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SUPREME COURT OK'S BARGAINED-FOR ARBITRATION OF DISCRIMINATION CLAIMS

On April 1, 2009, the United States Supreme Court held that a collective bargaining agreement (“CBA”) requiring union members to arbitrate claims under the Age Discrimination in Employment Act (“ADEA”) is enforceable. The case clarifies an area of the law that hindered the arbitration of individual statutory claims of unionized employees.

The Supreme Court reasoned that unions have the authority to negotiate final and binding dispute resolution procedures for the employees they represent, even disputes based on federal anti-discrimination statutes. The Court found that the ADEA does not exclude such claims from the labor arbitration process.

Despite giving a green light to arbitration of ADEA claims (and likely, by extension, claims under other anti-discrimination statutes as well), the Court cautioned that a CBA must clearly and unmistakably state that the union is relinquishing the employees’ right to go to court to vindicate their claims of discrimination and that an arbitrator is empowered to hear and decide those statutory claims. The Supreme Court did not address what would happen if a union were to exercise its customary authority to block arbitration of a discrimination claim.

While the Court’s ruling comes as welcome news to unionized employees, careful drafting remains essential. Based on what the Supreme Court said (and didn’t say), the parties to a CBA should consider who will bear the cost of arbitration, the authority of the arbitrator, and the union’s authority to determine whether arbitration should even go forward.



The case is *14 Penn Plaza LLC v. Pyett*, No. 07-581 (April 1, 2009). A copy of the Court's ruling may be found at <http://www.supremecourt.us/opinions/08pdf/07-581.pdf>.

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