

Employment, Benefits & Labor Alert

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U.S. Supreme Court Holds That Age Discrimination Claims Are Subject To Collectively Bargained Arbitration

The Supreme Court of the United States recently issued a decision that resolves the long-standing controversy over whether statutory discrimination claims are subject to binding arbitration under the grievance and dispute resolution procedures of a collective bargaining agreement (“CBA”). In *14 Penn Plaza LLC v. Pyett*, 186 L.R.R.M. 2065 (April 1, 2009), the Supreme Court, in a 5-4 decision, held that a CBA that “clearly and unmistakably” requires union members to arbitrate claims under the Age Discrimination in Employment Act (“ADEA”) is enforceable as a matter of federal law.

Events Leading to the Supreme Court’s Decision

In *14 Penn Plaza*, night watchmen who were members of a union, worked for Temco Services Industries, Inc., a maintenance service and cleaning contractor, in a building owned by 14 Penn Plaza. With the union’s consent, 14 Penn Plaza engaged a third party security firm to perform its security work, prompting Temco to reassign the night watchmen to other positions within the building. The night watchmen alleged that the reassignments resulted in a loss of income and less desirable positions for them.

Prior to instituting a lawsuit, the union filed grievances on behalf of the night watchmen challenging the reassignments on several bases, including age discrimination, which was prohibited by the CBA. Specifically, the CBA provided:

[T]here shall be no discrimination against any present or future employee by reason of . . . age . . . including but not limited to claims made pursuant to . . . the Age Discrimination in Employment Act. . . . All such claims shall be subject to the grievance and arbitration procedures . . . as the sole and exclusive remedy for violations.

The union, however, withdrew the age discrimination claims prior to completion of the arbitration proceedings under the CBA.

Thereafter, the union members filed a charge of discrimination with the Equal Employment Opportunity Commission (“EEOC”) and later filed a lawsuit in federal district court, alleging claims of age discrimination under the ADEA and similar state laws. *14 Penn Plaza* and Temco moved to compel arbitration pursuant to the terms of the CBA. Relying upon the Supreme Court’s prior holding in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), which specifically prohibited enforcement of a CBA provision requiring arbitration of statutory claims, the federal district court denied the motion to compel arbitration and the Court of Appeals for the Second Circuit affirmed. In an apparent shift from its prior precedent in this context, the Supreme Court reversed the lower court’s decision, holding that “a collective bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of law.”

In reaching its decision, the Supreme Court found that the parties had freely negotiated the CBA language requiring ADEA claims to be arbitrated, which qualified as “terms and conditions of employment” under the National Labor Relations Act (“NLRA”). The Court held that “the CBA’s arbitration provision must be honored unless the ADEA itself remove[d] this particular class of grievances from the NLRA’s broad sweep.” According to the Court, it did not.

Despite criticism from the dissent, the Supreme Court stated that it was not breaking from its prior precedent. Rather, it stated that “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.” Rather, the Court stated that its prior decisions have only required that an agreement to arbitrate statutory anti-discrimination claims be “explicitly stated” in the CBA. While the union members argued that the Court’s prior decision in *Gardner-Denver* precluded a union from waiving an individual’s right to pursue a statutory claim in court, the Supreme Court held that its prior decision was not that broad. Indeed, the Court stated that *Gardner-Denver* and its progeny held only that arbitration did not preclude filing a lawsuit in federal court when the CBA did not specifically address statutory claims. In *14 Penn Plaza*, however, the Court said that the language of the CBA clearly covered ADEA claims.

Recognizing contrary statements in prior decisions, the Court nonetheless held that the resolution of ADEA claims through arbitration rather than litigation does not waive any statutory right. Nor was the Court concerned about the policy issue—also raised in its prior decisions—that a union may subordinate the interests of an individual to the collective interests of all employees in the bargaining unit. The Court’s decision concluded by stating that the Court was not resolving whether a CBA allows a union to prevent members from “effectively vindicating” their federal statutory rights in the arbitral forum.

Implications of the Decision

The Supreme Court’s decision in *14 Penn Plaza* unambiguously opens the door for parties to choose to arbitrate—or, as here, move to compel arbitration of—statutory claims under a CBA. Also, to the extent language regarding arbitration of statutory claims does not exist in current CBAs, future negotiations will likely encompass discussions over such clauses.

It is not clear from the Court’s decision, however, what specific language in a CBA represents a “clear and unmistakable” waiver of the judicial forum. For the time being, this issue will be left to lower courts to sort out when challenged by parties to a CBA. Additionally, the Court specifically left open the significant issue of whether a union’s control over the grievance procedure could deprive employees of their statutory rights.

If you have any questions or concerns regarding the *14 Penn Plaza* decision or other arbitration-related issues, please contact a member of Blank Rome’s Employment, Benefits and Labor Practice Group. ■

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