Supreme Court Upholds Arbitration Of Discrimination Claims

Insights
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On April 1, 2009, the Supreme Court upheld the enforceability of arbitration provisions in collective bargaining agreements, which require employees to arbitrate claims under federal anti-discrimination law. While it marks a sharp departure from the established law in much of the country, for employers, it is welcome news. *14 Penn Plaza v. Pyett.*

Background
Employers often choose to arbitrate employee grievances rather than let them go before a jury. This has always been the traditional way of dealing with grievances regarding the terms of a collective bargaining agreement, such as claims for wages or benefits.

But until today, the Supreme Court had not decided whether a union contract could bind employees to arbitrate discrimination claims arising under federal law. In a 1974 case, *Alexander v. Gardner-Denver*, the Supreme Court held that union-negotiated arbitration agreements regarding federal rights are unenforceable. Later, in *Gilmer v. Interstate/Johnson Lane*, the Court held that individual arbitration agreements are enforceable as long as their terms are "clear and unmistakable."

The Supreme Court's lack of clarity on the matter has caused a great deal of confusion among the lower courts. While some courts will enforce the arbitration provision of a union contract as long as its terms are "clear and unmistakable," the majority of lower courts have held that provisions requiring an employee to arbitrate discrimination claims under federal law are always unenforceable. The resulting uncertainty created a situation tailor-made for the Supreme Court to step in and impose a uniform standard.

Two Bites At The Apple
Stephen Pyett, Thomas O'Connell, and Michael Phillips worked as night watchmen at 14 Penn Plaza. They were members of Local 32BJ of the Service Employees International Union and were subject to a collective bargaining agreement which provided that all claims made under Title VII, the Americans with Disabilities Act (ADA), and the Age Discrimination in Employment Act (ADEA) were subject to binding arbitration. The arbitration provision itself had been heavily negotiated throughout the bargaining process, and came about only after the employer conceded a sizable wage increase and benefit enhancements. Furthermore, the provision provided employees a union attorney at no cost, or, alternatively, a private attorney of the employee's choosing at cost.

In an effort to increase the building's security, the Company hired additional night watchmen. Pyett, O'Connell and Phillips were reassigned to different locations throughout the building. The employees, unhappy with their reassignments, utilized the arbitration process, claiming that the Company had violated the collective bargaining agreement and had discriminated against them on the basis of their age. Prior to the arbitration hearing, the Union withdrew the claim for age discrimination without protest from either the employees or their attorneys. After a four-day hearing, the arbitrator denied all of the employees' remaining claims.

The employees then filed a lawsuit in federal district court alleging that their reassignment violated the ADEA. Thinking that the issue had already been resolved through arbitration, the Company asked the court to dismiss the lawsuit or, in the alternative, to refer the case back to arbitration to resolve the employees' federal claims of age discrimination.

The court did neither. Instead, it held that the Company's arbitration provision violated the employees' rights to pursue their claims in a federal courtroom. On appeal, the U.S. Court of Appeals for the 2nd Circuit, which includes New York, Connecticut, and Vermont, agreed, stating flatly, "[A] union negotiated mandatory arbitration agreement purporting to waive a covered worker's right to a federal forum with respect to statutory rights is unenforceable."

The Supreme Court's Decision

In a 5-4 decision, the Supreme Court has reversed the 2nd Circuit and held that a collective bargaining agreement that requires employees to arbitrate discrimination claims is enforceable. Chief Justice Roberts and Justices Alito, Kennedy, and Scalia, joined in Justice Thomas' majority opinion. Justices Breyer, Ginsburg, Souter, and Stevens dissented.

As Justice Thomas explained, an arbitration provision is clearly a "condition of employment" that is a mandatory subject of bargaining. "As in any contractual negotiation, a union may agree to the inclusion of an arbitration provision in a collective bargaining agreement in return for other concessions from the employer. Courts generally may not interfere in this bargained for exchange."

Federal antidiscrimination laws do not change this basic premise. Although Title VII, the ADA, and the ADEA protect important substantive rights, they do not prohibit employees from pursuing these rights in arbitration. That means that a union may agree to submit employees' discrimination claims to binding arbitration.

Conclusion

The Supreme Court's decision is welcome news to employers. The quicker and more cost-efficient resolution generally provided through arbitration almost always outweighs the risks of going before a jury.

And the Court's ruling provides an additional benefit. Under the prior law, employers would often find themselves in the difficult position of having to defend a single claim in two arenas. Take, for example, the case in *14 Penn Plaza v. Pyett*. There, the employer was forced to defend the

example, the case in *14 Penn Plaza v. Pyett*. There, the employer was forced to defend the employees' reassignment in front of the arbitrator as well as in federal court. Obviously, this imposed a significant burden on the company with regards to both resources and management time.

Now, in being able to negotiate an enforceable arbitration provision that encompasses grievances under both the CBA and federal statutory law, employers can defend employee grievances in a single forum â€“ a forum that does not involve the costs and unpredictability of a jury proceeding.

For more information contact any Fisher Phillips attorney.

This Legal Alert provides an overview of a specific Supreme Court decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.