U.S. SUPREME COURT ENFORCES ARBITRATION OF EMPLOYMENT DISCRIMINATION CLAIMS IN UNION CONTRACTS

By

Carlyle C. White

In a groundbreaking 5-4 decision, the U.S. Supreme Court held on April 1, 2009, that a collective bargaining agreement ("CBA") provision that "clearly and unmistakably" requires union members to arbitrate Age Discrimination in Employment Act ("ADEA") claims is enforceable under federal law. Prior to this decision, employers could often be subjected to double jeopardy if employees pursed a claim in arbitration and in court.

The Supreme Court finally resolved this employment discrimination claim arbitrability controversy in *14 Penn Plaza LLC v. Pyett* (U.S. No. 07-581). Justice Clarence Thomas wrote the majority opinion and found that the National Labor Relations Act ("NLRA") provides broad authority to allow the enforcement of arbitration provisions in CBAs and the ADEA does not prohibit the arbitration of age discrimination claims.

In the *Pyett* case, security guard employees of Temco Service Industries, who were represented by the Local 32BJ of the Service Employees International Union ("Union"), filed an ADEA charge with the Equal Opportunity Commission after the Union declined to pursue age discrimination grievances in an arbitration hearing. The grievances occurred when 14 Penn Plaza authorized another contractor to provide security services, which resulted in some employees being reassigned to different positions. The plaintiffs alleged that the reassignment constituted age discrimination.

The CBA prohibited discrimination against employees pursuant to federal and state law, but provided that any claims were subject to arbitration as the sole and exclusive remedy for an alleged violation. 14 Penn Plaza and Temco Services Industries filed a motion to compel arbitration under the CBA, which was denied by the trial court and the Second Circuit Court of Appeals.

The Supreme Court reasoned in its decision that nothing in the ADEA required the Court to strike a freely negotiated arbitration clause under the NLRA. The Court did state, however, that a substantive waiver of employees' civil rights would be unenforceable. The employees had argued that the CBA prohibited a civil ADEA lawsuit and also allowed the Union to prohibit arbitration of the employees' claims. The Court declined to address the latter, but held that a CBA that "clearly and unmistakably" requires union members to arbitrate ADEA claims is enforceable as a matter of federal law. Notably, the CBA arbitration provision in the *Pyett* case expressly covered both statutory and contractual discrimination claims.

This decision is a significant victory for employers who often prefer to arbitrate employment discrimination grievances rather than defend the case before a jury. As a result, employers must carefully craft arbitration provisions during CBA negotiations to comply with the Supreme Court's new ruling.