

Unanimity And Clarity: U.S. Supreme Court Outlines Standards For Judicial Review Of EEOC Conciliation

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In a unanimous decision this morning, the U.S. Supreme Court held that courts have limited authority to second-guess the EEOC's conciliation efforts in enforcing Title VII - ending a circuit court split, and clarifying the "proper scope of review."

In *Mach Mining LLC v. EEOC*, the parties battled over the EEOC's conciliation tactics after the federal agency found probable cause that Mach Mining had discriminated against a group of female employees based on sex. The employer accused the EEOC of failing to bargain in good faith, instead of using "informal methods of *conference, conciliation, and persuasion*" as required by Title VII.

At [oral argument in January](#), the justices expressed skepticism that the EEOC's conciliation efforts should be shielded from judicial review, as it heard accusations that the EEOC was more interested in making headlines by rushing to the courthouse. But, in their 9-0 opinion today (authored by Justice Elena Kagan), the court rejected the "flawed proposals" from both sides. The decision reflected an even-handed approach to balancing the need for judicial review and the deference to the EEOC's "responsibility to eliminate unlawful workplace discrimination."

More specifically, the court relied on Title VII itself for outlining the EEOC's appropriate conduct: (1) the EEOC "must inform the employer about the specific allegation"; (2) in a notice that "properly describes both what the employer has done and which employees . . . have suffered as a result"; and (3) "engage the employer in some form of discussion . . . to give the employer an opportunity to remedy the allegedly discriminatory practice."

Beyond that, the Supreme Court said, the EEOC has "abundant discretion" under the law to determine the nature and scope of conciliation discussions in any particular case, saying that "Congress left to the EEOC such strategic decisions as whether to make a bare-minimum offer, to lay all its cards on the table, or to respond to each of an employer's counter-offers, however far afield."

The decision vacates a ruling from Seventh Circuit Court of Appeals (which had found that the EEOC's conciliation was not subject to review), and remands the case to the lower court to apply this new standard.

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