Cline v. General Dynamics: My Trip to the U.S. Supreme Court

By Mark W. Biggerman

Imagine receiving a telephone call from the United States Supreme Court informing you it had granted *certiorari* and your case will be heard by the High Court. At first, I thought the call was a prank. I was most pleased having prevailed before the United States Court of Appeals for the Sixth Circuit. But when the other side petitioned the Supreme Court for *certiorari*, given it is such a rarity for the Court to accept a case, my first thought was that a colleague was pulling a prank on me.

But the seriousness of the Clerk's voice, and her words sunk in. "I'm calling to inform you that the Supreme Court has granted *certiorari* and has decided to hear your case." When I didn't immediately respond, she asked, "Aren't you excited?"

"Actually," I said, a bit dazed, "I would have preferred if they had denied the petition because the Sixth Circuit ruled in our favor." This was a far cry from "I'm going to Disney World!" I think my reaction was equally surprising for the clerk. Maybe even disappointing.

As time went on, excitement did begin to build, however. Although it was true that my clients had won in the Sixth Circuit, the prospect of asking the Supreme Court to affirm the decision was exhilarating. After all, this is the opportunity to actually "make law," like many of us dreamed about during law school.

As you can imagine, there are unfathomable dynamics to a United States Supreme Court case. Not only are there considerable legal aspects, but also countless personal experiences that make it a challenge and uniquely fascinating experience.

In this article, I will tell you about the facts and legal issues which make this case one of the chosen few. In the next issue, I will convey my personal journey through the United States Supreme Court process. For those of you who, like me, have never been part of that process, this will provide a first-hand account of the preparation, time, emotions, and everything else that goes hand-in-hand with arguing before this country's highest court.

As for the particulars of this case, its roots go back to 1997. In the early part of that year, the union for the employees of General Dynamics Land Systems, Inc. ("GD"), negotiated a collective bargaining agreement ("CBA") with GD which changed the terms of the employees' health insurance benefits upon retirement. Previously, employees were entitled to retire after 30 years of service and receive continued health insurance upon and after retirement. The new CBA, however, added the requirement that employees must also be 50 years of age or older as of July 1, 1997, to receive these benefits.

The Age Discrimination in Employment Act ("ADEA") prohibits employers from discriminating against any employee 40 years or older on the basis of their age. Based upon his belief that the new CBA violated the ADEA, an employee named Dennis Cline filed a complaint with the U.S. Equal Employment Opportunity Commission ("EEOC"). After more than a year later, the EEOC issued a finding agreeing that GD had violated the ADEA.

In 1999, my co-counsel, Bruce Hadden, and I filed suit in the United States District Court for the Northern District of Ohio, at Toledo, on behalf of Dennis and his fellow 40-49 year old workers. The argument was simple. Our clients were between the ages of 40-49 and the new CBA had withdrawn their benefits solely because of their age.

The district judge, however, did not agree. Persuaded by GD's lawyers, the judge dismissed the complaint pursuant to a 12(b)(6) motion for failure to state a claim upon which relief could be granted. He held that "a claim of reverse age discrimination is not cognizable under ADEA."[1] He supported this holding by citing the opinion in *Hamilton v. Caterpillar Inc.*, 966 F.2d 1226 (7th Cir.1992), and its progeny.

We appealed this ruling and, in a 2-1 decision, the Sixth Circuit Court of Appeals reversed.[2] The appellate court began its opinion by explaining that the "starting point in determining how a statute is to be applied is the language of the statute itself." The court observed that *Hamilton* and the majority of courts to consider this question had held the ADEA does not provide a cause of action for "reverse discrimination." However, the Sixth Circuit did not find the reasoning of those opinions persuasive.

Instead, the Sixth Circuit Court held that the ADEA prohibits employers from discriminating against "any individual" 40 years of age or older based on that person's age. Since the appellate court was able to discern an unambiguous and plain meaning from the language of the statute, their task was at an end.

The Sixth Circuit did not share the belief that this situation was one of so-called "reverse discrimination." As far as the court was able to determine, the expression "reverse discrimination" has no ascertainable meaning in the law. An action is either discriminatory or it is not discriminatory.

The court presumed that what the district judge and others meant in concluding that the ADEA does not prohibit "reverse discrimination" is that otherwise prohibited discrimination is permitted if

(Continued on Page 23)

(Supreme Court Continued from Page 21)

the victims are within the protected class, "but are a group within the class who in most cases are the beneficiaries of discrimination against others." However, the court found there was no basis for this conclusion and was not aware of any legal doctrine permitting courts to redraft anti-discrimination statutes to better advance the court's view of sound policy.

In conclusion, the Sixth Circuit stated: "There is no doubt that the facts of this case are unusual and fall outside the typical ADEA claim, in that the plaintiffs were younger than the employees who were to receive health benefits upon retirement under the CBA2. But the fact that some members within the protected class were beneficiaries of the discriminatory action of which other members of the protected class--the plaintiffs--were victims, does not somehow suspend the language of the statute, which prohibits age discrimination against 'any individual' within the protected class."

After a failed attempt to convince the Sixth Circuit to rehear the case, *en banc*, GD petitioned the Supreme Court for *certiorari*. The questioned presented is "whether the Court of Appeals erred in holding, contrary to decisions of the First and Seventh Circuits, that the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634, prohibits 'reverse discrimination,' i.e., employer actions, practices, or policies that treat older workers more favorably than younger workers who are at least 40 years old." On April 21, 2003, the Supreme Court granted GD's petition.[3]

Currently, all briefs are in and oral arguments were held on November 12, 2003. Five institutions, including AARP, and the union have filed amicus briefs supporting GD. The United States and EEOC have filed briefs on our behalf. Stay tuned …

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Editor's Note: Since Mr. Biggerman wrote this article, the Supreme Court has rendered its decision, which is analyzed by Howard Besser on the opposing page.

Footnotes

1. *Cline v. General Dynamics Land Systems, Inc.*, 98 F.Supp.2d 846 (N.D. Ohio 2000).
2. *Cline v. General Dynamics Land Systems, Inc.*, 296 F.3d 466 (6th Cir. 2002).
3. *Cline v. General Dynamics Land Systems, Inc.*, 123 S.Ct. 1786, 155 L.Ed.2d 664 (2003)

(Age Discrimination Continued from Page 22)

Justice Kennedy) both more correct as a matter of law and based upon virtually all prior precedent. Citing the "plain language" of the Act, he argues that "[t]his should have been an easy case." Like the Circuit, he begins with the statute's language concluding that "the phrase 'discriminate… because of such individual's age', 29 U.S.C. § 23(a)(1), is not restricted to discrimination because of relatively older age." *Cline*, 2004 U.S. LEXIS 1623 at *40 (Thomas, J., dissenting). Further, he finds the "plain reading" of ADEA is supported by the EEOC's regulatory interpretation as the agency charged with administering the Act. *Id.* at *45.

As a former chair of EEOC, he cites the Court's position (i.e. its new definition of covered comparative older age) as both "untenable" and "straining credulity." He also cites the only relevant legislative history on this issue, an exchange between Senators Yarborough and Javits with approval, although the statute being clear, the history is deemed merely to confirm its plain reading. *Id.*

However, I regard Part II of his dissent as the most significant. There, he savages the majority's new approach to legislative interpretation, relying largely on totally unspecific "social history": "(after quoting the Court), the Court does not define 'social history,' although it is apparently something different from legislative history, because the Court refers to legislative history as a separate interpretive tool in the very same sentence. *Indeed, the Court has never defined 'social history' in any previous opinion, probably because it has never sanctioned looking to 'social history' as a method of statutory interpretation ....*" *Id.* at *47-48. (Emphasis added.)

I have thought it necessary to cover the case's Opinions in this detail largely because the decision presents such a radical departure not only from the prior case law on this Act, but indeed from the past careful analyses of each of the federal employment discrimination laws. I can only hope that this frankly bizarre and strange decision is but an anomaly.

Howard R. Besser, Secretary of the Association, has principally practiced employment discrimination law and litigation since 1968, and while Adjunct Professor at Law at Cleveland-Marshall College of Law (1970-1999), taught courses in this area. The views expressed in this article are solely his own.