

On Wednesday, the United States Supreme Court issued a ruling that could result in a significant decrease in the number of discrimination lawsuits filed in the United States.

In *14 Penn Plaza LLC v. Pyett*, the Court was asked to decide whether a clause contained in a collective bargaining agreement requiring union members to arbitrate claims arising under the Age Discrimination in Employment Act of 1967 (ADEA) is enforceable. By a narrow 5-4 majority, the Court ruled that such an arbitration clause was enforceable because the clause was freely negotiated and “clearly and unmistakably” requires arbitration of age discrimination claims.

## **Factual Background**

Respondents were members of the Service Employees International Union, Local 32BJ (Union). The Union had exclusive authority to bargain on behalf of its members and engage in collective bargaining with the Realty Advisory Board on Labor Relations (RAB), a multiemployer bargaining association for the New York City real-estate industry. The agreement between the Union and the RAB was memorialized in a Collective Bargaining Agreement (CBA). The CBA contained a clause requiring all union members to submit claims of discrimination to binding arbitration.

Petitioner 14 Penn Plaza LLC, a member of the RAB, owned and operated the office building where Respondents were employed by Temco Service Industries, Inc. (Temco) as night lobby watchmen. 14 Penn Plaza, with the Union’s consent, hired a unionized security contractor to provide licensed security guards for the building where Respondents worked, and Temco subsequently reassigned Respondents to jobs as porters and cleaners. Respondents alleged that 14 Penn Plaza and Temco violated the CBA by reassigning them on the basis of their age in violation of the ADEA, and requested that the Union file grievances on their behalf. The Union requested arbitration of Respondents’ ADEA claims under the CBA, but later withdrew Respondents’ ADEA claims from arbitration because the Union had consented later to the hiring of the security contractor.

Respondents then brought their ADEA claims in federal court. The trial judge rejected a motion to compel arbitration, finding that a union-negotiated waiver of a right to litigate was unenforceable. The Second Circuit Court of Appeals affirmed the trial court’s decision on the basis that the Supreme Court’s decision in *Alexander v. Gardner-Denver Co.* prohibited enforcement of such arbitration clauses.

## **Legal Analysis**

The Supreme Court overturned the lower courts’ refusal to enforce the arbitration clause and compel arbitration, holding that “a provision in a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of federal law.” The Court noted that the arbitration clause contained in the

CBA was bargained for in good faith and, similar to any other contract, “courts generally may not interfere in this bargained-for exchange.” The Court also examined the ADEA itself and found that the statute only required that agreements to arbitrate statutory claims be “explicitly stated” in the CBA. Because the arbitration clause at issue was bargained for in good faith and “clearly and unmistakably” required Respondents to arbitrate their ADEA claims, the Court concluded that “there is no legal basis ... to strike down the arbitration clause in this CBA.”

The Court rejected Respondent’s argument that the arbitration clause was unenforceable pursuant to the *Gardner-Denver* line of cases. The Court distinguished the CBA at issue in *Gardner-Denver* and its progeny from the CBA involved in the instant case by noting that the union members in the *Gardner-Denver* line of cases had not specifically agreed to arbitrate their statutory employment law claims. According, the Court held, the *Gardner-Denver* line of cases “does not control the outcome where, as here, the [CBA]’s arbitration provision expressly covers both statutory and contractual discrimination claims.”

### **Practical Considerations**

The Supreme Court’s decision in *14 Penn Plaza* is a victory for employers who prefer to resolve employment law claims through arbitration rather than courts, and reinforces the principle that collectively bargained arbitration agreements are a valid, enforceable mechanism for resolving discrimination claims. The decision will also likely decrease the number of employment law cases litigated in federal court, because it increases the likelihood of successfully compelling such claims to arbitration and precludes employees from splitting the same employment claim between courts and arbitration. Companies who employ union members should make sure that they negotiate a CBA which “clearly and unmistakably” requires the employee to arbitrate statutory and contractual discrimination claims.

If you have immediate questions you may contact one of the members of Thompson Coburn LLP's Labor and Employment Group listed below:

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