

Supreme Court Rules Union Members Can Be Forced To Arbitrate Federal Age Discrimination Claims

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In a victory for employers and arbitration, the Supreme Court ruled last week that a collective bargaining agreement (CBA) provision that specifically requires union members to arbitrate Age Discrimination in Employment Act (ADEA) claims is valid under federal law. *14 Penn Plaza LLC v. Pyett*, ___ U.S. ___ (2009). For a review of the facts and posture of the litigants, see the previous Dilworth Update on *Pyett* found [here](#).

In a straightforward analysis, the Court reasoned that the National Labor Relations Act (NLRA) permits a union and employer to collectively bargain over terms and conditions of employment. Determining the forum in which an employee may assert a workplace age discrimination claim, according to the *Pyett* Court, is a condition of employment. Further, the ADEA does not specifically preclude arbitration as a forum to hear ADEA claims. Accordingly, the Court held that there is no legal basis to strike a clear and unmistakable provision in a CBA requiring employees to arbitrate federal age discrimination claims.

Unionized employers are surely rejoicing. They can now guarantee arbitration of ADEA claims, if so desired, based on a bargain struck with the union. Arbitration may be a faster, cheaper method of dealing with disputes, and eliminating the uncertainty of a jury is always a benefit for employers. Still, arbitration is not necessarily a yellow brick road. Arbitrators are generally not familiar with handling age discrimination claims, let alone other points of employment law. It is no coincidence that the American Arbitration Association took an official position contrary to the outcome in *Pyett*.

For unions, this holding is a double-edged sword. The *Pyett* decision provides unions with more leverage in collective bargaining negotiations. Unions can now agree to arbitration provisions in exchange for other concessions from the employer, such as higher wages or better benefits for employees. However, such a bargain comes at a price for unions too. They would have to become more involved in ADEA claims, a potentially expensive process, and one which may pit union members against each other, with the union smack in the middle. For many unions, these are uncharted waters. Those unions that are not familiar with discrimination issues may need to hire specialized counsel to determine if a union member's ADEA claim has merit and then to subsequently represent the union at arbitration. Additionally, if the union decides not to arbitrate on behalf of a union member, the union could face allegations of violating its duty of fair representation to the member.

Undoubtedly, *Pyett* is a clear affirmation that arbitration is an appropriate forum for federal discrimination claims which, by statute, are not otherwise precluded from arbitration. Where arbitrators once were relegated to hearing only contractual disputes and had their competence questioned in federal statutory claims, the *Pyett* Court acknowledged that it has abandoned these "misconceived view[s] of arbitration." Since arbitrators handle other complex cases such as antitrust claims, the Court concluded that arbitrators are equally capable of handling employment issues such as ADEA discrimination claims.

A copy of the full text of the Supreme Court's opinion in *Pyett* can be found [here](#).