

A grievance procedure that requires union members to pursue age discrimination claims through [arbitration](#) can result in preventing the union member from filing the age discrimination claim in court. That is the result of the recent United States Supreme Court decision, [14 Penn Plaza LLC v. Pyett](#).

More specifically, the Court addressed whether a provision in a collective-bargaining agreement that requires union members to arbitrate claims arising under the [Age Discrimination in Employment Act of 1967 \(ADEA\)](#) is enforceable. The Court held that the employer could enforce the provision and prevent union members from going to court.

Summary of Facts in 14 Penn Plaza v. Pyett

In [14 Penn Plaza](#), the [Service Employees International Union](#), Local 32BJ, had entered into a collective bargaining agreement that required union members to submit all employment discrimination claims to binding arbitration. The agreement also specified that the grievance procedure resulting in arbitration “shall be the sole and exclusive remedy for violations.” When certain union members were reassigned to new duties, the Union filed a grievance. At first, the Union claimed that the reassignment: (1) violated the law against age discrimination; (2) violated seniority rules; and (3) unfairly assigned overtime work.

The union members, on whose behalf the grievance was filed, had been employed as watchmen in the employer’s building lobby. Their duties were reassigned, however, because the employer hired a new company to provide building security guards. The new company was also a union shop, and the Union agreed to the switch. After the grievance was filed and the first arbitration hearing was held, the Union decided that because it had consented to the switch to the new company’s providing security guards, the Union had no basis to pursue the age discrimination claims. So the Union withdrew the age discrimination claims from the arbitration.

The Union continued to arbitrate the seniority and overtime claims. While those issues were being arbitrated, the union members filed their age discrimination claims with the [Equal Employment Opportunity Commission](#) and then the federal district court. The employer responded to the lawsuit by asking the court to order the union members to arbitrate their claims rather than pursue them in court.

The employer's request was denied by the trial court. The employer appealed, and again the request was denied. This time, the United States Court of Appeals for the Second Circuit denied the request. Both courts relied on prior decisions from the Second Circuit and the United States Supreme Court. According to the Second Circuit, the law stated in those decisions was that: "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 United States Supreme Court Requires Union Members To Use Arbitration

The Supreme Court ruled that the lower courts were wrong about the law. The lower courts had relied on a prior decision from the Supreme Court, [Alexander v. Gardner-Denver Co.](#), 415 U.S. 36 (1974). In that case, the Supreme Court decided whether discrimination claims brought under [Title VII](#)

were barred from being resolved by a court after the claims had been resolved through arbitration pursuant to a collective bargaining agreement. The Supreme Court ruled that the [claims could be filed in court even though they had already been arbitrated](#)

. In part, the Supreme Court explained in

[Gardner-Denver](#)

: "Arbitral procedures, while well suited to the resolution of contractual disputes, make arbitration a comparatively inappropriate forum for the final resolution of rights created by Title VII." But in a footnote to the

14 Penn Plaza

opinion, The Supreme Court plainly stated that

[Gardner-Denver](#)

did not prevent a union from reaching on behalf of its members an agreement to arbitrate age discrimination claims:

Gardner-Denver

"does not prohibit collective bargaining for arbitration of ADEA claims." Then the Supreme Court devoted an entire section of its

[14 Penn Plaza opinion](#)

to further explain why the

Gardner-Denver

line of cases did not prohibit enforcing the arbitration agreement.

The key to why the law in [Gardner-Denver](#) was deemed not applicable in [14 Penn Plaza](#) was that the collective bargaining agreements in the two cases were different. In

[Gardner-Denver](#)

, the collective bargaining agreement prohibited discrimination based on "race, color, religion, sex, national origin, or ancestry." The agreement also required arbitration of "differences

aris[ing] between the Company and the Union as to the meaning and application of the provisions of this Agreement.” Although the prohibition against discrimination was exactly the same prohibition found in

[Title VII](#)

, the collective bargaining agreement did not specifically mention

[Title VII](#)

. In contrast, the collective bargaining agreement in

[14 Penn Plaza](#)

included specific reference to the statutes that prohibit discrimination. According to the Supreme Court, this distinction is why the employer prevailed in

[14 Penn Plaza](#)

and lost in

[Gardner-Denver](#)

In legal terms, the Court distinguished between a contract right and a statutory right. In other words, the right to be free from discrimination is created by certain statutes, but the right can also be created by a private agreement among parties. When parties to a contract agree to arbitrate disputes, they are free to decide the scope of the disputes that will be arbitrated. The contract must, however, be specific about that scope. So, in [Gardner-Denver](#) the right to be free from discrimination under

[Title VII](#)

was not within the scope of the arbitration agreement even though the right to be free from discrimination under the contract was. In

[14 Penn Plaza](#)

, however, the Court found that the union and the employer agreed that the right to be free from discrimination under all the statutes that prohibited discrimination was within the scope of arbitration.

This point did not end the [14 Penn Plaza](#) analysis. The Court continued by repudiating prior notions established in

[Gardner-Denver](#) that

arbitration was a poor forum for resolving employment discrimination disputes. As the

[14 Penn Plaza](#)

Court opined: “That skepticism . . . rested on a misconceived view of arbitration that this Court has since abandoned.”

[14 Penn Plaza](#) makes three specific points that undermine [Gardner-Denver](#) . First, [Gardner-Denver](#)

was wrong in suggesting that an agreement to arbitrate statutory rights is a waiver of those rights. Second,

[Gardner-Denver](#)

was wrong in suggesting that arbitration was a poor forum for resolving

[Title VII](#)

discrimination claims. Third,

[Gardner-Denver](#)

was wrong in relying on any concern about a potential conflict of interest that can arise in arbitration where a union might act in the best interest of the union over the best interest of the individual member asserting discrimination.

Finally, the Court left the door open on an important issue. The opening could still leave an arbitration agreement that specifically includes an agreement to arbitrate statutory claims unenforceable. [14 Penn Plaza](#) reiterates that federally protected civil rights cannot be waived in a collective bargaining agreement. The union members argued that this law applied because the Union had the ability to block the members from arbitrating their discrimination claims. The Supreme Court wrote that it would not decide this issue in this case.

According to the union members, giving the Union the power to block the arbitration equaled a waiver of the claim. The Court did not disagree. Instead, the Court decided not to decide whether the union members were right about the facts. More specifically, the Court explained that the union members and the employer disagreed about whether the Union could block the arbitration. Because that issue had not been litigated in the lower courts, the Supreme Court avoided answering the questions of: (1) whether a waiver of the right to be free from discrimination occurs when a union can block the arbitration; and (2) whether an arbitration agreement is unenforceable if a union has the right to decide against arbitrating a union member's discrimination claim.