Oregon Supreme Court ruling expands union grievance rights

SALEM — Workers can't be stripped of union grievance rights just because they're pursuing outside legal action, said the Oregon Supreme Court in a Nov. 27 ruling, and any collective bargaining agreement language that says otherwise is invalid and unenforceable.

The court's decision ends an eight-year legal case that began after a professor at Portland State University's Graduate School of Education complained to her department head that a colleague had been sexually harassed. When the professor later learned that her year-to-year employment contract would not be renewed for the following year, she turned to her union, American Association of University Professors (AAUP), and filed a grievance accusing PSU of discriminatory retaliation. But PSU refused to process the grievance — once it learned the professor was pursuing related discrimination claims with the state Bureau of Labor and Industries and the federal Equal Employment Opportunity Commission (EEOC). Under a clause in the union contract, the university had no obligation to continue the grievance process if a member tried to resolve the same matter in an outside agency or court. But AAUP asked the state Employment Relations Board (ERB) to declare that the clause itself was illegal, and ERB agreed. PSU challenged the ERB ruling at the Oregon Court of Appeals, and won. But AAUP appealed that ruling to the Oregon Supreme Court.

Under state and federal law, employers are prohibited from discriminating against employees for filing complaints about unlawful employment practices. The Oregon Supreme Court ruled that when the university denied the professor access to the grievance process — because she had filed an outside civil rights complaint — it was discriminating against her for exercising her rights.

"The clause at issue in this case imposes a form of employer retaliation for protected conduct that reasonably would impede or deter an employee from pursuing his or her statutory rights," wrote Supreme Court Justice Robert Durham. "The resulting harm is neither theoretical nor trivial, but qualifies as a substantive difference in treatment."

Attorney Elizabeth Joffe, who represented AAUP in the case, said unions tend to oppose such clauses, whereas employers like them because they prevent workers from having "two bites at the apple," and they can reduce employers' legal expenses.

But for workers, the clauses create a dilemma. EEOC, for example, doesn't pursue discrimination complaints if workers have waited more than 300 days to file, but union grievances can take longer than that to resolve. Meanwhile, workers know that unions will represent them for no charge in the grievance process, whereas even when attorneys take discrimination cases on a contingency fee basis, workers may have to pay a retainer to cover costs.

In the professor's case, she delayed filing her outside case while the grievance was under way, which resulted in her complaint being dismissed as untimely. Later, when PSU was ordered to resume the grievance process, AAUP was able to complete its investigation into the facts of the grievance, and the union opted not to pursue the grievance further. The professor moved on and got a job at another university, and the union bargained the objectionable clause out of its next contract.

Now, the Oregon Supreme Court's decision means union members throughout Oregon will have the right to pursue both an internal grievance process (if their union contract provides for one) and an external remedy. The decision's immediate application is to public sector union members. But Joffe, the attorney for AAUP, said it will affect private sector union rights as well, since lower courts, guided by the higher court's decision, would strike down any such clause in private sector union contracts if they're challenged in court.

"I think it's a very significant decision, because a lot of contracts have this language," Joffe said. "It's important that unions know they need to get it out of their contracts."

Michigan Legislature rams through right-to-work bills

LANSING, Mich. — Michigan became the 24th state to enact a so-called "right to work" law after Republican lawmakers rammed two bills through the lame-duck Legislature just before Christmas.

Republicans control both chambers of the Legislature, and the governor is a former venture capitalist and CEO. They passed the bills in six days without any public hearings. One bill covers almost all public workers, and one covers all private sector workers. Only police and fire unions are exempt.

Michigan is home of the United Auto Workers and has one of the highest union density levels in the country with roughly 17.5 percent of all workers members of a union.

The term "right to work" is a misnomer. It has nothing to do with the right of a person to have a job. Right-to-work laws make it illegal for employees and employers to negotiate a union contract (closed shop) that requires all employees who benefit from the collective bargaining agreement to pay their fair share of the costs of negotiating and administering it.

Proponents of right-to-work, including Michigan Gov. Rick Snyder, insist their action is only about "freedom of choice," saying no worker should be forced to pay dues in order to have a job.

That being the case, why did Republican lawmakers treat police and fire personnel with such disdain by exempting them from the law?

In fact, federal law already guarantees that no one can be forced to join a union, and no one can be required to pay union dues that fund political causes they oppose, explained Gordon Lafer, an associate professor at the University of Oregon's Labor Education and Research Center, in a report for Economic Policy Institute.

"By making it harder for workers' organizations to sustain themselves financially, right-to-work laws aim to weaken unions' bargaining strength," Lafer wrote. "When unions are weaker, wages and benefits decline for all workers, because nonunion employers face less competitive pressure to meet union wage standards."

The quick legislative action in Michigan came on the heels of a No-

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