



LEGAL ALERT

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Supreme Court Upholds Mandatory Arbitration Provision in Collective Bargaining Agreement

On April 1, 2009, the United States Supreme Court held that a provision in a Collective Bargaining Agreement that “clearly and unmistakably” requires employees to submit employment claims and disputes arising under federal and state anti-discrimination laws to binding arbitration is valid and enforceable under federal law. *14 Penn Plaza, LLC v. Pyett*, No. 07-581 (2009).

Factual Background:

The Service Employees International Union (“Union”) and the Realty Advisory Board on Labor Relations, Inc. (“RAB”), a multi-employer bargaining association for the New York City real estate industry, of which 14 Penn Plaza, LLC (“Penn”) is a member, entered into a Collective Bargaining Agreement (“CBA”), which prohibits workplace discrimination. Under the CBA, employees claiming discrimination under federal and state law are required to submit all claims to the CBA’s grievance and arbitration procedure.

In August of 2003, Penn, with the consent of the Union, subcontracted the security services for the lobby and entrances of its building. As a result, several Union-represented employees, who had been employed as night lobby watchmen by Penn, were reassigned to allegedly less desirable positions of night porters and light duty cleaners, which they claimed paid them less and caused them emotional distress.

At the workers’ request, the Union filed grievances alleging, among other things, that the employees were selected for reassignment based upon their age. After failing to obtain relief on its claims through the grievance process, the Union requested arbitration under the CBA. The Union later withdrew its age discrimination claims from arbitration because it did not believe it could prevail on its age-based claims.

The workers then filed a charge of age discrimination with the Equal Employment Opportunity Commission (“EEOC”) and, after receiving



their right-to-sue notices, filed suit in federal court, alleging that their job reassignments violated the Age Discrimination in Employment Act ("ADEA"). The lower courts denied Penn's motion to compel arbitration, concluding that a union-negotiated waiver of a right to litigate was unenforceable under a 1974 Supreme Court decision, *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974).

Legal Analysis:

In its analysis, the Supreme Court first noted that the National Labor Relations Act ("NLRA") gives the Union and RAB statutory authority to collectively bargain for the arbitration of all employment discrimination claims. The Court also noted that the ADEA does not prohibit mandatory arbitration, as long as it is "explicitly stated" in the collective-bargaining agreement."

In this case, the Supreme Court held that because the Union and RAB had collectively bargained in good faith, freely negotiating and agreeing, in clear and unmistakable language, that all ADEA claims would be resolved in arbitration, the mandatory arbitration provision must be honored.

In distinguishing the *Gardner-Denver* line of anti-arbitration cases, the Supreme Court noted that these cases **did not** involve a clear and unmistakable

agreement to arbitrate statutory claims such as was found in the present case. As a result, the Court held that the *Gardner-Denver* line of cases did not apply. In conclusion, the Supreme Court noted that a CBA that clearly and unmistakably requires union members to arbitrate statutory claims, including those under the ADEA, is enforceable as a matter of federal law.

Impact on Employers:

Although the Supreme Court's decision was divided (it was 5-4), it clearly reaffirms that clauses requiring mandatory arbitration in collective bargaining agreements are proper for claims of employment discrimination, where such provisions are clear and unmistakable.

While this case focuses on the ADEA, employers should be aware that the Court's opinion also clearly applies to mandatory arbitration of other federal statutory claims such as Title VII and the Fair Labor Standards Act – unless the federal statute specifically precludes a waiver of a civil action.

Employers should review their mandatory arbitration provisions in employment handbooks and in collective bargaining agreements to ensure that they clearly and unmistakably cover both statutory and contractual employment discrimination claims.



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