

14 PENN PLAZA, LLC v. PYETT
129 S.Ct. 1456 (2009)

JUSTICE THOMAS delivered the opinion of the Court:

The question presented by this case is whether a provision in a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate claims arising under the Age Discrimination in Employment Act of 1967 (ADEA) is enforceable. The United States Court of Appeals for the Second Circuit held that this Court's decision in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), forbids enforcement of such arbitration provisions. We disagree and reverse the judgment of the Court of Appeals.

I

Respondents are members of the Service Employees International Union, Local 32BJ (Union). Since the 1930's, the Union has engaged in industry-wide collective bargaining with the Realty Advisory Board on Labor Relations, Inc. (RAB), a multiemployer bargaining association for the New York City real-estate industry. The agreement between the Union and the RAB is embodied in their Collective Bargaining Agreement for Contractors and Building Owners (CBA). The CBA requires union members to submit all claims of employment discrimination to binding arbitration under the CBA's grievance and dispute resolution procedures:

“§ 30 NO DISCRIMINATION. There shall be no discrimination against any present or future employee by reason of race, creed, color, age, disability, national origin, sex, union membership, or any other characteristic protected by law, including, but not limited to, claims made pursuant to Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the New York State Human Rights Law, the New York City Human Rights Code, ... or any other similar laws, rules, or regulations. All such claims shall be subject to the grievance and arbitration procedures (Articles V and VI) as the sole and exclusive remedy for violations. Arbitrators shall apply appropriate law in rendering decisions based upon claims of discrimination.”

Petitioner 14 Penn Plaza LLC is a member of the RAB. It owns and operates the New York City office building where, prior to August 2003, respondents worked as night lobby watchmen and in other similar capacities. Respondents were directly employed by petitioner Temco Service Industries, Inc. (Temco), a maintenance service and cleaning contractor. In August 2003, with the Union's consent, 14 Penn Plaza engaged Spartan Security, a unionized security services contractor and affiliate of Temco, to provide licensed security guards to staff the lobby and entrances of its building. Because this rendered respondents' lobby services unnecessary, Temco reassigned them to jobs as night porters and light duty cleaners in other locations in the building. Respondents contend that these reassignments led to a loss in income, caused them emotional distress, and were otherwise less desirable than their former positions.

At respondents' request, the Union filed grievances challenging the reassignments. The grievances alleged that petitioners: (1) violated the CBA's ban on workplace discrimination by reassigning respondents on account of their age; (2) violated seniority rules by failing to promote one of the respondents to a handyman position; and (3) failed to equitably rotate overtime. After failing to obtain relief on any of these claims through the grievance process, the Union requested arbitration under the CBA.

After the initial arbitration hearing, the Union withdrew the first set of respondents' grievances—the age-discrimination claims—from arbitration. Because it had consented to the contract for new security personnel at 14 Penn Plaza, the Union believed that it could not legitimately object to respondents' reassignments as discriminatory. But the Union continued to arbitrate the seniority and overtime claims, and, after several hearings, the claims were denied.

In May 2004, while the arbitration was ongoing but after the Union withdrew the age-discrimination claims, respondents filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that petitioners had violated their rights under the ADEA. Approximately one month later, the EEOC issued a Dismissal and Notice of Rights, which explained that the agency's “ ‘review of the evidence ... fail[ed] to indicate that a violation ha[d] occurred,’ ” and notified each respondent of his right to sue.

Respondents thereafter filed suit against petitioners in the United States District Court for the Southern District of New York, alleging that their reassignment violated the ADEA and state and local laws prohibiting age discrimination. Petitioners filed a motion to compel arbitration of respondents' claims pursuant to § 3 and § 4 of the Federal Arbitration Act (FAA). The District Court denied the motion because under Second Circuit precedent, “even a clear and unmistakable union-negotiated waiver of a right to litigate certain federal and state statutory claims in a judicial forum is unenforceable.”

The Court of Appeals affirmed. According to the Court of Appeals, it could not compel arbitration of the dispute because *Gardner-Denver*, which “remains good law,” held “that a collective bargaining agreement could not waive covered workers' rights to a judicial forum for causes of action created by Congress.”

II

A

[T]he Union and the RAB, negotiating on behalf of 14 Penn Plaza, collectively bargained in good faith and agreed that employment-related discrimination claims, including claims brought under the ADEA, would be resolved in arbitration. This freely negotiated term between the Union and the RAB easily qualifies as a “conditio[n] of employment” that is subject to mandatory bargaining. The decision to fashion a CBA to require arbitration of employment-discrimination claims is no different from the many other decisions made by parties in designing grievance machinery

Respondents, however, contend that the arbitration clause here is outside the permissible scope of the collective-bargaining process because it affects the “employees' individual, non-economic statutory rights.” We disagree. Parties generally favor arbitration precisely because of the economics of dispute resolution. 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 bargained-for exchange. “Judicial nullification of contractual concessions ... is contrary to what the Court has recognized as one of the fundamental policies of the National Labor Relations Act—freedom of contract.”

As a result, the CBA's arbitration provision must be honored unless the ADEA itself removes this particular class of grievances from the NLRA's broad sweep. It does not. This Court has squarely held that the ADEA does not preclude arbitration of claims brought under the statute.

In *Gilmer*, the Court explained that “[a]lthough all statutory claims may not be appropriate for arbitration, ‘having made the bargain to arbitrate, the party should be held to it unless Congress itself has evinced an intention to preclude a waiver of judicial remedies for the statutory rights at issue.’ ” The Court determined that “nothing in the text of the ADEA or its legislative history explicitly precludes arbitration.” The Court also concluded that arbitrating ADEA disputes would not undermine the statute's “remedial and deterrent function.”

The *Gilmer* Court's interpretation of the ADEA fully applies in the collective-bargaining context. Nothing in the law suggests a distinction between the status of arbitration agreements signed by an individual employee and those agreed to by a union representative. This Court has required only that an agreement to arbitrate statutory antidiscrimination claims be “explicitly stated” in the collective-bargaining agreement. The CBA under review here meets that obligation. Respondents incorrectly counter that an individual employee must personally “waive” a “[substantive] right” to proceed in court for a waiver to be “knowing and voluntary” under the ADEA. As explained below, however, the agreement to arbitrate ADEA claims is not the waiver of a “substantive right” as that term is employed in the ADEA,

Examination of the two federal statutes at issue in this case, therefore, yields a straightforward answer to the question presented: The NLRA provided the Union and the RAB with statutory authority to collectively bargain for arbitration of workplace discrimination claims, and Congress did not terminate that authority with respect to federal age-discrimination claims in the ADEA. Accordingly, there is no legal basis for the Court to strike down the arbitration clause in this CBA, which was freely negotiated by the Union and the RAB, and which clearly and unmistakably requires respondents to arbitrate the age-discrimination claims at issue in this appeal. Congress has chosen to allow arbitration of ADEA claims. The Judiciary must respect that choice.

B

The CBA's arbitration provision is also fully enforceable under the *Gardner-Denver* line of cases. Respondents interpret *Gardner-Denver* and its progeny to hold that “a union cannot waive an employee's right to a judicial forum under the federal antidiscrimination statutes” because “allowing the union to waive this right would substitute the union's interests for the employee's antidiscrimination rights.” The “combination of union control over the process and inherent conflict of interest with respect to discrimination claims,” they argue, “provided the foundation for the Court's holding [in *Gardner-Denver*] that arbitration under a collective-bargaining agreement could not preclude an individual employee's right to bring a lawsuit in court to vindicate a statutory discrimination claim.” We disagree.

1

The holding of *Gardner-Denver* is not as broad as respondents suggest. The employee in that case was covered by a collective-bargaining agreement that prohibited “discrimination against any employee on account of race, color, religion, sex, national origin, or ancestry” and that guaranteed that “[n]o employee will be discharged ... except for just cause.” The agreement also included a “multistep grievance procedure” that culminated in compulsory arbitration for any “differences aris[ing] between the Company and the Union as to the meaning and application of the provisions of this Agreement” and “any trouble aris[ing] in the plant.”

The employee was discharged for allegedly producing too many defective parts while working for the respondent as a drill operator. He filed a grievance with his union claiming that he was “ ‘unjustly discharged’ ” in violation of the “ ‘just cause’ ” provision within the CBA. Then at the final prearbitration step of the grievance process, the employee added a claim that he was discharged because of his race.

The arbitrator ultimately ruled that the employee had been “ ‘discharged for just cause,’ ” but “made no reference to [the] claim of racial discrimination.” After obtaining a right-to-sue letter from the EEOC, the employee filed a claim in Federal District Court, alleging racial discrimination in violation of Title VII of the Civil Rights Act of 1964. The District Court issued a decision, affirmed by the Court of Appeals, which granted summary judgment to the employer because it concluded that “the claim of racial discrimination had been submitted to the arbitrator and resolved adversely to [the employee].”

This Court reversed the judgment on the narrow ground that the arbitration was not preclusive because the collective-bargaining agreement did not cover statutory claims. As a result, the lower courts erred in relying on the “doctrine of election of remedies” to bar the employee's Title VII claim. “That doctrine, which refers to situations where an individual pursues remedies that are legally or factually inconsistent” with each other, did not apply to the employee's dual pursuit of arbitration and a Title VII discrimination claim in district court. The employee's collective-bargaining agreement did not mandate arbitration of statutory antidiscrimination claims. “As the proctor of the bargain, the arbitrator's task is to effectuate the intent of the parties.” Because the collective-bargaining agreement gave the arbitrator “authority to resolve only questions of

contractual rights,” his decision could not prevent the employee from bringing the Title VII claim in federal court “regardless of whether certain contractual rights are similar to, or duplicative of, the substantive rights secured by Title VII.” *See id.*, at 46, n. 6 (“[W]e hold that the federal policy favoring arbitration does not establish that an arbitrator’s resolution of a *contractual* claim is dispositive of a statutory claim under Title VII” (emphasis added)).

2

We recognize that apart from their narrow holdings, the *Gardner-Denver* line of cases included broad dicta that was highly critical of the use of arbitration for the vindication of statutory antidiscrimination rights. That skepticism, however, rested on a misconceived view of arbitration that this Court has since abandoned.

First, the Court in *Gardner-Denver* erroneously assumed that an agreement to submit statutory discrimination claims to arbitration was tantamount to a waiver of those rights. The Court was correct in concluding that federal antidiscrimination rights may not be prospectively waived, but it confused an agreement to arbitrate those statutory claims with a prospective waiver of the substantive right. The decision to resolve ADEA claims by way of arbitration instead of litigation does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance. The suggestion in *Gardner-Denver* that the decision to arbitrate statutory discrimination claims was tantamount to a substantive waiver of those rights, therefore, reveals a distorted understanding of the compromise made when an employee agrees to compulsory arbitration.

The timeworn “mistrust of the arbitral process” harbored by the Court in *Gardner-Denver* thus weighs against reliance on anything more than its core holding.

Second, *Gardner-Denver* mistakenly suggested that certain features of arbitration made it a forum “well suited to the resolution of contractual disputes,” but “a comparatively inappropriate forum for the final resolution of rights created by Title VII.” According to the Court, the “factfinding process in arbitration” is “not equivalent to judicial factfinding” and the “informality of arbitral procedure ... makes arbitration a less appropriate forum for final resolution of Title VII issues than the federal courts.” The Court also questioned the competence of arbitrators to decide federal statutory claims. In the Court’s view, “the resolution of statutory or constitutional issues is a primary responsibility of courts, and judicial construction has proved especially necessary with respect to Title VII, whose broad language frequently can be given meaning only by reference to public law concepts.”

These misconceptions have been corrected. For example, the Court has “recognized that arbitral tribunals are readily capable of handling the factual and legal complexities of antitrust claims, notwithstanding the absence of judicial instruction and supervision” and that “there is no reason to assume at the outset that arbitrators will not follow the law.” An arbitrator’s capacity to resolve complex questions of fact and law extends with equal

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force to discrimination claims brought under the ADEA. Moreover, the recognition that arbitration procedures are more streamlined than federal litigation is not a basis for finding the forum somehow inadequate; the relative informality of arbitration is one of the chief reasons that parties select arbitration. Parties “trad[e] the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration.”

Third, the Court in *Gardner-Denver* raised in a footnote a “further concern” regarding “the union's exclusive control over the manner and extent to which an individual grievance is presented.” The Court suggested that in arbitration, as in the collective-bargaining process, a union may subordinate the interests of an individual employee to the collective interests of all employees in the bargaining unit.

We cannot rely on this judicial policy concern as a source of authority for introducing a qualification into the ADEA that is not found in its text. Absent a constitutional barrier, “it is not for us to substitute our view of ... policy for the legislation which has been passed by Congress.”

The conflict-of-interest argument also proves too much. Labor unions certainly balance the economic interests of some employees against the needs of the larger work force as they negotiate collective-bargain agreements and implement them on a daily basis. But this attribute of organized labor does not justify singling out an arbitration provision for disfavored treatment. This “principle of majority rule” to which respondents object is in fact the central premise of the NLRA. *Emporium Capwell Co. v. Western Addition Community Organization*, 420 U.S. 50, 62 (1975). “In establishing a regime of majority rule, Congress sought to secure to all members of the unit the benefits of their collective strength and bargaining power, in full awareness that the superior strength of some individuals or groups might be subordinated to the interest of the majority.” It was Congress' verdict that the benefits of organized labor outweigh the sacrifice of individual liberty that this system necessarily demands. Respondents' argument that they were deprived of the right to pursue their ADEA claims in federal court by a labor union with a conflict of interest is therefore unsustainable; it amounts to a collateral attack on the NLRA.

In any event, Congress has accounted for this conflict of interest in several ways. [T]he NLRA has been interpreted to impose a “duty of fair representation” on labor unions, which a union breaches “when its conduct toward a member of the bargaining unit is arbitrary, discriminatory, or in bad faith.” Thus, a union is subject to liability under the NLRA if it illegally discriminates against older workers in either the formation or governance of the collective-bargaining agreement, such as by deciding not to pursue a grievance on behalf of one of its members for discriminatory reasons. Given this avenue that Congress has made available to redress a union's violation of its duty to its members, it is particularly inappropriate to ask this Court to impose an artificial limitation on the collective-bargaining process.

In addition, a union is subject to liability under the ADEA if the union itself discriminates

against its members on the basis of age. Union members may also file age-discrimination claims with the EEOC and the National Labor Relations Board, which may then seek judicial intervention under this Court's precedent. In sum, Congress has provided remedies for the situation where a labor union is less than vigorous in defense of its members' claims of discrimination under the ADEA.

III

Respondents argue that the CBA operates as a substantive waiver of their ADEA rights because it not only precludes a federal lawsuit, but also allows the Union to block arbitration of these claims. Petitioners contest this characterization of the CBA, and offer record evidence suggesting that the Union has allowed respondents to continue with the arbitration even though the Union has declined to participate. But not only does this question require resolution of contested factual allegations, it was not fully briefed to this or any court and is not fairly encompassed within the question presented. Thus, although a substantive waiver of federally protected civil rights will not be upheld, we are not positioned to resolve in the first instance whether the CBA allows the Union to prevent respondents from “effectively vindicating” their “federal statutory rights in the arbitral forum.”

IV

We hold that a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of federal law. The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

Justice SOUTER, with whom Justice STEVENS, Justice GINSBURG, and Justice BREYER join, dissenting.

The issue here is whether employees subject to a collective-bargaining agreement (CBA) providing for conclusive arbitration of all grievances, including claimed breaches of the Age Discrimination in Employment Act of 1967 (ADEA) lose their statutory right to bring an ADEA claim in court. Under the 35-year-old holding in *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), they do not, and I would adhere to *stare decisis* and so hold today.

Gardner-Denver considered the effect of a CBA's arbitration clause on an employee's right to sue under Title VII. One of the employer's arguments was that the CBA entered into by the union had waived individual employees' statutory cause of action subject to a judicial remedy for discrimination in violation of Title VII. [W]e unanimously held that “the rights conferred” by Title VII (with no exception for the right to a judicial forum) cannot be waived as “part of the collective bargaining process,” *id.* at 51. We stressed the contrast between two categories of rights in labor and employment law. There were “statutory rights related to collective activity,” which “are conferred on employees collectively to foster the processes of bargaining [, which] properly may be exercised or

relinquished by the union as collective-bargaining agent to obtain economic benefits for union members.” *Ibid.* But “Title VII ... stands on plainly different [categorical] ground; it concerns not majoritarian processes, but an individual’s right to equal employment opportunities.” *Ibid.* Thus, as the Court previously realized, *Gardner-Denver* imposed a “seemingly absolute prohibition of union waiver of employees’ federal forum rights.” *Wright v. Universal Maritime Service Corp.*, 525 U.S. 70, 80 (1998).

We supported the judgment with several other lines of complementary reasoning. First, we explained that antidiscrimination statutes “have long evinced a general intent to accord parallel or overlapping remedies against discrimination,” and Title VII’s statutory scheme carried “no suggestion ... that a prior arbitral decision either forecloses an individual’s right to sue or divests federal courts of jurisdiction.” *Gardner-Denver*, 415 U.S. at 47. We accordingly concluded that “an individual does not forfeit his private cause of action if he first pursues his grievance to final arbitration under the nondiscrimination clause of a collective-bargaining agreement.” *Id.* at 49.

Second, we rejected the District Court’s view that simply participating in the arbitration amounted to electing the arbitration remedy and waiving the plaintiff’s right to sue. We said that the arbitration agreement at issue covered only a contractual right under the CBA to be free from discrimination, not the “independent statutory rights accorded by Congress” in Title VII. *Id.* at 49-50. Third, we rebuffed the employer’s argument that federal courts should defer to arbitral rulings. We declined to make the “assumption that arbitral processes are commensurate with judicial processes,” *id.* at 56, and described arbitration as “a less appropriate forum for final resolution of Title VII issues than the federal courts,” *id.*, at 58.

Finally, we took note that “[i]n arbitration, as in the collective bargaining process, the interests of the individual employee may be subordinated to the collective interests of all employees in the bargaining unit,” *ibid.* n. 19, a result we deemed unacceptable when it came to Title VII claims. In sum, *Gardner-Denver* held that an individual’s statutory right of freedom from discrimination and access to court for enforcement were beyond a union’s power to waive.

Our analysis of Title VII in *Gardner-Denver* is just as pertinent to the ADEA in this case. Once we have construed a statute, stability is the rule, and “we will not depart from [it] without some compelling justification.” There is no argument for abandoning precedent here, and *Gardner-Denver* controls.

II

The majority evades the precedent of *Gardner-Denver* as long as it can simply by ignoring it. The Court never mentions the case before concluding that the ADEA and the National Labor Relations Act “yiel[d] a straightforward answer to the question presented,” that is, that unions can bargain away individual rights to a federal forum for antidiscrimination claims. If this were a case of first impression, it would at least be possible to consider that conclusion, but the issue is settled and the time is too late by 35

years to make the bald assertion that “[n]othing in the law suggests a distinction between the status of arbitration agreements signed by an individual employee and those agreed to by a union representative.” In fact, we recently and unanimously said that the principle that “federal forum rights cannot be waived in union-negotiated CBAs even if they can be waived in individually executed contracts ... assuredly finds support in” our case law, *Wright*, 525 U.S. at 77, and every Court of Appeals save one has read our decisions as holding to this position

Equally at odds with existing law is the majority's statement that “[t]he decision to fashion a CBA to require arbitration of employment-discrimination claims is no different from the many other decisions made by parties in designing grievance machinery.” That is simply impossible to square with our conclusion in *Gardner-Denver* that “Title VII ... stands on plainly different ground” from “statutory rights related to collective activity”: “it concerns not majoritarian processes, but an individual's right to equal employment opportunities.”

When the majority does speak to [*Gardner-Denver*](#), it misreads the case in claiming that it turned solely “on the narrow ground that the arbitration was not preclusive because the collective-bargaining agreement did not cover statutory claims.” That, however, was merely one of several reasons given in support of the decision, and we raised it to explain why the District Court made a mistake in thinking that the employee lost his Title VII rights by electing to pursue the contractual arbitration remedy. One need only read *Gardner-Denver* itself to know that it was not at all so narrowly reasoned, and later cases have made this abundantly clear.

Nor, finally, does the majority have any better chance of being rid of another of *Gardner-Denver's* statements supporting its rule of decision, set out and repeated in previous quotations: “in arbitration, as in the collective-bargaining process, a union may subordinate the interests of an individual employee to the collective interests of all employees in the bargaining unit,” an unacceptable result when it comes to “an individual's right to equal employment opportunities.” The majority tries to diminish this reasoning, and the previously stated holding it supported, by making the remarkable rejoinder that “[w]e cannot rely on this judicial policy concern as a source of authority for introducing a qualification into the ADEA that is not found in its text.” It is enough to recall that respondents are not seeking to “introduc[e] a qualification into” the law; they are justifiably relying on statutory-interpretation precedent decades old, never overruled, and serially reaffirmed over the years. With that precedent on the books, it makes no sense for the majority to claim that “judicial policy concern[s]” about unions sacrificing individual antidiscrimination rights should be left to Congress.

Congress apparently does not share the Court's demotion of *Gardner-Denver's* holding to a suspect judicial policy concern: “Congress has had [over] 30 years in which it could have corrected our decision ... if it disagreed with it, and has chosen not to do so. We should accord weight to this continued acceptance of our earlier holding.”

III

On one level, the majority opinion may have little effect, for it explicitly reserves the question whether a CBA's waiver of a judicial forum is enforceable when the union controls access to and presentation of employees' claims in arbitration, which "is usually the case." But as a treatment of precedent in statutory interpretation, the majority's opinion cannot be reconciled with the *Gardner-Denver* Court's own view of its holding, repeated over the years and generally understood, and I respectfully dissent.

(The separate dissenting opinion of JUSTICE STEVENS has been omitted.)

Notes

1. In the *Steelworkers Trilogy*, the Court regarded grievance arbitration as a substitute for workplace strife and a vehicle for workplace self-governance. The Court contrasted grievance arbitration with commercial arbitration which the Court regarded as a substitute for litigation. How does the Court view grievance arbitration in *Pyett*? What are the implications, if any, for the Court's change in perspective?
2. In *Kravar v. Triangle Services, Inc.*, 2009 WL 1392595 (S.D.N.Y. May 19, 2009), the court faced the same SEIU Local 32BJ – RAB collective bargaining agreement. The court refused to compel the plaintiff to arbitrate her claim of disability discrimination under the Americans with Disabilities Act. The court found that under the collective bargaining agreement, the union had the exclusive right to advance a grievance to arbitration and that the union refused to process the plaintiff's disability discrimination claim. The court concluded that the union's refusal to arbitrate the plaintiff's disability discrimination claim meant that if not allowed to proceed in court, she would not be able to bring her claim in any forum. Under the circumstances, the court opined, the collective bargaining agreement amounted to a waiver of plaintiff's substantive rights and was not enforceable.
3. In *Mathews v. Denver Newspaper Agency*, 2009 WL 1231776 (D. Colo. May 4, 2009), the plaintiff grieved his demotion on grounds that included allegations of national origin discrimination and retaliation for filing a prior discrimination complaint. The collective bargaining agreement contained a non-discrimination clause but did not obligate employees to bring their statutory claims through the grievance procedure. Plaintiff arbitrated represented by his own attorney rather than a union advocate and the arbitrator denied his grievance. The court interpreted *Pyett* as modifying *Gardner-Denver* and concluded, in light of the arbitration, that plaintiff's Title VII and 1981 actions were barred by the doctrine of *res judicata*.
4. Is waiver of the judicial forum for statutory claims and submission of those claims to the grievance procedure a mandatory subject of bargaining? If so,

may an employer insist on such a waiver to the point of impasse? If the parties are at impasse, may the employer unilaterally impose such a waiver on the employees?