No. 05-177

In the Supreme Court of the United States

WILLIAM R. DORN, SR., ET AL.,
Petitioners,

v.

GENERAL MOTORS CORPORATION, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS GENERAL MOTORS CORPORATION AND DELPHI CORPORATION'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Petitioners in this matter raise the following issues:

1. Does an Intake Questionnaire that fully informs the EEOC of all aspects of plaintiff's age discrimination claim under the Age Discrimination in Employment Act suffice to meet the requirements of the EEOC's charge filing requirements.

2. When employees are forced to choose between signing a waiver presented by the employer and the union, accepting either employment or retirement, both of which violates their rights under the employer/union Collective Bargaining Agreement, or be laid off without pay, and the employees sign the waivers under protest, do their arguments fall under the totality of the circumstances.

(Pet'r. App. I.)

CORPORATE DISCLOSURE STATEMENT

General Motors Corporation has no parent corporation, and there is no publicly held company that owns 10% or more of General Motors Corporation's stock. Delphi Corporation has no parent corporation, and there is no publicly held company that owns 10% or more of Delphi Corporation's stock.

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STATEMENT OF THE CASE

In their Statement of the Case, Petitioners omit and/or mischaracterize pertinent facts. For purposes of clarification, the facts of this matter, which were accurately set forth by the Sixth Circuit, are briefly summarized here.

Petitioners worked at a Trenton, New Jersey manufacturing facility operated by General Motors Corporation's ("GM's") former Delphi Division. In June 1998, GM closed the facility. Pursuant to the then-applicable collective bargaining agreement ("CBA") between GM and the United Automobile Workers ("UAW"), Petitioners were placed into a "Protected Status" in which they remained GM employees on active status, but did not hold production jobs or perform production-related work. While on Protected Status, Petitioners were assigned to a Transition Center, where retraining opportunities were available, and they received each week 40-hours pay and benefits at their various regular rates.

In mid-1999, GM's Delphi Division became Delphi Automotive Systems ("Delphi"), an independent, publicly held corporation. Following this "spin off," Petitioners were employees of Delphi. They did not, however, resume production positions, and by late 2000, Petitioners had been in Protected Status for more than two years. At this time, Delphi and the UAW, which remained Petitioner's collective bargaining representative, negotiated a Memorandum of Understanding ("MOU") regarding the closure of the Trenton Transition Center and the redeployment of Petitioners and others who remained at the center. The CBA between Delphi and the UAW contained provisions permitting the parties to enter into such agreements.

The MOU provided for a Special Attrition Plan, DIS-Trenton ("Plan"), which gave affected employees several options upon the shut down of the Transition Center. First, they could transfer to one of several openings at Delphi or GM plants. Persons electing this option were eligible for a $36,000 cash bonus and up to $64,000 in enhanced relocation benefits. Second, if otherwise eligible, employees could retire under the normal or early voluntary retirement provisions of the Delphi Hourly-Rate Employee Pension Plan. Persons selecting this option would receive a $40,000.00 bonus. Third, if eligible, employees could retire under the provisions of a defined letter agreement between Delphi and the UAW. Persons selecting this option would receive a $25,000.00 bonus. Finally, if ineligible to retire, employees could elect to grow into retirement, which allowed them to remain on Protected Status and receive 85% wages and 100% benefits until eligible for retirement. Persons selecting this option would receive a $25,000.00 bonus. Under the terms of the Plan, employees who elected none of these options would remain on Protected Status, but they would not receive a bonus and would become subject to placement at other Delphi facilities.

When Petitioners learned of the MOU, Petitioner Robert Ryan ("Ryan") made a telephone inquiry to the Equal Employment Opportunity Commission ("EEOC"). In response, the EEOC mailed Ryan a letter dated November 28, 2000. This letter stated that:

> **In order for the EEOC to have jurisdiction to investigate any complaint, and to protect your legal rights, a charge of discrimination must be filed within 300 calendar days of the alleged violation.** It is your responsibility to insure that your charge of discrimination is filed in a timely manner. Please be

> advised that at this time you have not filed a charge of discrimination.

(emphasis in the original) The letter, which included a blank intake questionnaire, further indicated that if Petitioners "provided minimally sufficient information" on the questionnaire, they would be contacted to "determine if a charge will be taken." The questionnaire itself provided that "[i]f a charge is filed, the [EEOC] will attempt to settle your case." On January 10, 2001, Petitioner William Dorn ("Dorn") completed the questionnaire. In doing so, Dorn indicated that, in November 2000, he had contacted "Cureton Caplan Attorneys at Law," who "advised that we had a discrimination case [and] to pursue case with EEOC."

By mid-January 2001, each of the Petitioners had selected one of the options available under the Plan. The Petitioners admit that, as part of their participation in the Plan, all of the Petitioners except James Zeek ("Zeek") executed a release.[1] Petitioners' releases waived "all claims, demands and causes of action" against "Delphi, General Motors Corporation, [and] the UAW," including claims under the "Age Discrimination in Employment Act." Petitioners conceded below, as they concede to this Court (Pet'r. App. 16), that they had the experience and education to make an informed decision regarding their releases, that they had time to consider whether or not to sign the waivers and to consult with counsel, that the language and meaning of the waivers was clear, and that they received consideration in exchange for their waivers.

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[1] As the Sixth Circuit noted, 21 of the 22 Petitioners executed a release. (Pet'r. App. 4a-5a.) Petitioners' contention (Pet'r. App. 3) that only 20 signed is incorrect.

Petitioners allege that, in mid-2001, Dorn had several conversations with the EEOC. However, he did not sign EEOC charges against Delphi and the UAW until December 19, 2001. On February 23, 2002, Dorn executed revised versions of these charges. The EEOC assigned charge numbers to the February 23, 2002 documents only. Petitioners never filed an EEOC Charge against GM.

On March 13, 2002, Petitioners filed suit against GM, Delphi, and the UAW in the United States District Court for the Eastern District of Michigan (hereinafter "Dorn I"). In their complaint, Petitioners asserted, among other things, that the MOU and Plan breached certain CBA provisions and the UAW's duty of fair representation. In September 2002, GM, Delphi and the UAW moved to dismiss the Dorn I complaint contending, among other things, that valid releases barred Petitioners' claims in their entirety. At an oral hearing on December 11, 2002, the district court held that the releases barred the claims of all Petitioners who admittedly signed them. The district court then dismissed certain claims of Petitioner Zeek (who denied executing a release), but the court permitted Zeek's other claims to proceed.

On March 13, 2003, as Zeek's remaining Dorn I claims proceeded, the EEOC issued Petitioners a Right to Sue letter. In June 2003, Petitioners initiated in the United States District Court for the Eastern District of Michigan an Age Discrimination in Employment ("ADEA") action against GM, Delphi, and the UAW (hereinafter "Dorn II"). The district court assigned Dorn II to the judge presiding over Dorn I. In July 2003, GM, Delphi, and the UAW filed motions for summary judgment on remaining Dorn I plaintiff Zeek's claims, and, in August 2003, they filed motions to dismiss the Dorn II complaint. At an oral hearing on December 10, 2003, the district court granted both motions in their entirety.

Notably, in Dorn II, the district court held the ADEA claims against GM failed because Petitioners never filed an EEOC charge against GM and that the ADEA claims against Delphi and the UAW failed because Petitioners' charges against those entities were untimely. The court further held that releases barred the ADEA claims of the 21 Petitioners who signed them.

On January 9, 2004, Appellants filed timely notices of appeal in both the Dorn I and Dorn II cases, and, on April 28, 2005, the United States Court of Appeals for the Sixth Circuit affirmed in an unpublished decision. In relevant portions of its opinion, the Sixth Circuit rejected Petitioners' argument that the releases in this matter should be set aside based upon Petitioners' "economic duress" theory. (Pet'r. App. 6a-10a.) In addition, the Sixth Circuit held in a footnote that Dorn's completed intake questionnaire could not be construed as a charge of discrimination on the facts presented.[2] (Pet'r. App. 13a n.7.) Petitioners failed to brief this latter point to the Sixth Circuit (choosing instead to argue for the application of equitable tolling), but they had raised it in their papers to the district court.

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[2] In light of this holding, the Sixth Circuit found it unnecessary to address Petitioners' argument that their releases were invalid as to ADEA claims. (Pet'r. App. 8a n.5.)

REASONS FOR DENYING THE WRIT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for a writ of certiorari will be granted only for compelling reasons." In this case, Petitioners have articulated no such compelling reasons.

I. PETITIONERS HAVE NOT ARTICULATED A COMPELLING REASON TO JUSTIFY REVIEW AS TO THE ISSUE OF DORN'S INTAKE QUESTIONNAIRE

Petitioners first assert that this Court should exercise discretionary review over the Sixth Circuit's holding -- contained in a footnote of its unpublished decision (Pet'r. App. 13a n.7) -- that Dorn's intake questionnaire did not constitute a charge of discrimination. See 29 U.S.C. § 626(d) (providing that an ADEA plaintiff must file a "charge alleging unlawful discrimination" before initiating a lawsuit). Contrary to Petitioners' contention, however, the Sixth Circuit applied the proper rule of law in this matter, and Petitioners have not demonstrated that the Sixth Circuit's opinion conflicts with decisions from other circuits. As such, this Court should deny Petitioners' request for certiorari.

In particular, while Petitioners assert (Pet'r. App. 8-13) that a completed intake questionnaire automatically and in all cases constitutes a charge of discrimination, reviewing courts determine whether a particular questionnaire may function as a charge by conducting a detailed and fact-based inquiry into the events surrounding the filing of the questionnaire. In this respect, the Third, Seventh, Eighth, and Eleventh Circuits hold that an intake questionnaire may function as the equivalent of a charge only if it was "submitted under

circumstances that would lead the EEOC to believe that the complaining party sought 'to activate the Act's machinery.'" Diez v. Minnesota Mining & Mfg. Co., 88 F.3d 672, 676 (8th Cir. 1996) (quoting Steffen v. Meridian Life Ins. Co., 859 F.2d 534, 542 (7th Cir. 1988), cert. denied, 491 U.S. 907 (1989); see also Bost v. Federal Express Corp., 372 F.3d 1233, 1240 (11th Cir.), cert. denied, --- U.S. ---, 125 S.Ct. 656 (2004) (examining whether "the circumstances of the case would convince a reasonable person that the charging party manifested her intent to activate the administrative process") (internal citations omitted); Bailey v. United Airlines, 279 F.3d 194, 199 n.2 (3rd Cir. 2002) (citing Michelson v. Exxon Research & Eng'g. Co., 808 F.2d 1005, 1010-11 (3rd Cir. 1987) and holding that plaintiff's "intake questionnaire was not adequate to constitute a charge"). This Court has underscored the propriety of this line of cases by denying petitions for certiorari with respect the Seventh Circuit's Steffen opinion and Eighth Circuit's Bost opinion. See Steffen, 859 F.2d at 542, cert. denied, 491 U.S. 907; Bost, 72 F.3d at 1240, cert. denied, 125 S.Ct. 656. And, not surprisingly, this approach results in different outcomes in different factual settings. Compare Bost, 372 F.3d at 1241 (finding a questionnaire was not a charge where the undisputed evidence showed that plaintiff "clearly understood that the intake questionnaire was not a charge"); and Diez, 88 F.3d at 677 (finding that a questionnaire was not a charge where there was no evidence that plaintiff was "led . . . to believe that he had done all that was necessary once he returned the questionnaire") with Steffen, 859 F.2d at 544 (finding that a questionnaire was the equivalent of a charge where "the EEOC informed [plaintiff] that it would be treating the Intake Questionnaire as a charge but then failed to treat it as a charge").

Other circuits, while perhaps not as explicit in their standards as the above-listed circuits, have similarly examined the facts and circumstances surrounding the filing of an intake questionnaire to determine whether it constituted a charge of discrimination in a given case. See, e.g., Persik v. Manpower, Inc., 85 Fed.Appx. 127, 131 (10th Cir. 2003), cert. denied, 541 U.S. 1086, reh'g. denied, --- U.S. ---, 125 S.Ct. 18 (2004) (noting that the intake questionnaire in the case warned that "COMPLETING THIS QUESTIONNAIRE DOES NOT CONSTITUTE THE FILING OF A CHARGE" and holding that "[u]nder the circumstances, the charge . . . eventually filed did not relate back to the date of the questionnaire"); Price v. Southwestern Bell Tel. Co., 687 F.2d 74, 78-79 (5th Cir. 1982) (finding a questionnaire to be a charge where the EEOC "at least at the initial stages of the proceedings, considered the circumstances surrounding the receipt" of the document); cf. Waiters v. Robert Bosch Corp., 683 F.2d 89, 91-92 (4th Cir. 1982) (holding that an affidavit functioned as a charge where "the plaintiff attempted to file a charge of discrimination on several occasions" but was precluded from doing so, in part because the relevant EEOC office was "burglarized and [his] file was lost"). This fact-based approach is consistent with Bost, Bailey, Diez, and Steffen.

Here, although its unpublished footnote is possibly less clear than it could have been, the Sixth Circuit's reasoning appears likewise consistent. Notably, the Sixth Circuit cited the Eighth Circuit's Diez opinion, placing the Sixth Circuit within the above-noted line of cases. (Pet'r. App. 13a n. 7.) Moreover, like other circuits, the Sixth Circuit grounded its decision in the facts of this case -- such as "the letter plaintiffs received in November 2000, which informed them of the 300-day charge filing limit," and "the fact that plaintiffs subsequently filed a formal charge," which "indicates that

they understood the difference between a complaint and a formal charge." (Id.) See also Bost, 372 F.3d at 1241; Diez, 88 F.3d at 677..

For their part, Petitioners' cases do not demonstrate a conflict between the Sixth Circuit's decision and those of other circuits. Indeed, while Petitioners place great reliance (Pet'r. App. 8-10) on Steffen, the Seventh Circuit in that case rejected the very proposition that Petitioners now espouse. See 859 F.2d at 542-43 (adopting the fact-based analysis set forth above and rejecting as "overly-simplistic" the contention that a completed intake questionnaire automatically constitutes a charge if it names a respondent and generally alleges discrimination); see also Downes v. Volkswagen, Inc., 41 F.3d 1132, 1138 (7th Cir. 1993) (citing Steffen and holding that an intake questionnaire constitutes a charge only if the facts "would convince a reasonable person that the plaintiff manifested an intent to activate the Act's machinery") (discussed at Pet'r. App. 9-10). Similarly, and as noted above, the Fifth Circuit in Price, 687 F.2d at 78-79 (discussed at Pet'r. App. 10) based its decision on the facts and circumstances of the case before it, not a general rule that completed intake questionnaires constitute charges of discrimination.

Moreover, the Ninth Circuit's decision in Casaventes v. California State Univ., 732 F.2d 1441 (9th Cir. 1984) (discussed at Pet'r. App. 12-13) is distinguishable from the present matter. Central to that court's decision was the fact that the plaintiff acted pro se. Id. at 1442. Here, however, Dorn stated on his intake questionnaire that he had previously contacted "Cureton Caplan Attorneys at Law," who "advised that we had a discrimination case [and] to pursue case with EEOC." Further, there is no indication in the Casaventes case that, as here, the EEOC had sent the plaintiff a letter

detailing the applicable statute of limitations and instructing that it was plaintiff's responsibility to file a timely charge of discrimination. GM and Delphi are unaware of any case in which the Ninth Circuit has considered the question presented on facts similar to those in this case.

Finally, Petersen v. City of Wichita, 888 F.2d 1307 (10th Cir.), cert. denied, 495 U.S. 932 (1989) (discussed at Pet'r. App. 12) is inapposite. That case addressed whether, under Title VII, a verified charge of discrimination related back to an earlier, unverified charge. Id. at 1308. In that case, it was "undisputed" that the plaintiff's earlier filing constituted a charge of discrimination. Id. The court thus did not address the question presented in this case and, as previously noted, the Tenth Circuit recently held that an intake questionnaire did not constitute a charge of discrimination on facts similar to those in this case. See Persik, 85 Fed. Appx. at 131-32.

In sum, Petitioners have not presented this Court with a compelling reason to review the Sixth Circuit's ruling concerning Dorn's intake questionnaire, and this Court should deny Petitioners request for certiorari on this issue.[3]

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[3] Certiorari should be denied with regard to GM for the additional reason that both the district court and the Sixth Circuit held that Dorn did not file even a belated charge of discrimination with respect to GM. Petitioners have not sought to challenge this conclusion.

II. PETITIONERS HAVE NOT ARTICULATED A COMPELLING REASON TO JUSTIFY REVIEW AS TO THE VALIDITY OF PETITIONERS' RELEASES

The Sixth Circuit also rejected Petitioners' contention that, under the totality of the circumstances in this case, their releases are void under an "economic duress" theory. (Pet'r. App. 6a-10a.) Petitioners again proffer no compelling reason (Pet'r. App. 14-20) for the Court to review this determination.

As an initial matter, Petitioners concede that the Sixth Circuit's position on economic duress "seems to be shared by all Circuits." (Pet'r. App. 14.) Petitioners thus do not, and cannot, identify a conflict among the circuits on this issue.

Furthermore, Petitioners are incorrect in their apparent contention (Pet'r. App. 18) that the Sixth Circuit failed to consider their arguments below. While the Sixth Circuit acknowledged (Pet'r. App. 8a-9a) Petitioners' admissions that: 1) they had the experience, background, and education to comprehend their releases, 2) they had time to consider the releases and consult an attorney, 3) the releases were clear, and 4) Petitioners received consideration for their releases, the appeals court went on to recognize (Pet'r. App. 9a) Petitioners' claim "that under the 'totality of the circumstances,' they must be understood to have been coerced into signing the Release, because they were forced to choose between signing it and simply being fired without benefits." The court noted that it had "rejected a nearly identical argument" in Adams v. Philip Morris, Inc., 67 F.3d 580, 583 (6th Cir. 1996). In that case, as here, the plaintiff had argued that his release should be disregarded because "he 'was forced to sign the general release' out of 'extreme economic duress,'" but the Sixth Circuit found that "[a]though he

certainly felt some economic pressure to accept the attractive settlement package" he was offered, "this pressure does not rise to the level of economic duress." Id. In the present matter, the Sixth Circuit found no cause to rule differently. (Pet'r. App. 9a (holding that "recognizing economic duress in situations like those in Adams and the present case would invalidate most, if not all, releases of claims in agreements conferring severance benefits on employees").) Petitioners cite no authority from this Court or any other that would serve to discredit this reasoning.

CONCLUSION

This Court should deny the Petition in its entirety.

Respectfully submitted,

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