INTERNATIONAL UNION v. JOHNSON CONTROLS, INC. (1991)
JOB SAFETY FOR WOMEN

SUMMARY

The Supreme Court has unanimously ruled that a company may not discriminate against women workers for the alleged purpose of protecting any future children they might have from harm through exposure to dangerous substances. The opinion was issued in March 20, 1991 in the case of *International Union v. Johnson Controls, Inc.*

BACKGROUND

Johnson Controls is in the business of making lead batteries. Exposure to substantial amounts of lead during the manufacturing process is inevitable. There is a known link between exposure to significant amounts of lead and miscarriages. Over the years, the company advised employees of this risk, counseled them about the dangers, and, when it was shown that several pregnant employees had amounts of lead in their blood that was beyond the danger level, barred women "capable of bearing children" from working in jobs where there would he significant lead exposure.

These jobs were often higher paid. Women were not allowed to retain these jobs by waving damages against the company or by stating that they did not intend to become pregnant. Actual medically proven sterility was required.

A number of employees sued the company claiming that the rule constituted sex discrimination in violation of the Civil Rights Act of 1964. One was a women who had undergone surgical sterilization to keep her job. Another was a 50 year old woman who had been moved to a lower paying position because of the risk that she would become pregnant. A third was a man who had been denied unpaid leave to lower his own lead levels prior to fathering a child.

The trial court ruled in favor of the company, holding that the company's policy was based on business necessity, a controversial doctrine that some other federal courts had used to override civil rights laws. The United States Court of Appeals in Chicago agreed with the trial court by a vote of 7-4 and the Supreme Court of the United States agreed to hear the case.

ANALYSIS

The Civil Rights Act of 1964 was designed to end discrimination based on race. During debate on the bill just before its passage, a powerful segregationist congressman was fighting a losing battle against the bill on the House floor. He offered an amendment, which he felt certain would kill the bill. The amendment was to expand legislation to bar sex discrimination. To his surprise, Congress agreed to the amendment and passed the bill. That is how sex discrimination became illegal in the United States.

Oddly, the first significant cases under the sex discrimination laws were against practices

rather like the one in this case. Many states had what were known as “protective laws.” These were provisions designed to protect women on the job just as “child labor” laws were designed ro protect children. There laws typically would bar women from holding jobs requiring the lifting of anything over 40 pounds or working around machinery or in high places. The laws were passed in the early 1900's as part of a general effort to make factory work safer and to end exploitation of workers by factory owners. Women were economically more vulnerable than men and laws “protecting” them from more dangerous work were thought to be an appropriate reaction to that vulnerability.

By the mid-1960's, though, things had begun to change. Women had more job options and a greater ability to avoid exploitation on the job. Moreover, the protective laws were acting as a bar to the economic advancement of women. Women could be operators for the telephone company but they would not, by law, climb telephone poles. Women could carry 40 pound toddlers but not 40 pound sacks of cement.

Title VII of the Civil Rights Act ended these laws in a few short years. But company practices that had the same effects were harder to root out. There were only a handful of state laws, but there were many thousands of company practices. Moreover, there is a difference between excluding all women from jobs because a few women cannot or will not do those jobs and the practice of removing women from jobs that you know will be dangerous to any fetus they may carry.

The courts have traditionally measured these company practices on what is called the Bona Fide Occupational Qualification (BFOQ) standard. Under this standard, a company may engage in sexually biased activities if a specific gender is a legitimate aspect of a job. For instance, being female is a BFOQ for playing Lady Macbeth. Being male is a BFOQ for a men’s maximum security prison guard. But being female is not a BFOQ for being a flight attendant and being male is not a BFOQ for being a construction worker.

The lower courts had ignored the BFOQ notion in favor of the new business necessity doctrine. This doctrine applied when a practice is not discriminatory on its face but, instead, coincidentally has a heavier impact on one sex. For instance, a horse trainer requires that all of his jockeys weigh less than 100 pounds. Many women weigh less than 100 pounds, but very few men do. The practice has the coincidental effect of limiting jockey jobs for men, but it has a business necessity behind it since lighter jockeys mean faster horses.

But the business necessity doctrine only applies at all in cases where the practice is not discriminatory on its face, but only in its results. The Supreme Court here said, with almost no discussion, that the lower courts had been seriously wrong in using the business necessity doctrine. A practice barring persons with the capacity to bear children from certain jobs clearly applied only to women. The company could have established a broader practice since the evidence shows that lead is harmful to the male reproductive system as well. It did not adopt such a policy, but limited its restrictions to women.

Since the Court determined that the business necessity test did not apply, the company had to show that being male was a bona fide occupational qualification for these jobs. Their

argument here was that fetuses needed protection and that protecting them required excluding women of childbearing ability from jobs which were dangerous to fetuses. The Court paid little attention to this argument since another Congressional action made it clear that it was the parents' responsibility to protect a fetus, not corporate America's.

The Court also dismissed the argument that the company could be subject to suit for miscarriages. Its exposure limits were below federal standards, and it gave detailed warnings to its employees. Moreover, it could take care of the problem entirely by simply saying that no fertile males or females could work with the lead. That would have the effect of having more women eligible for the jobs than men, but that practice could be defined on the business necessary doctrine since, on its fact, it treated both genders equally.

EXCERPTS FROM THE COURT'S OPINION (By Justice Blackmun)

"Our holding today that Title VII forbids sex-specific fetal-protection policies is neither remarkable nor unprecedented. Concern for a woman's existing or potential offspring historically has been the excuse for denying women equal employment opportunities. Congress . . . prohibited discrimination on the basis of a woman's ability to become pregnant. We do no more than hold that (it) means what it says.

It is no more appropriate for the courts than it is for individual employees to decide whether a woman's reproductive role is more important to herself and her family than her economic role. Congress has left this choice to the woman as hers to make."