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## Supreme Court Holds That Employees Under Collective Bargaining Agreement Are Blocked From Going to Court On Age Discrimination Claims, Must Arbitrate Instead

In *14 Penn Plaza LLC v. Pyett*, a decision with significant practical ramifications for unionized employers, the United States Supreme Court, on April 1, 2009, held that employees covered under a collective bargaining agreement were required to arbitrate claims of age discrimination under the arbitration clause of that agreement instead of allowing them to sue in Court. In so ruling, the Court narrowed or perhaps effectively overruled, a previous decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), and reiterated its approval of arbitration as an appropriate forum for resolving employment claims even when union members do not individually agree to the arbitration provision.

Writing for the majority, Justice Thomas opined, "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 [employer], and which clearly and unmistakably requires [the individual union employees] to arbitrate the age discrimination claims at issue in this appeal."

The case arose after employees of 14 Penn Plaza, who had worked previously as security guards, pursued age discrimination claims in the Southern District of New York federal court based largely on allegations that 14 Penn Plaza transferred them to porter and light duty positions because of their over 40 age status. Citing a CBA provision that explicitly required arbitration of all discrimination claims, 14 Penn Plaza moved to compel arbitration of the claims. The district court denied 14 Penn Plaza's motion and the Second Circuit affirmed, relying on *Gardner-Denver Co.*, which, according to the Second Circuit, held that a mandatory arbitration of a statutory employment rights clause in a CBA was unenforceable.

Disagreeing with the Second Circuit's analysis, the Supreme Court majority based its decision on an examination of the ADEA and the National Labor Relations Act ("NLRA"). In short, the Supreme Court reasoned that because an arbitration provision is a mandatory subject of bargaining (*Litton Financial Printing Div., Litton Business Systems, Inc. v. NLRB*, 501 U.S. 190 (1991)), the NLRA demands that courts respect the parties' contractual bargain, unless a specific provision in the ADEA removes this type of grievance from the contract's sweep. Finding no such language in the text of the bill, and relying on *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991), which held that ADEA claims are subject to arbitration in agreements outside the collective bargaining context, the Court concluded that the CBA arbitration clause mandated arbitration of age discrimination claims.

The employees raised several arguments. Two of the arguments focused on the inappropriateness of the arbitral forum to adjudicate discrimination claims and the inability of unions to adequately represent individual employee rights. The Court was not persuaded, explaining that judicial hostility towards arbitration is long dead and that the union must fairly represent the individual employee's claim or risk breach of duty of fair representation or ADEA claims.

In their most significant argument, the employees, like the Second Circuit, insisted that *Gardner-Denver* precluded CBA arbitration clauses that forced an individual employee to arbitrate statutory claims. The Court distinguished the *Gardner-Denver* line of cases, reasoning that the clauses at issue in cases such as *Gardner-Denver* did not

explicitly cover statutory claims. Instead, those clauses apparently contemplated that contractual claims would be subject to the CBA's grievance procedure, but employees would retain the ability to bring statutory claims in court.

This case is a powerful weapon in the arsenal of a unionized employer that desires to avoid employment discrimination jury trials and use a CBA's grievance procedure to resolve employee statutory employment discrimination. Arbitration provisions that purport to cover these statutory claims are no longer subject to attack as unenforceable under *Gardner-Denver* and its progeny, and an employer need only bargain for and include explicit language in the CBA stating that the grievance procedure covers statutory employment discrimination claims.

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