SUPREME COURT'S 2003-2004 LABOR AND EMPLOYMENT LAW DOCKET

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This 2003-2004 term (October to June), The United States Supreme Court will decide several cases that have consequences for employment and labor law practices nationwide. Thus far, The Court has granted certiorari to hear the following such cases:

RAYTHEON CO. V. HERNANDEZ
NO. 02-749

The legal issue presented in *Raytheon Co. v. Hernandez* is whether the Americans with Disabilities Act (ADA) confers preferential rehire rights on employees who are lawfully terminated for misconduct such as illegal drug use. In this case, the employee Hernandez was given a drug test by his employer upon suspicion by a supervisor that Hernandez's breath smelled of alcohol. The drug test indicated the presence of cocaine, and Hernandez admitted to using cocaine on the previous night. Rather than being fired, however, Hernandez was permitted to resign.

Three years later in 1994, Hernandez re-applied to the same employer to fill a position similar to the one from which he had resigned. Along with his employment application, Hernandez submitted a letter from a counselor from Alcoholics Anonymous (AA) stating that Hernandez took part in AA, was two years sober, and was currently in recovery from alcoholism. When Hernandez's job application was rejected, he promptly filed a complaint with the Equal Employment Opportunity Commission (EEOC).

Alcoholism and/or drug addiction is a recognized disability under the ADA. The ADA also protects individuals who are regarded as having a physical or mental impairment. In his complaint, Hernandez essentially claimed that because he was rehabilitated, his employer's rejection for rehire was based on the employer's impermissible "regard" of him as having an ADA-protected impairment.

Upon receiving a right to sue letter, Hernandez sued his former employer Raytheon Co. in an Arizona federal court. The judge granted the movant's motion for summary judgement, and on appeal the 9th Circuit Court of Appeals unanimously reversed. In reaching this decision, Judge Stephen Reinhardt of the Ninth Circuit emphasized that while the ADA does not protect an applicant who is currently engaging in drug use, "it does protect qualified individuals with a drug addiction who have been successfully rehabilitated." The United States Supreme Court accepted review of the case on February 24, 2003.

BUCK DOE, ET AL. V. CHAO, SEC. OF LABOR
NO. 02-1377

The question presented in *Doe v. Chao,* is whether, under the Privacy Act, 5 U.S.C. 552a, an individual who has proven a violation of the Privacy Act but who can not prove actual damages is automatically entitled to $1,000 in damages. In *Doe*, miners' Social Security numbers were used on various Department of Labor (DOL) documents to identify their claims for certain health benefits. These numbers were listed on hearing notices distributed to numerous miners and their attorneys, and thereafter published in administrative agency decisions. *Doe v. Chao* is the only labor and employment area law ruling from the Fourth Circuit for which the Supreme Court has thus far granted certiorari.

General Dynamics Land Systems, Inc. v. Dennis Cline, et al.
No. 02-1080

In hearing General Dynamics Land Sys. Inc. v. Cline, the Supreme Court will consider whether the United States Court of Appeals for the Sixth Circuit erred in holding that the Age Discrimination in Employment Act of 1967, 29 U.S.C, sections 621-634 ("ADEA"), prohibits "reverse discrimination." "Reverse discrimination" has been defined as employer actions, policies, or practices that treat older workers more favorably than younger workers who are at least 40 years old. In particular, the Court will decide whether a union contract that allows health retirement benefits only to workers who reach 50 (or who have 30 years of service) by a particular date constitutes "reverse age discrimination" under the ADEA.

Dennis Cline was an employee for General Dynamics Land Systems from the time that he was 19 years old. By age 48, he had accumulated 28 years as a mule driver for the company, and decided to retire. Cline's union then renegotiated its contract, and under the new labor agreement General Dynamics contracted to give full health care benefits only to retirees who had both accumulated 30 years of seniority and who were more than 50 years old by July 1, 1997. Cline sued his employer on behalf of himself and nearly 200 other workers. The U.S. District Court ruled that Cline failed to state a cause of action. On appeal, the 6th Circuit dismissed Cline's ADEA claims.

John McCain, et al., v. Mitch McConnell, et al.
No. 02-1702

McCain v. McConnell, an appeal by United States Senator John McCain (et. al.) from a May 2, 2003 decision of the United States District Court for the District of Columbia, addresses a challenge under the First Amendment to the Bipartisan Campaign Reform Act of 2002 that may have consequences for union political spending. On September 8, 2003, the Supreme Court heard oral argument from both sides.

Jones, Edith, et al. v R.R. Donnelley & Sons Co.
No. 02-1205

In *Jones v. R.R. Donnelley & Sons Inc.,* the Court will address the issue of the statute of limitations in racial harassment and termination claims under 42 U.S.C. 1981(a) and (b) ("Section 1981"). The particular legal question presented is whether the four-year "catch-all" limitations period of 28 U.S.C. 1658 applies to new causes of action created by the Civil Rights Act of 1991, which amended Section 1981. The Supreme Court granted *Donnelley* cert from a decision of the United States Court of Appeals for the Seventh Circuit.

Scarborough v. Principi
No. 02-1657

In *Scarborough v. Principi*, the Supreme Court will interpret more specifically the Equal Access to Justice Act (EAJA), under which the prevailing party in a law suit against the federal government may obtain it' s attorneys' fees. *Principi* is on cert from the United States Court of Appeals for the Federal Circuit.

YATES v. WILLIAM T. HENDON
NO. 02-458

Yates v. Hendon addresses whether, under section 3(7) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1002(7), the working owner of a business (in this case, the sole shareholder of a corporate employer) is precluded from being a "participant" in an ERISA plan. *Yates* is an appeal from the U.S. Court of Appeals for the Sixth Circuit.