

No choice

Workers lose certain rights to sue for discrimination in court

ACCORDING TO A new Supreme Court ruling, union workers who want to sue their employers for discrimination may have to do so through arbitration instead of in court.

If a union contract specifically mentions that discrimination claims are covered, then workers will not be allowed to sue privately in court. They must go through the union contract's grievance and arbitration process.

The decision was handed down on April 1 in a 5 to 4 vote, with Clarence Thomas, John Roberts, Antonin Scalia, Anthony Kennedy, and Samuel Alito all voting in the majority.

Based on who voted for the case, you might guess whether or not this result is good for workers' rights!

The case was *14 Penn Plaza LLC v. Pyett*, 129 S.Ct. 1456.

Background

In *14 Penn Plaza*, several members of SEIU 32BJ brought age discrimination claims against their employer, asserting that they were given less preferential assignments because they were over 40 years of age.

The employer moved to dismiss the suit on the ground that the collective bargaining agreement it had entered into with SEIU 32 BJ also covered employment discrimination claims under the Age Discrimination in Employment Act.

Both the trial court and the Court of Appeals for the Second Circuit denied the employer's motion to dismiss and ruled that the employees had not waived their right to pursue a federal lawsuit based upon statutory employment discrimination claims even though the collective bargaining agreement included statutory discrimination claims within its arbitration provision.

(While most collective bargaining agreements contain a provision that generally prohibits discrimination, they do not actually reference the applicable anti-discrimination statutes like Title VII and the ADEA. This collective bargaining agreement did).

Writing for the majority, Justice Thomas reversed the lower court decisions and held that since the collective bargaining agreement "clearly and unmistakably" required union members to arbitrate ADEA claims, the union on behalf of these members would be compelled to arbitrate as a matter of federal law.

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This holding was unexpected because previous Supreme Court precedent had indicated that union members would have a choice as to what forum they wanted their claims adjudicated in.

No doubt, legislation will be introduced to overrule this decision, but there is no certainty that it will be effective or enacted.

A group of workers sue for age discrimination and the Supreme Court makes a surprise judgment.

Until legislation is passed that permits individuals the choice to either arbitrate or litigate in court, unions must remain vigilant during negotiations to ensure that the membership understands the effect of this decision and the contractual clauses it applies to.

No private lawsuits

If a union agrees to a similar clause in a contract, members will no longer have the right to individually pursue employment discrimination claims in court.

They will have to rely upon the union to pursue the claim in the arbitration context. Furthermore, unions must be aware of their newly expanded role in pursuing civil rights claims on behalf of their members and remain cognizant that their duty of fair representation applies to these claims as well as more traditional contractual claims.

While this decision will be debated for a long time to come, even its opponents must acknowledge that arbitration as an alternative means of dispute resolution has served both labor and management well for roughly 60 years as a process for resolving contractual claims.

Whether it will have the same degree of success for union statutory discrimination claims, however, remains to be seen.