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Of Time Limits, Worksharing And Deferral

By Barbara J. Fick

Equal Employment Opportunity Commission

v.

Commercial Office Products Company

(Docket No. 86-1696)

Argued January 13, 1988

Viewed from one perspective, this case involves a relatively narrow issue of statutory interpretation: What does the phrase "unless such proceedings have been earlier terminated" mean? As such, it presents an archetypal example of legal quibbling over semantics.

On the other hand, the outcome of this case will affect thousands of charges of employment discrimination currently pending both before the Equal Employment Opportunity Commission (EEOC) and in courts.

ISSUE

When a state civil rights agency decides to defer processing an employment discrimination charge to the EEOC, has the agency "terminated" its proceedings so that the charge will be deemed filed with the EEOC for purposes of calculating the statute of limitations?

FACTS

Two hundred and eighty-nine days after she was fired from her job, Suanne Leerssen filed a charge of sex discrimination with the EEOC against her employer, Commercial Office Products. A few days after receiving the charge, the EEOC transmitted a copy to the Colorado Civil Rights Division (CCRD), a state agency charged with enforcing state law prohibiting employment discrimination based on sex. Several days later, the CCRD informed the EEOC that it was declining to process the charge pursuant to the work-sharing agreement between itself and the EEOC and advised Leerssen that it was taking no action on her charge until the EEOC terminated its proceedings. Subsequently, the CCRD informed Leerssen that it had never had jurisdiction over her because her charge had not been filed within the 180-day limitation period required by state law.

As part of the EEOC's investigation of Leerssen's charge, it issued a subpoena to Commercial Office Products requesting it to provide certain documents. Commercial Office Products refused to comply with the request on the grounds

that the charge which Leerssen filed with the EEOC was untimely and therefore the EEOC did not have jurisdiction over the case.

The EEOC filed suit in federal district court asking the court to force Commercial Office Products to comply with the subpoena. The district court, however, denied the EEOC's request, agreeing with Commercial that Leerssen's EEOC charge was untimely. Upon appeal, the United States Court of Appeals for the Tenth Circuit affirmed the district court's decision (803 F.2d 581 (1986)).

BACKGROUND AND SIGNIFICANCE

When Congress passed Title VII of the Civil Rights Act prohibiting employment discrimination, many states already had laws on the books prohibiting the same conduct. Congress clearly stated its intention not to displace or supersede such regulation, allowing state discrimination laws to coexist with Title VII. Congress then dealt with the problem of coordinating the enforcement efforts of state and federal agencies concerning the same legal issues. This coordination was accomplished in a series of procedural rules included in Title VII detailing where and when a charge of employment discrimination must be filed.

An individual alleging employment discrimination under Title VII must file a charge with the EEOC within 180 days after the discrimination took place. However, when employment discrimination occurs in a state which has a law prohibiting such conduct, an individual who initiates proceedings under state law is given 300 days to file a complaint with the EEOC. Title VII also provides that where there is such concurrent jurisdiction, the individual *must* first file a charge with the state agency and cannot file a charge with the EEOC "before the expiration of sixty days after proceedings have been commenced under the state...law, unless such proceedings have been earlier terminated" (section 706(c) of Title VII).

This provision, requiring initial deferral to a state agency, was included to allow the states to deal with discrimination problems on a local level, where possible, to avoid unnecessary federal intervention, and to provide for expeditious and nonduplicative processing of charges.

Congress also authorized the EEOC to cooperate with state agencies by entering into written agreements to promote effective enforcement of Title VII. Accordingly, the EEOC has entered into worksharing agreements with forty-three states. These agreements provide for a division of labor in processing discrimination charges where there is concurrent state and federal jurisdiction; the state agencies initially process certain types of claims and the EEOC initially pro-

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cesses others. Most of these agreements also provide that where the state agency waives its right to initially process a charge, it retains jurisdiction over the charge and reserves the right to act after the EEOC terminates its proceedings.

The EEOC interprets the deferral and time limitations provisions of Title VII in light of these worksharing agreements. Thus, when a worksharing agreement provides that a certain charge over which there is concurrent jurisdiction is to be initially processed by the EEOC, the EEOC views the state as having "terminated" its proceedings for purposes of section 706(c). Therefore, the charge is deemed filed with the EEOC as of that date in determining whether the charge is timely under the 300-day limitation.

According to the EEOC's view of Leerssen's case, both the CCRD and the EEOC had jurisdiction over the substance of her charge. Pursuant to their worksharing agreement, the CCRD waived its right to initially process and charge. Thus, the CCRD had "terminated" its proceedings and the charge was "filed" with the EEOC within the 300-day time limit.

Both the district court and court of appeals disagreed with the EEOC's interpretation of section 706(c) and its application to the Leerssen case. The appeals court held that where a state has jurisdiction over a charge, that charge cannot be filed with the EEOC until either sixty days have elapsed since the charge was filed with the state, or the state has terminated its proceedings. In Leerssen's case, since the charge was not initially filed until day 289, the sixty-day period did not conclude until the 349th day—past the 300-day time limit for filing with the EEOC. Thus, her charge could only have been considered timely if the state "terminated" its proceedings prior to the 300th day. Under the worksharing agreement, the state merely waived initial processing of the charge; it did not terminate its authority over the charge. Indeed, it expressly retained jurisdiction to act after the EEOC had terminated its proceedings. This does not amount to a termination of state proceedings for purposes of section 706(c). Since the state did not terminate its proceedings, nor had sixty days elapsed (within the 300-day time limit), Leerssen's charge with the EEOC was untimely.

Most of the individuals who file employment discrimination charges with the EEOC are lay people unassisted by attorneys. As acknowledged by the appeals court, there is much confusion among complainants over the time limits for filing charges. This confusion undermines two important goals of Title VII: to facilitate filing discrimination charges by lay complainants and to resolve such discrimination claims quickly. The Supreme court's decision in this case will not only determine the fate of thousands of pending charges which will be untimely and subject to dismissal if the Court affirms the appeals court interpretation, but it may also clarify the filing procedures for future claimants, making the process more accessible.

ARGUMENTS

For the Equal Employment Opportunity Commission (Counsel, Richard J. Lazarus, Department of Justice, Wash-

ington, DC 20503; telephone (202) 633-2217)

1. Looking solely at the relevant statutory language does not resolve the issue in this case. The language providing that no charge may be filed with the EEOC "before the expiration of sixty days after proceedings have been commenced under state...law, unless such proceedings have been earlier terminated" is unclear.
2. Since the meaning of the statute is not discernible from its face, it is appropriate to consider the legislative history behind this section of the statute to determine its intent. The purpose behind the deferral provision was to give state agencies the opportunity to redress the problem of discrimination by applying and enforcing their own laws—avoiding unnecessary federal intervention. When the state declines to process the charge and instead refers it to the EEOC, the purpose behind the deferral provision is satisfied. The state was given the opportunity to apply and enforce its law and chose to waive that opportunity.
3. Affirming the court of appeals' interpretation of the deferral provision undermines the statute's purpose. This interpretation requires either that the EEOC wait sixty days or that the state completely relinquish jurisdiction. The sixty-day delay would thwart Congress' clear intent to encourage processing all discrimination charges promptly. To require the states to completely surrender their jurisdiction over the case is contrary to congressional intent to defer to the wishes of state agencies.
4. Other sections of Title VII support the EEOC's interpretation of the deferral provision. Title VII specifically authorizes execution of written agreements between state agencies and the EEOC detailing cooperative arrangements. Worksharing agreements, such as the one involved in this case, increase cooperation by a division of labor involving initial processing of charges, and help avoid simultaneous federal and state proceedings.

For Commercial Office Products Company (Counsel of Record, James L. Stone, One United Bank Center, 1700 Lincoln Street, Suite 2400, Denver, CO 8203; telephone (303) 830-2400)

1. The words of section 706 are not ambiguous and should be given their plain meaning. The plain meaning of "terminated" is completed or ended. The CCRD did not terminate its proceedings; it expressly retained the right to act on the charge in the future.
2. Section 706(c) does not confer any rights on state agencies which they may waive; rather, it is a statutory prohibition aimed at the EEOC. The statute prohibits the EEOC from allowing a charge to be filed before either the expiration of the sixty-day deferral period or termination of state proceedings, whichever is earlier. A state agency does not have the power to authorize the EEOC to take action prohibited by the statute.
3. Even if a state agency could waive its rights and allow the EEOC to proceed, the CCRD lacks the authority under state law to waive initial processing of the charge. State

law requires the agency to take action on a charge immediately. The CCRD's agreement with the EEOC not to take action contravenes this law.

4. The worksharing agreement between the EEOC and the CCRD evades the congressional intent behind the deferral provisions of Title VII. These provisions seek not only to foster federal and state cooperation and provide for federal enforcement when the state's efforts are ineffective, but most importantly to prevent federal dominance in the field.
5. By giving effect to the worksharing agreement, a complainant may choose between a state or federal remedy and undermine the purpose behind the deferral requirement merely by choosing where to initially file a charge. Under the EEOC's agreement with the CCRD, the agency where the charge is filed is the agency which initially processes the case.
6. Leerssen's charge was untimely under state law; therefore, her Title VII charge must be filed within the 180-day filing period. She does not get the benefit of the extended filing period since the state agency lacked the authority to grant relief.

AMICUS ARGUMENTS

In Support of the EEOC

The state of Colorado joined by Connecticut, the District

of Columbia, Missouri, New Jersey, New York, Texas, Wisconsin and Wyoming filed a brief arguing that to interpret "termination" as requiring the states to completely surrender jurisdiction frustrates state interests and state antidiscrimination laws. The backlog of cases pending before state agencies makes it improbable that a charge will be investigated within sixty days. They contend the worksharing arrangement serves state interests by providing for efficient and prompt processing of charges without either a sixty-day delay or duplication of effort, while at the same time allowing states to retain jurisdiction to review EEOC findings and provide a remedy when the EEOC is unable to do so.

In Support of Commercial Office Products Company

The Equal Employment Advisory Council filed a brief arguing that Leerssen's charge does not qualify for the 300-day time limit because the CCRD did not have the authority to grant relief. It lacked this authority both because the charge was untimely filed under state law and thus the CCRD had no jurisdiction to act and because it had contractually relinquished its authority to grant relief to the EEOC in the worksharing agreement.