

Supreme Court Issues Decision on EEOC Conciliation in *Mach Mining*

On April 29, 2015, the Supreme Court issued a unanimous decision in *Mach Mining, LLC v. EEOC*, No. 13-1019, 575 U.S. ___, 2015 U.S. Lexis 2984. In *Mach Mining*, the Court considered whether federal courts have the authority to review the Equal Employment Opportunity Commission's ("EEOC's") compliance with its statutory obligation to attempt conciliation before filing suit. The Court held that federal courts have the authority to review the EEOC's efforts, but that this review must be narrow: courts are authorized to review only whether the EEOC gave the employer adequate notice of its findings and an opportunity to discuss conciliation. The decision does not provide employers with a basis to challenge the EEOC's conciliation efforts on the ground that, having provided the opportunity to discuss settlement, the EEOC then failed to engage in settlement discussions in good faith.

A. Background

Under Title VII, plaintiffs asserting employment discrimination claims must first file a charge with the EEOC in order to obtain relief. The EEOC is then required to undertake an investigation of the charge. Where the EEOC finds that there is "reasonable cause" to believe that discrimination took place, the EEOC must "endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. § 2000e-5(b). If the EEOC is unable to obtain a settlement through conciliation, it may then either bring a lawsuit against the employer or issue a notice of a right to sue letter that will allow an employee to bring suit on his or her own behalf.

In *Mach Mining*, a woman filed a charge with the EEOC claiming that Mach Mining refused to hire her as a coal miner because of her sex. The EEOC investigated the allegations and found reasonable cause to believe that Mach Mining had engaged in discriminatory behavior, and sent a letter to the parties informing them of its findings and stating that it would contact the parties to engage in the conciliation process. Mach Mining maintains that it was not subsequently contacted by the EEOC, and that no conciliation efforts were undertaken by the EEOC. A year later, the EEOC sent Mach Mining a letter that stated that conciliation was unsuccessful. The EEOC then filed suit against Mach Mining in federal court.

In its answer, Mach Mining claimed that the EEOC failed to conciliate in good faith prior to filing suit. The EEOC moved for summary judgment on this issue, claiming that its conciliation efforts are not subject to judicial review. The district court rejected the EEOC's contention, and this decision was subsequently appealed to the Seventh Circuit and the Supreme Court.

B. The Supreme Court's Decision

First, the Court considered whether courts have authority to review the EEOC's conciliation efforts. The EEOC argued that since Title VII provides "no standards by which to judge" the EEOC's performance at conciliation, Congress left conciliation to the EEOC's discretion and did not intend for there to be judicial review. The Court rejected this argument, concluding that Congress rarely intends to prevent courts from enforcing its directives to federal agencies, and that some level of judicial review is appropriate.

Second, the Court considered the proper scope of judicial review. The EEOC argued that judicial review should be limited to documents submitted by the EEOC regarding conciliation efforts. The EEOC argued that because it sent two

letters—one announcing a conciliation process and one claiming that conciliation was unsuccessful—it had complied with the statute. Mach Mining argued for an expansive review of the conciliation process, analogous to court oversight of collective bargaining between labor unions and employers.

The Court rejected both proposals and decided that “narrow” judicial review was required. It concluded that the EEOC could generally meet its notice requirements under the statute by providing a written communication containing the “alleged unlawful employment practice,” and a statement that the EEOC would “endeavor” to achieve a settlement between the parties. Separately, the statute requires that the EEOC communicate with the parties through “conference, conciliation, and persuasion.” The Court held that while courts may exercise judicial review over whether the EEOC satisfied these requirements, the review must be “narrow” and “relatively barebones,” and should be limited to considering: (i) whether the EEOC “[told] the employer about the claim—essentially, what practice has harmed which person or class,” and (ii) “provide[d] the employer with an opportunity to discuss the matter in an effort to achieve voluntary compliance,” either through written communications or in a conversation.

Finally, the Court remanded the case to the district court to determine whether the EEOC met the conciliation requirement.

C. Implications of the Decision

The Court made clear that it will no longer be sufficient for the EEOC to send the employer an opening letter stating that it would contact the employer about conciliation, and a closing letter stating that conciliation had failed. Given the narrow scope of judicial review, however, we expect that so long as the EEOC also actually contacts the employer to offer a chance to either discuss conciliation or make a proposal, courts will typically find that the EEOC satisfied its obligations to conciliate. The Court made clear that courts should not review “the pace and duration of conciliation efforts, the plasticity or firmness of its negotiating positions, and the content of [the EEOC’s] demands for relief.”

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