Supreme Court limits right of union workers to sue for discrimination

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In a reactionary, pro-business ruling that reverses decades of settled law, the Supreme Court ruled 5 to 4 last week that workers lose their right to file federal discrimination lawsuits under the 1964 Civil Rights Act whenever a union collective bargaining agreement includes a mandatory arbitration clause.

Mandatory arbitration means that a party agreeable to the company rather than a federal court and jury will decide a dispute, and can do so without making findings of fact or explaining reasons for the decision. There is no right to an appeal, even where the arbitrator disregards the applicable law. Such clauses have become ubiquitous, as businesses insist on compelling arbitration to keep from being hauled in front of juries and forced to defend their actions.

With last week's Supreme Court decision, it is now the rule that contracts negotiated by union bureaucrats trump federal laws enacted to protect against workplace discrimination.

The plaintiffs in the case, *14 Penn Plaza, LLC v. Pyett*, were security guards represented by Service Employees International Union (SEIU) Local 32BJ, which had a collective bargaining agreement with a consortium of New York City commercial landlords. The contract contained a provision to force workers to arbitrate their federal discrimination claims along with alleged violations of the contract itself, such as seniority provisions and work rules.

The SEIU bureaucracy made a deal with a new contractor to replace the plaintiff security guards in the high-rise adjacent to Penn Station with lower-paid workers, which resulted in a grievance claiming violations of federal age discrimination laws as well as seniority rights. At the arbitration hearing, the SEIU withdrew the age discrimination claims because of a "conflict of interest"—namely, that the reassignments were made possible by the union's own deal with the new contractor.

The transferred security guards then filed age discrimination suits in federal court against the landlords.

The Supreme Court dismissed the security guards' lawsuit in a decision authored by Associate Justice Clarence Thomas, joined by the three other members of the extreme right-wing bloc, Chief Justice John Roberts and Associate Justices Samuel Alito and Antonin Scalia. "Swing" Justice Anthony Kennedy, who invariably votes in favor of business interests, provided the crucial fifth vote.

As usual, the right-wing majority proceeded by working backward from its desired political conclusion to fashion its legal reasoning, in the process brushing aside any legal precedent standing in the way.

Thomas brushed aside *Alexander v. GardnerDenver Co.*, which federal courts had been following for 35 years. In that case, a black worker filed a racial discrimination claim after his termination for "just cause" was upheld in a mandatory arbitration. The Supreme Court in 1974 rejected the employer's argument that the worker could not pursue claims for workplace discrimination in federal court.

Associate Justice Lewis Powell, an appointee of Richard Nixon writing for a unanimous court, explained, "Parties usually choose an arbitrator because they trust his knowledge and judgment concerning the demands and norms of industrial relations. On the other hand, the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to [anti-discrimination laws], whose broad language frequently can be given meaning only by reference to public law concepts."

This means that certain issues under the contract, such as those concerning seniority, are appropriate for an arbitrator, who is being asked to determine rights under

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the collective bargaining agreement itself. Disputes involving core civil rights, such as freedom from discrimination in the workplace, however, should be left to judges and juries.

As of last week, that is no longer the law.

Since 1974, American unions have evolved into little more than appendages of the employers. Even 35 years ago, however, the Supreme Court in *Alexander* recognized that “harmony of interest between the union and the individual employee cannot always be presumed,” and “the union may subordinate the interests of an individual employee” to its own interests.

As did reactionary judges during the first part of the twentieth century when striking down minimum wage and maximum work-hour regulations, Thomas in his decision exalted supposed “arm’s length” contract principles over laws enacted to protect workers’ rights. “As in any contractual negotiation, a union may agree to the inclusion of an arbitration provision in a collective bargaining agreement in return for other concessions from the employer. Courts generally may not interfere in this bargainedfor exchange,” Thomas wrote.

Thomas dismissed *Alexander v. Gardner-Denver* with the sophistry that the case stood only for the narrow principle that workers could not be forced to give up their right to be protected from discrimination in a collective bargaining agreement. According to Thomas, companies can still insist that workers give up their right to file lawsuits enforcing those rights.

Thomas’s argument flies in the face of the legal axiom that there can be no right without a meaningful remedy.

In a strongly worded dissent, Associate Justice John Paul Stevens, the senior member of the court’s liberal wing, denounced Thomas for his “subversion of precedent.” Associate Justices Ruth Bader Ginsburg, David Souter and Stephen Breyer also dissented.

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