

Chicago Daily Law Bulletin®

Volume 160, No. 227

7th Circuit resurrects bias suit

Panel highly critical of judge's conception of Title VII meaning

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Blasting a judge's handling of the case, a federal appeals court has revived a lawsuit accusing a union of discriminating against a woman who wants to work on movie and television productions in Chicago.

The 7th U.S. Circuit Court of Appeals held that Maura Anne Stuart is entitled to pursue her claim that Local 727 of the International Brotherhood of Teamsters failed to refer her for work because of her gender.

The court rejected the notion that failing to refer someone for a job — as opposed to refusing to hire him or her — passes muster under federal law even when the failure is based on the person's gender, race or some other characteristic an employer is barred from considering.

A union may not "fail or refuse to refer for employment any individual" because of the individual's gender, the court wrote, quoting Title VII of the Civil Rights Act of 1964.

U.S. District Judge Milton I. Shadur, the court continued, erred in holding otherwise.

The court did not limit its criticism to Shadur's legal ruling.

It also criticized the "abruptness and irregularity" of his

handling of the case.

Without informing Local 727, Shadur asked his law clerk to obtain from Stuart's lawyer the charge she filed with the Equal Employment Opportunity Commission, the court wrote.

Shadur, it wrote, also dismissed Stuart's suit with prejudice even though Local 727 had not sought to have the suit tossed out.

And the court criticized "the unmistakable (and to us incomprehensible) tone of derision that pervades his opinion" dismissing the suit.

The court directed that Stuart's suit be assigned to another judge on the federal trial bench.

Stuart, who has a commercial driver's license, drives school buses for a living.

But she has tried to obtain work driving the vehicles that move equipment and people involved in movie and TV productions. Those jobs pay about twice as much as a bus driver's job.

Local 727 has collective bargaining agreements with all the production companies that operate in Chicago requiring the companies to hire only drivers referred by the union.

Stuart alleges she joined Local 727 in 2010 and submitted an application seeking referrals for driving jobs.

She alleges the union's business agent told her she was on a referral list. After she asked him on several occasions about jobs, Stuart alleges, he told her to quit calling him.

Richard A. Posner

She alleges she was never referred to a job in the 4½ years since she joined Local 727. She also alleges that in its 70-year history, Local 727's Movie/Trade Show Division has never referred a woman for a driving job.

After she filed her EEOC charge, Stuart alleges, Local 727's general counsel told her she was not a member of the local.

In dismissing Stuart's suit, Shadur held a failure to refer did not constitute a Title VII violation.

And he held that other discriminatory acts alleged by Stuart had occurred more than 300 days before she filed her EEOC charge and that the statute of limitations for suing over those acts had therefore expired.

The limitations time is usually 180 days, but it was 300 days in Stuart's case because she first filed her claim with the Illinois Department of Human Rights.

In its opinion, a three-judge panel of the 7th Circuit rejected the notion that a plaintiff must sue over the first act of discrimination she suffers or forgo suing over any later acts.

"That would be an absurd rule," Judge Richard A. Posner wrote for the panel. "It would require an employee to infuriate her employer or union by complaining about what might be an inconsequential act of discrimination that she did not expect to be repeated."

And blocking a plaintiff who did not take a chance of infuriating her employer or union from complaining of subsequent discrimination "would open a large gap in Title VII," Posner wrote.

The case has not been reassigned to another judge yet.

Joining Friday's opinion were Judges Ilana Diamond Rovner and David F. Hamilton. *Maura Anne Stuart v. Local 727, International Brotherhood of Teamsters*, No. 14-1710.

Jeffrey I. Cummings of Miner, Barnhill & Galland P.C. argued the case before the 7th Circuit on behalf of Stuart.

He said the decision represents a "fresh start" in the litigation.

"My client is quite pleased with the court's ruling, and we look forward to returning to the district court to prove her allegations," he said.

Brandon M. Anderson of Jacobs, Burns, Orlove & Hernandez argued the case on behalf of the union. He could not be reached for comment.