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“Employee Briefs”
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Sauce for the Goose

An arbitrator ruled that the EEOC willfully violated the Fair Labor Standards Act (FLSA) by underpaying its own employees throughout its United States offices. The arbitrator held that the EEOC’s practice of offering compensatory time off rather than overtime pay amounted to forced volunteering and constituted a knowing violation of the FLSA. The arbitrator concluded that the agency’s actions went “beyond mere negligence . . . employees were pressured to work extra hours, but not offered extra pay . . .” The grievance was filed in 2006 and involves overtime disputes dating back to 2003. The amount of back pay owed by the EEOC is unknown at this time.

In Fiscal 2008 (through September 30, 2008), the EEOC reported a 15% increase in the number of employment discrimination charges to 95,402, which is the highest in the agency’s history. The greatest percentage increase was in age discrimination cases, which increased 28.7%, followed by sex discrimination cases, up 14%.

The Federal Labor Relations Authority (FLRA) decided that the NLRB committed an unfair labor practice by refusing to bargain with the union representing the employees of the NLRB that was certified, over the NLRB’s objections, as the bargaining agent representing employees in a nationwide consolidated unit.

The union representing the staff employees of the Service Employees International Union (SEIU) filed an unfair labor practice charge with the NLRB because the SEIU refused to bargain with the staff union about the effects of the SEIU’s decision to lay off a number of employees. The staff union also filed a complaint with the EEOC alleging age discrimination in the choice of employees who were laid off.

The Government Accountability Office (GAO) found that the US Department of Labor (DOL) systematically ignored, improperly tracked or inadequately investigated dozens of cases of alleged underpayments of overtime pay throughout the country. The nine month investigation found that the DOL mishandled serious cases nearly 20% of the time. The cases included failure by employers to pay employees wages they were owed and failure to seek legal action against employers who allegedly broke the wage and hour law.

Awards and Settlements

A Federal judge in New Jersey awarded \$2.5 million against Staples Office Supply Company. 343 sales managers alleged that Staples misclassified them as exempt employees under the FLSA and failed to pay them overtime. Because the jury found that the employer willfully violated the law, the court will consider whether to impose liquidated damages in an amount equal to the jury’s award as well as attorney fees. Stillman v Staples. The jury rejected Staples’ argument that it hired an outside consultant who advised that their classification of the sales managers as exempt employees was in compliance with the law and therefore they should not be subject to a damage award.

Wal-Mart agreed to a \$17.5 million settlement of a class action lawsuit in which the plaintiffs alleged that the employer discriminated against African-American employees in recruiting and hiring. In addition to

the dollar settlement, the employer agreed to provide priority job placements for 23 former applicants and to inform other applicants of future job openings.

A Las Vegas food establishment settled a racial discrimination claim by eight employees for \$457,000. In this case, the EEOC alleged that the employer permitted the racial harassment of African-American employees by not stopping the use of words such as “boy, nigger, spades and dumb Africans.” The EEOC also alleged that employees who complained of such treatment were retaliated against. EEOC v N-M Ventures

The EEOC settled a case of national origin discrimination with a construction company for \$325,000. The EEOC alleged that the employer permitted the harassment of Hispanic employees by a supervisor in the form of words such as “spick, wetback and go back to Mexico.” The EEOC also alleged that employees who complained about the use of these words were retaliated against. EEOC v Wheeler Construction Co

Pensions

An index of 100 of the largest pension plans showed that these pension funds lost \$21 billion in February 2009. These funds lost \$337 billion between February 2008 and February 2009, based on an average 26.5% loss in the value of their investments.

Decertification

The NLRB ruled that a decertification petition signed by a sizeable number of bargaining unit employees could not result in a decertification election because the employer “tainted” the decertification process. The NLRB concluded that the employer told employees that they would get a wage increase if they signed the decertification petition. In this case, the NLRB issued a bargaining order against the employer. Narrico Industries LP

Employer Withdrawal Liability

A Federal District Court in Puerto Rico rejected an employer’s contention that it was not subject to paying employer withdrawal liability (EWL) to a pension fund because the union and the employer’s employees decided not to continue to participate in a pension plan that had in earlier contracts required employer contributions. Gastronomical Workers Local Union Pension Plan v La Mallorquina, Inc. After the predecessor contract had expired, the employer and the union signed a new collective bargaining agreement which did not require continued contributions to the pension plan. When the pension plan informed the employer that by agreeing to the new collective bargaining agreement and stopping contributions to the pension plan the employer had completely withdrawn from the fund and, as a result, had to pay his share of the unfunded vested liability, known as employer withdrawal liability, the employer refused to pay and did not file for arbitration within 90 days of the demand by the fund for payment. The fund then sued the employer. The court denied the employer’s motion for summary judgment and concluded that by signing the collective bargaining agreement and ceasing to continue payments to the fund the employer had completely withdrawn from the fund as defined by the Multiemployer Pension Plan Amendments Act (MPPAA) and therefore had to pay the assessed amount of EWL.

Unions

The presidents of the two current union federations, the AFL-CIO and Change to Win, and the presidents of the twelve largest unions met and took an apparent step towards forming one union organization. These participants, in a meeting held in Maryland, formed a National Labor Coordinating Committee with the initial joint interest of backing changes in labor law, such as the so-called Employee Free Choice Act, also known as the card check bill. The committee is headed by David Bonior, former Democratic

congressman from Michigan. The power in this committee seems to be more vested in the presidents of the large unions than, as is true in the AFL-CIO, in the president of the organization.

Supremes

The Supreme Court decided the case of 14 Penn Plaza v Pyett. The Court decided by a 5 to 4 majority to overturn the decisions by the District Court and the Second Circuit Court. The Supreme Court decided that when an arbitration section in a collective bargaining agreement expressly states that claims of age discrimination must be arbitrated under the terms of a collective bargaining agreement, the employees are barred from filing age discrimination charges under the ADEA with the EEOC and then suing the employer. Previously, both the District Court and the Second Circuit Court held that no matter what the terms were of an arbitration section in a collective bargaining agreement, an employee had the right to file charges of age discrimination with the EEOC and sue the employer for age discrimination rather than arbitrating the claims as provided in the collective bargaining agreement. The Supreme Court held that unless the discrimination law in question provides otherwise, an employer and a union can agree to arbitrate statutory discrimination claims. The ADEA contains no provision barring arbitration of age discrimination claims therefore the employees must arbitrate age claims under the terms of the collective bargaining agreement. While only age discrimination claims are included in this decision, presumably it would apply to all claims of discrimination under other discrimination laws.

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