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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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14 PENN PLAZA LLC ET AL. *v.* PYETT ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 07–581. Argued December 1, 2008—Decided April 1, 2009

Respondents are members of the Service Employees International Union, Local 32BJ (Union). Under the National Labor Relations Act, the Union is the exclusive bargaining representative of employees within the building-services industry in New York City, which includes building cleaners, porters, and doorpersons. The Union has exclusive authority to bargain on behalf of its members over their "rates of pay, wages, hours of employment, or other conditions of employment," 29 U. S. C. §159(a), and engages in industry-wide collective bargaining with the Realty Advisory Board on Labor Relations, Inc. (RAB), a multiemployer bargaining association for the New York City real-estate industry. The agreement between the Union and the RAB is embodied in their Collective Bargaining Agreement for Contractors and Building Owners (CBA). The CBA requires union members to submit all claims of employment discrimination to binding arbitration under the CBA's grievance and dispute resolution procedures.

Petitioner 14 Penn Plaza LLC is a member of the RAB. It owns and operates the New York City office building where respondents worked as night lobby watchmen and in other similar capacities. Respondents were directly employed by petitioner Temco Service Industries, Inc. (Temco), a maintenance service and cleaning contractor. After 14 Penn Plaza, with the Union's consent, engaged a unionized security contractor affiliated with Temco to provide licensed security guards for the building, Temco reassigned respondents to jobs as porters and cleaners. Contending that these reassignments led to a loss in income, other damages, and were otherwise less desirable than their former positions, respondents asked the Union to file grievances alleging, among other things, that petitioners violated the CBA's ban

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on workplace discrimination by reassigning respondents on the basis of their age in violation of Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. §621 *et seq*. The Union requested arbitration under the CBA, but after the initial hearing, withdrew the age-discrimination claims on the ground that its consent to the new security contract precluded it from objecting to respondents' reassignments as discriminatory. Respondents then filed a complaint with the Equal Employment Opportunity Commission (EEOC) alleging that petitioners had violated their ADEA rights, and the EEOC issued each of them a right-to-sue notice. In the ensuing lawsuit, the District Court denied petitioners' motion to compel arbitration of respondents' age discrimination claims. The Second Circuit affirmed, holding that *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, forbids enforcement of collective-bargaining provisions requiring arbitration of ADEA claims.

Held: A provision in a collective-bargaining agreement that clearly and unmistakably requires union members to arbitrate ADEA claims is enforceable as a matter of federal law. Pp. 6–25.

(a) Examination of the two federal statutes at issue here, the ADEA and the National Labor Relations Act (NLRA), yields a straightforward answer to the question presented. The Union and the RAB, negotiating on behalf of 14 Penn Plaza, collectively bargained in good faith and agreed that employment-related discrimination claims, including ADEA claims, would be resolved in arbitration. This freely negotiated contractual term easily qualifies as a "conditio[n] of employment" subject to mandatory bargaining under the NLRA, 29 U. S. C. §159(a). See, *e.g., Litton Financial Printing Div., Litton Business Systems, Inc.* v. *NLRB*, 501 U. S. 190, 199. As in any contractual negotiation, a union may agree to the inclusion of an arbitration provision in a collective-bargaining agreement in return for other concessions from the employer, and courts generally may not interfere in this bargained-for exchange. See *NLRB* v. *Magnavox Co.*, 415 U. S. 322, 328. Thus, the CBA's arbitration provision must be honored unless the ADEA itself removes this particular class of grievances from the NLRA's broad sweep. See *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.*, 473 U. S. 614, 628. It does not. This Court has squarely held that the ADEA does not preclude arbitration of claims brought under the statute. See *Gilmer* v. *Interstate/Johnson Lane Corp.*, 500 U. S. 20, 26–33. Pp. 6–10. Accordingly, there is no legal basis for the Court to strike down the arbitration clause in this CBA, which was freely negotiated by the Union and the RAB, and which clearly and unmistakably requires respondents to arbitrate the age-discrimination claims at issue in this appeal. Pp. 6–10.

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(b) The CBA's arbitration provision is also fully enforceable under the *Gardner-Denver* line of cases. Respondents incorrectly interpret *Gardner-Denver* and its progeny as holding that an agreement to arbitrate ADEA claims provided for in a collective-bargaining agreement cannot waive an individual employee's right to a judicial forum under federal antidiscrimination statutes.. Pp. 11–23.

(i) The facts underlying *Gardner-Denver* and its progeny reveal the narrow scope of the legal rule they engendered. Those cases "did not involve the issue of the enforceability of an agreement to arbitrate statutory claims," but "the quite different issue whether arbitration of contract-based claims precluded subsequent judicial resolution of statutory claims." *Gilmer, supra,* at 35. *Gardner-Denver* does not control the outcome where, as here, the collective-bargaining agreement's arbitration provision expressly covers both statutory and contractual discrimination claims. Pp. 11–15.

(ii) Apart from their narrow holdings, the *Gardner-Denver* line of cases included broad dicta highly critical of using arbitration to vindicate statutory antidiscrimination rights. That skepticism, however, rested on a misconceived view of arbitration that this Court has since abandoned. First, contrary to *Gardner-Denver*'s erroneous assumption, 415 U. S., at 51, the decision to resolve ADEA claims by way of arbitration instead of litigation does not waive the statutory right to be free from workplace age discrimination; it waives only the right to seek relief from a court in the first instance, see, *e.g., Gilmer*, *supra,* at 26. Second, *Gardner-Denver*'s mistaken suggestion that certain informal features of arbitration made it a forum "well suited to the resolution of contractual disputes," but "a comparatively inappropriate forum for the final resolution of [employment] rights." 415 U. S., at 56, has been corrected. See, *e.g., Shearson/American Express Inc.* v. *McMahon*, 482 U. S. 220, 232. Third, *Gardner-Denver*'s concern that, in arbitration, a union may subordinate an individual employee's interests to the collective interests of all employees in the bargaining unit, 415 U. S., at 58, n. 19, cannot be relied on to introduce a qualification into the ADEA that is not found in its text. Until Congress amends the ADEA to meet the conflict-of-interest concern identified in the *Gardner-Denver* dicta, there is "no reason to color the lens through which the arbitration clause is read." *Mitsubishi, supra,* at 628. In any event, the conflict-of-interest argument amounts to an unsustainable collateral attack on the NLRA, see *Emporium Capwell Co.* v. *Western Addition Community Organization*, 420 U. S. 50, 62, and Congress has accounted for the conflict in several ways: union members may bring a duty of fair representation claim against the union; a union can be subjected to direct liability under the ADEA if it discriminates on the basis of age; and union

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members may also file age-discrimination claims with the EEOC and the National Labor Relations Board. Pp. 15–23.

(c) Because respondents' arguments that the CBA does not clearly and unmistakably require them to arbitrate their ADEA claims were not raised in the lower courts, they have been forfeited. Moreover, although a substantive waiver of federally protected civil rights will not be upheld, see, *e.g., Mitsubishi, supra,* at 637, and n. 19, this Court is not positioned to resolve in the first instance respondents' claim that the CBA allows the Union to prevent them from effectively vindicating their federal statutory rights in the arbitral forum, given that this question would require resolution of contested factual allegations, was not fully briefed here or below, and is not fairly encompassed within the question presented. Resolution now would be particularly inappropriate in light of the Court's hesitation to invalidate arbitration agreements based on speculation. See, *e.g.*, *Green Tree Financial Corp.-Ala.* v. *Randolph*, 531 U. S. 79. Pp. 23–25.

498 F. 3d 88, reversed and remanded.

THOMAS, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, and ALITO, JJ., joined. STEVENS, J., filed a dissenting opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined.