SUPREME COURT ENFORCES CBA PROVISION REQUIRING EMPLOYEES TO ARBITRATE

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The United States Supreme Court, by a narrow 5-4 ruling, recently endorsed a labor contract provision sending age discrimination claims to arbitration rather than to federal court. In *14 Penn Plaza v. Pyett*, the employer sought to compel union employees to arbitrate their age discrimination claims through the grievance/arbitration provision of the collective bargaining agreement, or CBA. The district court had denied the employer's request in reliance on a 1974 Supreme Court case, *Alexander v. Gardner-Denver Co.*, and the Second Circuit affirmed.

The Supreme Court held that a provision in a CBA that *clearly* and *unmistakably* requires union members to arbitrate claims under the Age Discrimination in Employment Act of 1967 (ADEA) is enforceable as a matter of federal law. Accordingly, pursuant to this decision, bargaining unit employees can be required to submit claims of discrimination through the grievance/arbitration provision of their CBA (depending on the specific language in the CBA anti-discrimination provision). The non-discrimination provision in the CBA made specific reference to the ADEA and other anti-discrimination laws and stated that "[a]ll such claims shall be subject to the grievance and arbitration proceedings … as the sole and exclusive remedy for violations." Justice Thomas noted that parties had "collectively bargained in good faith and agreed that employment-related discrimination claims … would be resolved in arbitration." The Supreme Court asserted in the *Pyett* decision that its ruling is consistent with the prior *Gardner-Denver* line of cases.

One issue left open by the *Pyett* decision is whether or not the result would be the same in a case where the CBA requires arbitration and the determination to pursue arbitration rests solely with the union (not with the individual aggrieved employee). In some CBAs, the grievance procedure requires the union to advance a grievance and does not grant an employee the right to pursue a grievance absent endorsement by the union. It seems unlikely that the Supreme Court would rule consistent with *Pyett* in a case where the union, not the employee, makes the sole determination to pursue the discrimination complaint through the grievance procedure and the union declined to pursue the grievance/claim.

In light of the *Pyett* decision, employers may want to consider seeking language in their CBA that would require the arbitration of discrimination claims and allow employees the right to pursue such grievances without union approval.

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