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CURRENT ISSUES IN ARBITRATION SYMPOSIUM OVERVIEW

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As workplace 2000 approaches, America's workforce is not only changing, but workplace issues are becoming more complex. Experts have projected women and minorities will make up a large share of new entrants into the workforce. What significant issues will a diverse workforce raise for arbitration? In addition, society's ills have intruded into the workplace, raising unique issues for arbitration on control and discipline of the workforce. Such changing events present a challenge to the arbitral process.

Therefore, a symposium was held at Howard University[1] on October 8, 1993 to 1) provide a forum for practicing attorneys and labor–management professionals to explore the ramifications of *Gilmer v. Interstate/Johnson Lane Corp.* [1] to arbitrating Title VII disputes and 2) address other significant issues for arbitration in workforce 2000. Robert Coulson, president of the American Arbitration Association, presented the keynote address—the reference point from which the symposium's goals were to be accomplished. Symposium topics were explored through four panels composed of arbitrators and labor and management practitioners.

The *Gilmer* case was of primary interest because of the new arbitral territory toward which that decision could lead. *Gilmer* addressed the issue of whether a claim under the Age Discrimination in Employment Act of 1967 (ADEA) [2] can

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be subjected, under the Federal Arbitration Act (FAA) [3], to compulsory arbitration pursuant to an arbitration agreement in a securities registration application. The Supreme Court's affirmative ruling on the *Gilmer* issue raised a major question in the context of Title VII claims: Is arbitration a viable forum for Title VII disputes?

The symposium participants' first task was to reconcile *Gilmer* with the Supreme Court's 1974 case of *Alexander v. Gardner-Denver Co.* [4], which concluded that arbitration of an employment contract-based claim did not preclude subsequent judicial resolution of the statutory claim. Second, the participants assessed language in the Civil Rights Act of 1991 [5] that encourages arbitration to determine a plausible interpretation that would allow future deferral of Title VII [6] disputes to arbitration. Third, participants weighed and evaluated the impact deferral of Title VII disputes to arbitration would have on the policies of other agencies, i.e., the Equal Employment Opportunity Commission, the National Labor Relations Board, and the Public Employee Relations Board (The model discussed was that of the District of Columbia).

The symposium then focused on the practicality of arbitrating Title VII issues from the viewpoint of management, union, and the arbitrator. Participants also had the hard assignment of addressing future issues arbitrating Title VII cases might present, e.g., How to overcome *Gardner-Denver* to allow binding arbitration of statutory claims? and Can the union waive the statutory rights of members to include such language?

The final symposium panel had challenging topics to consider. Panelists addressed the implications that a very changed workplace (e.g., service industry replacing manufacturing) and workforce composition will have on arbitration. Drug and alcohol abuse have become significant problems in the modern workplace. Employers' attempts to respond to the problem (e.g., instituting testing procedures) raise issues for arbitration, such as the privacy interests of employees.

Statistics and medical reports indicate that another pressing issue to confront workforce 2000 employers is the increasing number of AIDS victims in the workplace. The types of arbitral issues this situation might generate were explored by a symposium participant.

The recently enacted Americans with Disabilities Act of 1990 [7] is sure to raise issues as to coverage and/or application of the statutory terms "qualified individual with a disability" and what constitutes "reasonable accommodation." What effect such broad issues will have on arbitration was also an area of exploration for the symposium.

Although "sexual harassment and gender issues" was the final topic addressed at the symposium, it is one of the most controversial and significant issues in today's workplace. Presentation of these cases before arbitrators does not have the benefit of agency or judicial discovery procedures. What can be expected in arbitrating these cases was addressed by one panelists.

Symposium participants have graciously agreed to author articles on their topics, which are published in this issue of the *Journal of Individual Employment Rights.*

One final but most important note: Howard University School of Law and School of Business extends sincere appreciation to Baywood Publishing Company, Inc., for a grant that assisted in presenting this open forum to the labor/employment community.

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END NOTES

1. *Gilmer v. Interstate/Johnson Lane Corp.,* 111 S. Ct. 1647 (1991).
2. 81 Stat. 602 (1967), as amended 29 U.S.C. 621 *et seq.*
3. 9 U.S.C. secs. 1-14 (1988).
4. *Alexander v. Gardner-Denver Co.,* 415 U.S. 36 (1974).
5. Pub. L. No. 102-166, 105 Stat. 1071 (1991).
6. 42 U.S.C. Stat. 2000e (1988).
7. Pub. L. No. 101-336, 104 Stat 327 (1990).

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