

RETIREE HEALTH BENEFITS RULING, SUPREME COURT DECLINES REVIEW

The Supreme Court denies review of an appeals court ruling upholding the Equal Employment Opportunity Commission (EEOC) exemption under the Age Discrimination in Employment Act (ADEA) for employer-sponsored retiree health benefit plans that reduce or eliminate benefits once a retiree becomes eligible for Medicare, leaving intact the EEOC final rule that took effect in December.

The American Association of Retired Persons (AARP) sued to prevent implementation of the EEOC rule in 2005, when the commission sought to make final a rule proposed in July 2003. Although a federal district court initially granted the AARP's request for an injunction and ruled in March 2005 that the EEOC proposal violated the ADEA, the district court reversed course and ruled in September 2005 that the proposal did not violate either the ADEA or the Administrative Procedure Act. The district court, however, left in place an injunction that prevented the EEOC from implementing the rule pending appeal to the Third Circuit.

In June 2007, a Third Circuit panel unanimously affirmed that under Section 9 of the ADEA, the EEOC had power to issue the exemption that permits employer-sponsored benefit plans to "coordinate" retiree health benefits with a retiree's eligibility for Medicare or a state-sponsored health benefit program, effectively allowing employers to reduce or eliminate plan benefits for retirees 65 or older, which the EEOC issued as a final rule in December. Meanwhile, the AARP sought Supreme Court review of the Third Circuit ruling.

In its petition for review, the AARP argues that the EEOC rule violates the express terms of the ADEA, as amended by the Older Workers Benefit Protection Act (OWBPA), and therefore cannot be deemed valid under the Administrative Procedure Act or Supreme Court precedent on judicial deference to agency rulemaking. Indeed, the EEOC's rule represents an unconstitutional attempt by an executive branch agency to exercise legislative authority expressly reserved to Congress. The AARP emphasizes that the opposing parties agreed that Congress's "prohibition of arbitrary age discrimination in employee benefits was clearly and plainly expressed" in the OWBPA. Specifically, Congress adopted an "equal benefit or equal cost" exception, which gave employers credit for health benefits provided by Medicare and allowed them to purchase, "carve out" or "supplemental health plans" for individuals age 65 and older that were less expensive than full health care coverage for younger individuals.

The EEOC's proposed rule in 2003, however, provided that employer-sponsored benefit plans could reduce or eliminate health benefits altogether when the participant became eligible of Medicare or a state-sponsored health plan. The "EEOC's proposal would nullify the limited statutory exception enacted by Congress, the ADEA's 'equal benefit or equal cost rule,' to cease altogether, without any cost justification, health care benefits for retirees age 65 and older, directly contrary to the prohibitions on discrimination set forth in the substance of the ADEA." Under those circumstances, the AARP contends, the Third Circuit erred in holding the EEOC had permissibly exercised its authority under Section 9 of the ADEA "to establish such reasonable exemptions to and from any and all provisions of [the ADEA] as it may find necessary and proper in the public interest."

The Third Circuit correctly decided the EEOC permissibly implemented a "narrow" exemption to the general rule of no age bias in retiree health benefits through the commission's Section 9 authority expressly delegated by Congress, the Justice Department argues in opposing review. The petitioner's argument that the Third Circuit's interpretation of Section 9 threatens the constitutional separation of powers is "without merit and does not warrant further review."

(Source: *AARP v. EEOC*, U.S., No. 07-662, *cert. denied*, March 24, 2008, as reported in BNA, *Daily Labor Report*, No. 57, March 25, 2008, pp. AA1-AA2, E1.)