

Supreme Court Authorizes “Barebones” Court Review of the EEOC’s Conciliation Efforts

Written by Christopher Feudo

April 30, 2015

On April 29, 2015, the U.S. Supreme Court held in *Mach Mining, LLC v. Equal Employment Opportunity Commission* that courts are empowered to review whether the U.S. Equal Employment Opportunity Commission (EEOC) satisfied its obligation to remedy workplace discrimination through informal conciliation before filing suit against an employer. However, the scope of the review is limited and does not permit employers to challenge the reasonableness of the EEOC’s conciliation efforts.

At issue in *Mach Mining* was a provision in Title VII of the Civil Rights Act of 1964 requiring that the EEOC “endeavor to eliminate [an] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion” prior to suing an employer. In *Mach Mining*, the EEOC filed a lawsuit alleging sex discrimination in hiring after it concluded – based on an investigation into a charge filed with the agency – that there was reasonable cause to believe that the employer had discriminated against female applicants. In defense of the action, Mach Mining claimed that the EEOC had failed to conciliate in good faith prior to filing suit. In fact, the evidence in the record concerning the EEOC’s conciliation efforts consisted only of two letters: one announcing that an EEOC representative would contact the employer to begin the conciliation process and the other, from about a year later, communicating the EEOC’s determination that conciliation efforts had failed. The EEOC argued that its conciliation efforts were not subject to judicial review. The district court disagreed, ruling that it could review whether the EEOC had made “a sincere and reasonable effort to negotiate.” On appeal, the Seventh Circuit reversed, agreeing with the EEOC that its conciliation efforts were not subject to judicial review.

A unanimous Supreme Court rejected the EEOC’s contention that courts were not permitted to review its conciliation efforts. According to the Court, there is a “strong presumption” favoring judicial review over administrative action, and nothing in Title VII overcame that presumption. Nevertheless, the Court rejected Mach Mining’s argument that this review permitted courts to consider whether the EEOC conciliated in good faith over a discrimination claim. In the Court’s view, Title VII gives the EEOC “expansive discretion” over how to conciliate and when to end conciliation. The statute merely requires the EEOC to inform the employer about the alleged unlawful employment practice and to try to engage the employer in some form of discussion that gives the employer an opportunity to voluntarily remedy the challenged practice. Courts, therefore, are permitted only to engage in a “barebones review” to determine whether the EEOC met those limited statutory requirements. The Court noted that, while the two letters in evidence did not meet this minimum standard, an affidavit from the EEOC stating that conciliation efforts had occurred and failed would be sufficient.

In the end, *Mach Mining* provides employers with a hollow victory. The case had gained particular significance in light of the EEOC’s recent strategy of pursuing so-called “systemic discrimination” cases – essentially class action cases over employer policies and practices initiated by the EEOC rather than by any individual employee. Many employers who have been the targets of such claims have challenged the EEOC’s conciliation efforts as unreasonable. However, the judicial review recognized by the Court in *Mach Mining* is limited. The EEOC can withstand scrutiny by merely showing that it made minimal effort to conciliate.

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