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Warren, McVeigh & Griffin, Inc. Griffin Communications, Inc.
1420 Bristol Street North, Suite 220, Newport Beach, CA 92660
Tel 949/752-1058 | www.griffincom.com

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Supreme Court Rejects Reverse Age Discrimination Claim By "Younger Older" Employees; Employers Can Favor Oldest Workers

By Bennett Pine, Esq.

By a vote of 6 to 3, the United States Supreme Court has ruled that the Age Discrimination in Employment Act ("ADEA") does not prevent an employer from giving more preferable treatment to older individuals within the age protected (i.e., over the age of 40) category, at the expense of "younger" workers who are also over age 40. (*General Dynamics Land Systems, Inc. v. Cline,* No. 02-1080, February 24, 2004) The issue arose under a new provision in a collective bargaining agreement which granted certain retiree health benefits only to workers who had reached age 50 by July 1, 1997. The previous agreement granted retiree health benefits to all employees with 30 years of service with the company, regardless of age.

The lawsuit was brought by a group of approximately 200 workers at two company facilities who were between age 40 and 49 as of July 1, 1997. They therefore did not qualify for retiree benefits under the new collective bargaining agreement, but would have under the prior provision.

The U.S. District Court for the Northern District of Ohio dismissed the case on the ground that the ADEA does not permit claims for reverse age discrimination against younger workers. The Court of Appeals for the Sixth Circuit reversed. It ruled that the plain language of the ADEA prohibits employers from discrimination against *any* employee age 40 or over based upon that person's age and reasoned that Congress did not intend to limit the ADEA to protect "only those workers who are *relatively* older."

The Supreme Court reversed the Sixth Circuit and ruled that the ADEA does not bar employers from favoring older workers over younger ones, even though both groups are within the age protected category.

Writing for the Court, Justice Souter focused on the legislative history of the ADEA as being designed to prohibit unjustified stereotypes and assumptions about older employees and their ability to perform. He emphasized that the ADEA's "text, structure, purpose, history and relationship to other federal statutes show that the statute does not mean to stop an employer from favoring an older employee over a younger one." While recognizing that no prior Supreme Court decision addressing the ADEA had focused on this precise issue Justice Souter stated that "all of them show the Court's consistent understanding" regarding the ADEA as a remedy for those treated less favorably based on relatively *older* age, thus "leaving complaints of the relatively younger outside the statutory concern."

Significance

The Supreme Court's decision was hardly a shock. Most employment law practitioners, and each of the organizations that filed amicus briefs in the case, favored reversal of the Sixth Circuit, arguing that to permit younger workers to sue when older workers were favored would have stretched the ADEA further than was intended by Congress and, indeed, would have turned the ADEA on its head. Accordingly, against the backdrop of changing demographics of increased

life expectancies, postponed retirements and continued reductions in force, employers still appear to be on safe ground, at least for the time being, by continuing to take employment actions, fashioning benefit plans, and undertaking voluntary separation packages and other retirement incentives that run in the favor of their older or oldest workers, at the expense of "younger" workers and others who are also in the protected over 40 category.

Bennett Pine, Esq. *is a shareholder in the New York office of Anderson Kill & Olick, P.C. and Co-Chair of Anderson Kill's Employment and Labor Law Department. He can be reached at 212-278-1288 or bpine@andersonkill.com.*