December 6, 2010

Supreme Court Agrees to Hear Wal-Mart Appeal

By ADAM LIPTAK and STEVEN GREENHOUSE

WASHINGTON — The Supreme Court on Monday agreed to hear an appeal in the biggest employment discrimination case in the nation's history, one claiming that Wal-Mart Stores had discriminated against hundreds of thousands of women in pay and promotion. The lawsuit seeks back pay that could amount to billions of dollars.

The question is not whether there was discrimination but rather whether the claims by the individual employees may be combined as a class action. The court's decision on that issue will almost certainly affect all sorts of class-action suits, including ones asserting antitrust, securities and product liability.

If nothing else, many pending class actions will slow or stop while litigants and courts await the decision in the case. Arguments in the case are likely to be heard this spring, with a decision expected by the end of June.

Wal-Mart, which says its policies expressly bar discrimination and promote diversity, said the women in the potential class action — who worked in 3,400 stores in 170 job classifications — could not possibly have enough in common to make class-action treatment appropriate.

"We are pleased that the Supreme Court has granted review in this important case," a Wal-Mart

statement said. “The current confusion in class-action law is harmful for everyone — employers, employees, businesses of all types and sizes and the civil justice system. These are exceedingly important issues that reach far beyond this particular case.”

There has been no ruling yet on the plaintiffs’ claims that they were discriminated against, and the ground rules for how those claims will be heard have not yet been determined. Resolution of the merits of the plaintiffs’ case will now await a decision about whether it may go forward as a class action.

In their brief urging the justices to deny review, the plaintiffs said Wal-Mart’s objection to class-action treatment boiled down to the enormous size of the class. But size is “legally irrelevant,” the brief said.

“The class is large because Wal-Mart is the nation’s largest employer,” the brief said, “and manages its operations and employment practices in a highly uniform and centralized manner.”

Brad Seligman, the main lawyer for the plaintiffs, said Monday that plaintiffs welcomed the court’s review of the limited issue and were confident that the justices would rule in their favor.

“Wal-Mart has thrown up an extraordinarily broad number of issues, many of which, if the court seriously entertained, could very severely undermine many civil rights class actions,” Mr. Seligman said.

In April, an 11-member panel of the United States Court of Appeals for the Ninth Circuit, in San Francisco, ruled by a 6-to-5 vote that the class action could go forward.

Judge Michael Daly Hawkins, writing for the majority, said the company’s policies and treatment of women were similar enough that a single lawsuit was both efficient and appropriate. He added that the six women who represent the class, four of whom have left Wal-Mart, had claims typical of the other plaintiffs.

The size of the proposed class was not an obstacle, Judge Susan P. Graber wrote in a concurrence.

“If the employer had 500 female employees, I doubt that any of my colleagues would question the

certification of such a class," Judge Graber wrote. "Certification does not become an abuse of discretion merely because the class has 500,000 members."

That drew a sharp dissent from Chief Judge Alex Kozinski. "Maybe there'd be no difference between 500 employees and 500,000 employees if they all had similar jobs, worked at the same half-billion-square-foot store and were supervised by the same managers," he wrote.

"But the half-million members of the majority's approved class held a multitude of jobs, at different levels of Wal-Mart's hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female)."

"They have little in common but their sex and this lawsuit," Judge Kozinski concluded.

In a second dissent, Judge Sandra S. Ikuta said that allowing the case to go forward as a class action would prevent Wal-Mart from presenting tailored defenses to individual claims.

In their briefs in the case, Wal-Mart Stores v. Dukes, No. 10-277, the two sides cited the work of the court's newest justices to the court.

Wal-Mart twice relied on an influential unsigned law review note that Justice Elena Kagan wrote as a student at Harvard Law School on class certification in employment discrimination suits.

The plaintiffs responded by noting that Justice Sonia Sotomayor had voted to certify an even larger class action in an antitrust case involving eight million merchants when she was a judge on the United States Court of Appeals for the Second Circuit, in New York. Wal-Mart was a plaintiff in that class action.

Judge Sotomayor acknowledged that the very fact of class certification provided the plaintiffs with "leverage in settlement negotiations."

"While the sheer size of the class in this case may enhance this effect," she added, "this alone cannot

defeat an otherwise proper certification.”

Steven Greenhouse contributed reporting from New York.

More in Business Day (14 of 23 articles)

DealBook: Aletheia Founders Spar Amid S.E.C. Inquiry

Read More »