for comment Wednesday.

14 Penn Plaza is represented in this matter by Proskauer Rose LLP.

The workers are represented by Kellogg Huber Hansen Todd Evans & Figel PLLC and Kreisberg & Maitland LLP.

The case is 14 Penn Plaza LLC et al. v. Steven Pyett et al., case number 07-581, in the U.S. Supreme Court.

--Additional reporting by Christine Caulfield