14 Penn Plaza LLC v. Pyett: A Step Toward Bringing Federal Labor Law Arbitrability Rules in Line With Their FAA Counterparts?

On April 1 the United States Supreme Court decided 14 Penn Plaza LLC v. Pyett, ___ U.S. ___ (2009) (Thomas, J.), an interesting case that highlights some of the differences between labor arbitration governed by the National Labor Relations Act (?NLRA?) and arbitration governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq. (the ?FAA?). The question before the Court was whether ?a collective bargaining agreement that clearly and unmistakably requires union members to arbitrate [Age Discrimination in Employment Act (?ADEA?)] claims is enforceable as a matter of federal law.? Slip op. at 25. Reversing the United States Court of Appeals for the Second Circuit, the Court said ?yes.? See slip op. at 25.

The Court's decision rested on four premises. First, the Court found that the NLRA granted the Union broad authority on behalf of its members to collectively bargain with the Employer, including the authority to enter into an express agreement to arbitrate ADEA claims. Slip op. at 10. The Court said that 29 U.S.C. § 159(a) permits employees to designate a union as their ?exclusive representative . . . for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment,? and that whether or not the union and employer will arbitrate -- and if so, what -- are ?conditions of employment.? Slip op. at 6-7.

Second, the Court ruled that ?Congress did not terminate that authority with respect to federal age-discrimination claims in the ADEA.? Slip op. at 10. The Court relied heavily on Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991), in which the Court held that an individual employee could be compelled to arbitrate ADEA claims under a private agreement with a securities exchange governed by the FAA. Gilmer found that ?nothing in the text of the ADEA or its legislative history explicitly precludes arbitration. . . .? and that arbitration would not undermine the ADEA's ?remedial and deterrent function.? 500 U.S. at 28. The Pyett Court concluded that ?[t]he Gilmer Court's interpretation of the ADEA fully applies in the collective-bargaining context.? Slip op. at 9.

Third, the ADEA's prohibition against prospective waivers of substantive rights did not apply. The ADEA prohibits individuals from ?waiv[ing] rights or claims that may arise after the date the waiver is executed.? 29 U.S.C. § 626(f)(1)(C). But, according to Gilmer, the right to a judicial forum for ADEA claims is not a substantive right and the prospective waiver rule is therefore not implicated. See slip op. at 15-16.

Fourth, citing Wright v. Universal Maritime Service Corp., 525 U.S. 70 (1998) (Scalia, J.), the Court noted that an ?agreement to arbitrate statutory antidiscrimination claims? had ?to be explicitly stated in the collective bargaining agreement,? and the CBA met that requirement. Slip op. at 9 (quotation omitted).

After justifying its holding, the Court went to great lengths to explain that its decision was consistent with Alexander v. Gardner-Denver Co., 415 U.S. 36 (1974). In Gardner-Denver, decided about seventeen years before Gilmer, the Court held that an employee who had submitted a claim for workplace discrimination to an arbitrator and lost could assert a Title VII claim in federal district court. The CBA's broad arbitration clause did not expressly submit Title VII claims to arbitration, but the CBA itself expressly prohibited workplace discrimination (without referencing Title VII). The Court distinguished between the employee's contractual rights concerning workplace discrimination and his statutory rights under the Title VII, finding that the arbitrator could decide the former but not the latter. The Court also considered the right to sue under Title VII to be a substantive one, which could not be waived prospectively. See slip op. at 11-12 & 16.

Rather than explicitly overruling Gardner-Denver the Court, again relying on Gilmer confined it to what the Court said was its ?narrow? holding: ?that the arbitration award was not preclusive because the [CBA] did not cover statutory claims.? See slip op. at 12 & 14. But the Court eschewed Gardner-Denver to the extent that it: (a) considered the right to sue in a federal forum to be substantive; (b) criticized the ability of arbitrators to adjudicate federal statutory claims; and (c) suggested that allowing unions to agree to arbitrate statutory claims created a conflict of interest that was not already adequately addressed by other protections afforded by Congress, such as the duty of fair representation. See slip op. at 16-23.

Justices Stevens and Souter dissented, joined by Justices Breyer and Ginsburg. The dissenting opinions are certainly well worth reading, but extensive discussion of them is beyond the scope of this post. They mainly concern the Court's treatment of Gardner-Denver and its progeny.

It remains to be seen whether Pyett will one day be extended to CBA arbitration clauses that are broad enough to arguably cover statutory claims, but do not expressly require arbitration of such claims. In cases governed by the FAA, the presumption of arbitrability requires that result, but Wright said that the corresponding presumption of arbitrability in labor law cases extends only to the interpretation and application of the CBA, and not statutory claims, which involve the interpretation and application of federal statutes. 525 U.S. at 78-79. That is presumably why the CBA in Pyett clearly and unmistakably provided for arbitration of ADEA claims. See 525 U.S. at 79-80. But Pyett did not directly address the continued viability of the clear and unmistakable requirement, and it may be that the Court in some later case takes the additional step necessary to bring labor law arbitrability rules in line with their FAA counterparts. Indeed, the general rationale of Pyett would support such a result.