

After Supreme Court tosses class action

Women vow to continue sex discrimination fight against Walmart

WASHINGTON, D.C. (PAI) — Brookfield, Colorado Letter Carrier Cindy Kirby has a simple message for the U.S. Supreme Court: “My 21-year-old daughter, who just graduated college and is job-hunting, deserves fair and equal pay, too, when she lands a job.”

But thanks to the High Court’s June 20 ruling tossing out a massive class-action lawsuit filed by female workers at Walmart, Kirby’s daughter and millions of other woman workers might not get it.

The justices, in a 9-0 decision written by Associate Justice Antonin Scalia, threw out the entire suit, including certification of the women as a class. Ten years ago, a group of women who worked at Walmart stores, led by Betty Dukes, filed a lawsuit alleging the corporation engaged in company-wide gender discrimination by paying women less than men, promoting fewer women to management positions and promoting male employees more quickly.

A four-justice minority — dissenting in part from the majority ruling — said the only thing wrong with the lawsuit was that the court required too much proof from the women, too early in the class-action filing.

“That each individual employee’s unique circumstances will ultimately determine whether she is entitled to back pay or damages should not factor into the (class-action) determination,” Associate Justice Ruth Bader Ginsburg wrote for the minority, which included the other two women justices. “That should come only at a later trial.”

That wasn’t the view of the five-member court majority, all men and all nominated to the High Court by Republican presidents.

“Members of the class held a multitude of different jobs, at different levels of Walmart’s hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female), subject to a variety of regional policies that all differed. Some thrived while others did poorly. They have little in common but their sex and this lawsuit,” Scalia said, quoting a lower court judge.

Scalia noted Walmart’s employee handbook forbids sex discrimination. He said unlimited managerial discretion at the firm’s local level — a point the women’s lawyers contested — means it “can” lead to sex discrimination, not that it automatically will.

“Left to their own devices most managers in any corporation — and

surely most managers in a corporation that forbids sex discrimination — would select sex-neutral, performance-based criteria for hiring and promotion that produce no actionable disparity at all,” Scalia wrote. “Others may choose to reward various attributes that produce disparate impact ... Still other managers may be guilty of intentional discrimination that produces a sex-based disparity. In such a company, demonstrating the invalidity of one manager’s use of discretion will do nothing to demonstrate the invalidity of another’s.”

The justices’ ruling brought Kirby and more than a hundred other women out to the court’s front steps the next day to let the court know it is wrong and to demand Congress right the injustice by passing the Paycheck Fairness Act.

Thousands of other demonstrators nationwide joined the D.C. women, who included members of the Letter Carriers, The Newspaper Guild, the United Food and Commercial Workers (UFCW), the Coalition of Labor Union Women, and the American Federation of Government Employees.

UFCW — which has been campaigning to organize Walmart’s million-plus workers for years in the face of continual company labor law-breaking — and the Service Employees In-

ternational Union (SEIU) urged Walmart workers to join a new pro-worker group, the Organization United for Respect at Walmart.

The court “turned its back on collective remedy for workers facing widespread injustices,” said UFCW President Joe Hansen. “UFCW will continue to demand accountability from Walmart to its workers who deserve fair treatment, fair pay and respect on the job.

“Employers like Walmart have long attempted to isolate workers and prevent them from solving problems together. This decision will not stop workers from joining together, through collective action, or prevent them from continuing to pursue their individual claims against Walmart,” he stated.

“No single employer has a larger impact on employment standards than Walmart. That’s why we must stop Walmart’s race to the bottom,” added SEIU President Mary Kay Henry. “This work must be done with Walmart associates. We can change Walmart, but we need to work together. Please encourage all the Walmart associates you know to join OUR Walmart at www.ForRespect.org.”

Women’s rights groups also protested the ruling, and pondered next moves. “One thing we hope to see happen is action in Congress, and specifically passage of the Paycheck Fairness Act,” which would outlaw employer bans on workers’ discussions of their pay on the job, said Anne King, an attorney with the National Women’s Law Center. That bill stalled in the Senate in 2010 as a result of a GOP filibuster. It

has little chance of passing in this Congress.

“We hope the ruling will galvanize Congress and constituents to push it,” King added.

Debra Ness of the National Partnership for Women and Families agreed.

“Particularly now, when families rely more than ever on women’s earnings, women need fair pay and fair opportunities for advancement,” she said. “This ruling sets a dangerous precedent that will make it easier for employers — especially large ones — to discriminate against their employees while, at the same time, making it harder for workers to come together to challenge it. This creation of a potential ‘large company’ exception to our civil rights laws is a perversion of justice.”

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