

Supreme Court tackles labor law question: 'What's a complaint?'

WASHINGTON, D.C. (PAI) — What's a complaint? That seemingly obvious question landed at the U.S. Supreme Court Oct. 13 in the context of labor law, and its decision could affect whether millions of workers can complain about their pay.

The crux of the issue is the 1938 Fair Labor Standards Act (FLSA), which established the minimum wage and time-and-a-half pay for overtime for all covered workers. It also said that "any" communication from a worker to a supervisor about FLSA violations qualifies as a "complaint" that the federal government could investigate.

Later laws are more specific: The complaints have to be — for the most part — to government officials, often after in-house remedies have been tried and have failed. And they have to be in writing. That requirement for written-only complaints would hamstring many workers — especially those who don't know their rights, have little education or are immigrants — from getting the justice and the pay they deserve.

James Kaster, attorney for Kevin Kasten, an employee at St. Gobain Industries, told justices that Kasten complained orally to his supervisors that their time clocks were illegally placed and that as a result workers could be shorted overtime.

"Filing includes an oral communication, because 'any' means any, which in-

cludes formal or informal, written or unwritten communications," Kaster said.

The law is pretty broad, he told Justice Samuel Alito. "Something's going on in the workplace and the supervisor happens to be walking by, maybe a machine is broken ... and an employee walks up the supervisor walking briskly by, taps the supervisor on the shoulder and says the company is breaking the law because of the placement of a clock," Alito said.

"Would that be the filing of a complaint?" Alito asked.

"Yes, I think it would," Kasten replied. And that applies if the complaining worker takes his problem to the government, too, he told Justice Sonia Sotomayor.

"What you are doing is stopping the government from saying, 'The only

way you can file a complaint with us is in writing,'" she said. And that would occur under FLSA even if the government thought oral complaints "would create havoc," she added.

Kaster stuck to his stand, replying that "if a person directs a complaint to the government" orally "and to the responsible party who can do something about it, they're filing a complaint."

Some of the justices were skeptical. Alito said that if the complaining worker gets fired three weeks later, and charges he got fired in retaliation for his oral complaint, the company could say, in essence, "What complaint? There's nothing in writing."

Kaster replied that the fired worker could always have a witness, and that such a circumstance was a straight case of retaliation — which St. Gobain and

its business allies are trying to get out from under, by requiring all the complaints be in writing.

Justice Antonin Scalia said he could accept oral complaints to government agencies — such as the Labor Department — where the law doesn't specifically require written complaints. "But, my goodness, if it could apply to private employers as well, including employers who don't have grievance procedures" of a union contract, "I am very disinclined to think it (the law) could mean an oral complaint."

"Your honor, I'm just looking at the language" of the law, Kaster replied. The law, he repeated, says "file 'any' complaint and the word 'any' has a particular meaning."

The Obama Administration took the worker's side.

Justice Department attorney Jeffrey Wall told the justices that FLSA wasn't the first law that permits "any" type of complaint. It was preceded by the National Labor Relations Act, three years before.

Carter Phillips, the attorney for St. Gobain, told Justice Stephen Breyer that letting oral complaints be legal would be "inherently unworkable." Sotomayor challenged him on that point.

"What makes this worse than the other statutes" that allow oral complaints, such as the NLRA?, she asked. "What would create more cases in this area as opposed to some of the other areas?"

Phillips shot back that "this statute carries a criminal penalty with it."

The justices will decide the case before next July.

Big Pipe project wraps up ahead of schedule

Rosie, the 530-ton tunnel boring machine, has finished tunneling on the East Side Big Pipe project, which is part of the City of Portland's program to control combined sewer overflows (CSOs). It is the largest public infrastructure project in Portland's history.

At its peak, more than 100 laborers — members of Laborers Local 320, and 150 operators — members of Op-

erating Engineers Local 701, worked on the project.

Rosie started working in September 2007. It bored into the McLoughlin shaft on Oct. 18 to complete tunneling about four months ahead of schedule. Work is beginning now to prepare the nearly six-mile long, 22-foot diameter East Side Big Pipe for activation.

The tunnel will be ready to accept

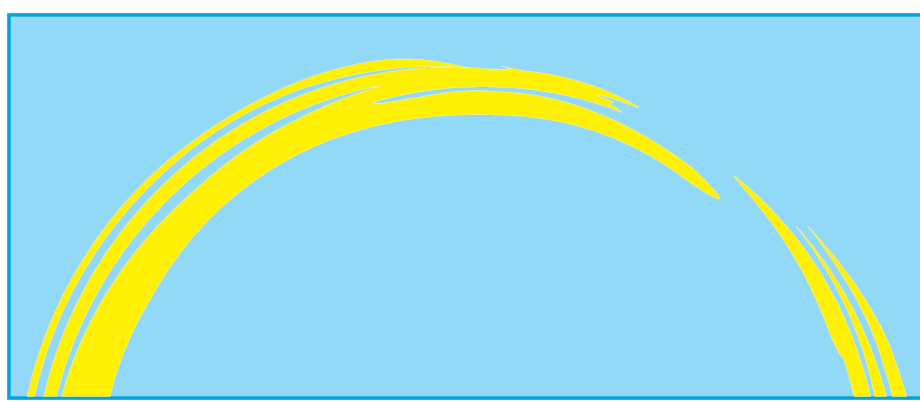
combined sewage by late next summer.

The \$426-million sewer project is the largest construction project in Portland's 20-year CSO control program. The Bureau of Environmental Services is working to complete several other sewer overflow projects, including the Balch Consolidation Conduit, the Sellwood Wet Weather Pump Station, the Portsmouth Force Main and Phase 2 of

the Swan Island CSO Pump Station.

When construction is complete in December 2011, Portland's combined sewers will overflow to the Willamette River an average of once every three summers and four times each winter instead of every time it rains.

Kiewit/Bilfinger Berger Joint Venture is the general contractor.



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