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U. S. SUPREME COURT TO ADDRESS IMPORTANT LABOR AND EMPLOYMENT ISSUES IN FALL TERM

The U. S. Supreme Court currently has several cases on its docket involving important labor and employment issues that could have significant implications for employers. It is anticipated that the U. S. Supreme Court will be ruling in these cases in 2010. This summary provides a run-down of the key cases to be decided over the coming months.

1. **Lewis v. City of Chicago, (Docket No. 08-974) (Appeal from 7th Circuit) (Oral argument scheduled for February 22, 2010).** The U. S. Supreme Court will decide whether a plaintiff must file a charge of discrimination with the U. S. Equal Employment Opportunity Commission within 300 days after the *announcement* of an employment practice that violates Title VII's disparate impact provision, or whether a plaintiff may file a charge within 300 days after the employer actually *uses* the discriminatory practice. In this case, the Seventh Circuit Court of Appeals joined the Third and Sixth Circuits in holding that the 300 day clock begins to run when the discriminatory employment practice is announced. In contrast, the Second, Fifth and Ninth Circuits have held that the time for filing a charge begins to run each time the employer uses the discriminatory practice, i.e., each time a hiring decision is based on that practice.

The case was brought Under Title VII by plaintiffs who unsuccessfully applied for firefighter positions with the City of Chicago. They claim that the results of a written test had a disparate impact on them, as white applicants were 5 times more likely to be ranked higher than African American applicants. The City appealed only the timeliness issue, not the underlying disparate impact claim.

This case is similar to the U. S. Supreme Court's 2007 ruling in Ledbetter v. Goodyear Tire & Rubber Co., 550 U. S. 618 (2007), in which the Court held that the deadline for bringing a claim of pay discrimination under Title VII begins to run when the employer makes an allegedly unlawful pay-setting decision, and does not restart each time the employer issues a paycheck. The U. S. Supreme Court's decision was reversed on January 29, 2009, when President Obama signed the Lilly Ledbetter Fair Pay Act of 2009, easing the statute of limitations on pay discrimination claims by allowing an employee to file a charge within 180 days (or 300 days in states, such as Illinois, with local FEP agencies) of the date when the employee is affected by a discriminatory wage decision or practice, i.e., each time a paycheck is issued. (See, our February, 2009 Client Alert).

2. Union Pac. R.R. Co. v. Brotherhood of Locomotive Eng'r and Trainmen Gen. Comm. of Adjustment, Central Region, (Docket No. 08-604) (Appeal from 7th Circuit) (Oral argument held on October 7, 2009). The U. S. Supreme Court will decide whether federal courts have the power to review arbitration awards for alleged due process violations under the Railway Labor Act. In this case, the Seventh Circuit Court of Appeals joined the Second, Fifth, Eighth and Ninth Circuits in holding that parties are not limited to the express grounds for judicial review identified in the Railway Labor Act, and may seek judicial review based on any alleged due process violation.

Although this case involves a fairly narrow issue related to the grounds for judicial review of binding arbitration awards in the railroad industry, it may have broader implications given the U. S. Supreme Court's recent trend in limiting the scope of judicial review of arbitration awards. If the U. S. Supreme Court agrees with the Circuits, the losing side in an arbitration under the Railway Labor Act may be more likely to take another bite at the apple through judicial review, while a reversal of the Seventh Circuit would bolster the finality of the arbitration process by limiting judicial review to the express grounds under the statute.

3. Granite Rock Co. v. Int'l Brotherhood of Teamsters, (Docket No. 08-1214) (Appeal from 9th Circuit) (Oral argument scheduled for January 19, 2010). The U. S. Supreme Court will decide: (i) whether federal courts have jurisdiction to determine, as a threshold matter, if an enforceable labor contract has been formed before the arbitration of contract disputes; and (ii) whether an international union, that is not a signatory to a collective bargaining agreement, can be sued under the Labor Management Relations Act ("LMRA") for alleged violations of such labor contracts. In this case, the Ninth Circuit Court of Appeals held that the parties were required to submit all contract disputes to arbitration – even a dispute about whether a collective bargaining agreement had been properly ratified and was enforceable – under the contract's arbitration clause. The Ninth Circuit also held that Section 301(a) of the LMRA only grants jurisdiction for claims against labor contract signatories.

If the U. S. Supreme Court were to hold that arbitrators, as opposed to courts, have the power to decide the threshold question of whether an enforceable contract exists, then arbitrators will have wide latitude to determine their own jurisdiction. Additionally, if the U. S. Supreme Court were to hold that the protections of the LMRA cannot be enforced against parties that are not signatories to a collective bargaining agreement, international unions may be encouraged to induce violations of labor contracts and find protection behind the shield of the local unions that sign the labor contracts.

4. Conkright v. Frommert, Docket No. 08-810 (Appeal from 2nd Circuit) (Oral argument scheduled for January 20, 2010). The U. S. Supreme Court will decide how much deference federal courts should give decisions by ERISA plan administrators when the decision occurs outside the context of a formal ERISA claim proceeding. In this case, the Second Circuit Court of Appeals held that a federal court was not required to defer to an ERISA plan administrator's reasonable interpretation of the plan's terms if the administrator arrived at its interpretation outside the context of an administrative claim for benefits.

The Second Circuit's holding creates a potentially large exception to the general rule followed by federal courts that an ERISA plan administrator's interpretation of plan terms or language is entitled to deference. The holding conflicts with the Third, Fifth, Sixth, Seventh, Tenth and Eleventh Circuit Courts of Appeal, which have upheld that the rule of deference applies to plan administrator interpretations offered not only with respect to administrative claims for benefits but in various other contexts as well. If the U. S. Supreme Court affirms the Second Circuit, employers may find the administration and interpretation of their ERISA governed benefit plans coming under more scrutiny and attack in the federal courts.

5. Graham County Soil and Water Conservation District v. United States, Ex rel. Wilson, (Docket No. 08-304) (Appeal from 4th Circuit) (Oral argument held on November 30, 2009). The U. S. Supreme Court will decide whether a whistleblower may file a qui tam suit under the False Claims Act ("FCA") if the alleged wrongdoing has already been disclosed in administrative reports of state or local governments.

The FCA bars private actions "based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media." 31 U.S.C. § 3730(e). Basically, the statute is designed to prohibit plaintiffs from bringing whistleblower actions when the alleged issues raised by the whistleblower are a matter of public record. The Court of Appeals for the Fourth Circuit held that such suits are barred by *federal* administrative reports, but not by reports of *state and local* governments. The U. S. Supreme Court will determine whether state or local government reports constitute "an administrative report" or whether the statute is limited to only federal reports.

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