DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-216918 DATE: *May 27, 1986*

MATTER OF: Investigative Jurisdiction of Equal Employment Opportunity Commission over the Superior Court of the District of Columbia

DIGEST:

The Superior Court of the District of Columbia, although established by Congress under Article I of the Constitution, is more analogous to a state court than to a Federal court for purposes of Title VII of the Civil Rights Act of 1964. Accordingly, and since its employees are not in the competitive service, it is subject to the jurisdiction of the Equal Employment Opportunity Commission under section 706 of the Civil Rights Act, which generally covers state and local governments, rather than section 717 which applies to Federal entities.

The late Chief Judge of the Superior Court of the District of Columbia requested our opinion on whether the Equal Employment Opportunity Commission (EEOC) has jurisdiction over employment discrimination complaints against the court under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972. Specifically, the question is whether the court is subject to the EEOC's enforcement authority found in section 706 of the Act. Before preparing our response, we solicited the views of the EEOC on this issue. We have fully considered the Commission's comments in preparing this decision. For the reasons stated below, we conclude that the court is subject to section 706.

Background

Generally, Title VII of the Civil Rights Act of 1964 (codified at 42 U.S.C. §§ 2000e-2000e-17 (1982)) provides protections against discrimination in employment and appropriate remedies. As originally enacted, Title VII did not cover Government employees. The Equal Employment Opportunity Act of 1972 amended the Civil Rights Act to extend the protections of Title VII to most Federal, state and local government employees. As a result of the 1972 amendment, section 717[1]/

[1]/ 42 U.S.C. § 2000e-16.

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sets forth the administrative procedures for the enforcement of Title VII protections which are applicable to Federal employees, and section 706[2]/ provides procedures applicable to state and local government employees.

Under the procedures set forth in section 706 and the EEOC's implementing regulations, employees bringing a charge against an employer to whom section 706 applies are, with exceptions not relevant here, required to begin the administrative complaint process by filing their charge with the Commission. 42 U.S.C. § 2000e-5(b). The Commission, after serving the respondent with a copy of the charge, conducts a full investigation of the matter. 29 C.F.R §§ 1601.14, 1601.15. The EEOC is authorized to subpoena witnesses and documents and to hold public hearings to carry out its investigation. 29 C.F.R. § 1601.16, 1601.17.

Once it has taken jurisdiction of a charge under section 706, the Commission may dispose of it in a number of ways. It may dismiss a charge which was not timely filed or which fails to state a claim under Title VII. 29 C.F.R. § 1601.19. It may encourage a negotiated settlement of the matter. 29 C.F.R. § 1601.20. If the charge is not settled or dismissed, the Commission may make a determination that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring and then endeavor to eliminate the practice informally. 29 C.F.R. § 1601.24. Finally, if the matter remains unresolved, the EEOC may issue a notice of right to sue, thereby enabling the aggrieved party to bring a civil action. 29 C.F.R. § 1601.28.

By contrast, Title VII complaints covered by section 717 are not subject to the Commission's complaint process. Under the applicable regulations, the employing agency, not the EEOC, is responsible for carrying out the administrative process for discrimination complaints against "section 717 employers." 29 C.F.R. § 1613.211-1613.283. The process is somewhat analogous to the section 706 procedure, concluding with the head of the agency or his designee making a final decision on the complaint. The Commission's role in section 717 cases is generally limited to hearing the appeals of complaints which have been adversely decided by agency heads. 29 C.F.R. §§ 1613.231-1613.234.

Issue

Section 717 specifies that it covers employees "in those units of the Government of the District of Columbia having

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2/ 42 U.S.C. § 2000e-5.

positions in the competitive service * * *." 42 U.S.C. § 2000e-16(a). Section 706 does not apply to employees of "any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5) * * *" 42 U.S.C. § 2000e(b). The legislative history of the Equal Employment Opportunity Act of 1972 indicates that the term "competitive service" as used above was intended to mean the Federal competitive service. A section-by-section analysis inserted into the Congressional Record at the time the Senate considered approval of the Conference Report on the later enacted bill, in explaining the Act's definition of "employer" upon which Title VII coverage is based, stated:

> "This subsection defines the terms 'employer' as used in Title VII. This subsection would now include, within the meaning of term 'employer' all state and local governments, governmental agencies, and political subdivisions, and the District of Columbia departments or agencies (except those subject by statute to the procedures of the Federal competitive service as defined in 5 U.S.C. § 2102, who along with all other Federal employees would now be covered by section 717 of the Act.)" 120 Cong. Rec. S3460 (daily ed. March 6, 1972) (following remarks of Sen. Williams).

Interpreting these provisions and their legislative history, the courts have held that Title VII complaints against District of Columbia governmental units are covered by the procedures of either section 706 or section 717, depending upon whether the unit has positions in the competitive service. Bethel v. Jefferson, 589 F.2d 631 (D.C. Cir. 1978); Torre v. Barry, 661 F.2d 1371 (D.C. Cir. 1981).

Employees of the Superior Court of the District of Columbia are not in the competitive service. Under 5 U.S.C. § 2102(a)(3), the competitive service includes "positions in the government of the District of Columbia which are specifically included in the competitive service by statute." The court's employees are not included in the competitive service by statute. On the contrary, the statutory provisions pertaining to court personnel indicate clearly that court employees are not subject to competitive service procedures. Section 11-1725 of the District of Columbia Code provides that the Court's Executive Officer shall appoint and remove non-judicial court personnel subject to the approval of the Joint Committee on Judicial Administration of the District of Columbia.

The "non-competitive service" status of such District of Columbia Superior Court employees coincides with the status of District of Columbia employees generally. Although a number of District of Columbia employees were in the Federal competitive service at the time of the enactment of Title VII, they no longer are. Under the authority of the District of Columbia Self-Government Act, Public Law No. 93-198 (December 24, 1973), § 422(3), 87 stat. 774 at 791, the District of Columbia has enacted its own merit personnel system (See D.C. Law 2-139, § 3202, D.C. Code § 1-633.2(a)(2)) thereby making District of Columbia employees generally not subject to the Federal competitive system. See also B-217270, October 28, 1985, regarding "non-competitive service" status of employees of the Superior Court of the District of Columbia.

Since court employees do not hold competitive service positions, the court would appear to be subject to the EEOC's complaint process under section 706, unless there is some reason to distinguish the court from other departments or agencies of the Government of the District of Columbia. Clearly the Superior Court is an element of the Government of the District of Columbia. The complication arises in that the court is also an "Article I court," i.e., it was established by Congress under Article I of the Constitution. D.C. Code § 11-101. In this sense, it differs from other state and local courts, which are subject to section 706. The late Chief Judge noted that section 717(a) (42 U.S.C. § 2000e-16(a)) appears to exclude courts established by Congress under Articles I and III of the Constitution from EEOC's section 706 complaint process. He further noted that "the Congress has retained authority over the Court despite the enactment of the District of Columbia Self-Government and Governmental Reorganization Act." For these reasons he asked whether, for purposes of Title VII, it is correct to treat the court as a state or local court, in which event section 706 applies, or whether it is more correct to consider the court as analogous to a Federal court, in which event it is subject presumably only to section 717.

Discussion

In our opinion, the Superior Court is subject to section 706 because it is analogous to a state or local court, and the fact that it was established under article I does not affect its status as a local governmental unit.

We note initially that Title VII does not mention article I or article III courts specifically. Rather, for purposes of determining the applicability of section 706 or section 717,

Title VII speaks, in effect, in terms of whether an employer is one of certain specified Federal departments or agencies, a state or local agency, or a unit of the Government of the District of Columbia. The late Chief Judge's question suggested the view that article I courts, because they are federally created, should be considered Federal employers for Title VII purposes.

A court need not, in our view, be considered a Federal employer merely because it is established by Congress under Article I. The Congress established the Superior Court of the District of Columbia pursuant to power granted to it in clause 17 of section 8 of article I, which authorizes the Congress to exercise exclusive jurisdiction over the District of Columbia. As our following discussion indicates, the Congress, although acting under article I, intended the Superior Court to be strictly local in character and analogous to a state court.

We base our opinion on several United States Supreme Court decisions in which the Court has viewed the Superior Court as tantamount to a state or local court by interpreting the legislative intent of the Court Reform Act. For example, in Palmore v. United States, 411 U.S. 389 (1973), the Court stated that the Court Reform Act was intended to establish a strictly local court system to relieve the formerly burdened article III "federal" courts of the responsibility for trying local criminal matters in order to support its holding that a felon need not constitutionally be tried by an article III judge. In discussing the Court Reform Act, the Court stated:

> "* * * Here Congress has expressly created two systems of courts in the District. One of them, made up the United States District Court for the District of Columbia and the United States Court of Appeals for the District of Columbia Circuit, are constitutional courts manned by Art III judges to which the citizens of the District must or may resort for consideration of those constitutional and statutory matters of general concern * * *. The other system is made up of strictly local courts, the Superior Court and the District of Columbia Court of Appeals. These courts were expressly created pursuant to the plenary Art I power to legislate for the District of Columbia, DC Code Ann § 11-101(2) (Supp. V, 1972), * * *. Here, Congress reorganized the court system in the District of Columbia and established one set of courts in the District with Art III characteristics and devoted to

> matters of national concern. It also created a wholly separate court system designed primarily to concern itself with local law and to serve as a local court system for a large metropolitan area."
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> "[This separate court system has] functions essentially similar to those of the local courts found in the 50 States of the Union with responsibility for trying and deciding those distinctively local controversies that arise under local law, including local criminal laws having little, if any, impact beyond the local jurisdiction." 411 U.S. at 406-409.

Following Palmore, the Supreme Court has taken the view that it is proper to consider the Superior Court of the District of Columbia as a local court in other contexts as well. See for example, Key v. Doyle, 434 U.S. 59, 64 (1977); and Swain v. Pressley, 430 U.S. 372, 375 (1977).

Conclusion

In light of these Supreme Court decisions, we believe that, for purposes of Title VII, the Superior Court is more appropriately viewed as a state or local, rather than a Federal, government entity. As such, and since its employees are not in the competitive service, the Court would be subject to the investigative jurisdiction of the EEOC as provided in section 706.

for Milton J. Socolar
Comptroller General
of the United States