

## Court Finds That Employee Properly Engaged In ADA Interactive Process

The Americans With Disabilities Act (ADA) requires that an employer and a disabled employee engage in a dialogue whenever there is a question as to whether the employer can accommodate the employee's need for a disability-related accommodation. This dialogue is the so-called "interactive process." Recently, the Seventh Circuit Court of Appeals found this interactive process does *not* include a requirement that the employer meet with the employee's attorney or rehabilitation counselor. *Ammons v. ARAMARK Uniform Services, Inc.*, No. 03-1036.

The plaintiff in the case, Clyde Ammons, worked for ARAMARK at a large uniform cleaning facility in Chicago. Ammons' job involved maintenance and repair of everything in the facility, including washers, dryers, ironers, boilers, and presses. This maintenance job required significant physical exertion and agility—frequent climbing, standing, walking, kneeling, and lifting.

In 1997, Ammons took a leave of absence due to an injury to his right knee. After a knee operation, a course of treatment, and a functional capacity evaluation, his doctor concluded that he had reached the point of maximum medical improvement. Ammons' doctor further determined that he could not return to his normal job duties at ARAMARK and that he was limited to a light-medium level of work with severe limits on his ability to kneel, stand, walk, and lift.

Eventually, Ammons requested to return to work with modified job duties. The company scheduled a meeting with

Ammons to discuss whether his physical restrictions could be accommodated. Ammons requested that the company allow his attorney (who was representing Ammons in a workers' compensation case against the company) and his vocational rehabilitation counselor (who was also assisting Ammons in his workers' compensation case) to attend the meeting. The company refused to allow the attorney or counselor to attend the meet-

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ing but it did allow him to bring his union representative to the meeting.

At two meetings with company officials, Ammons indicated that he could perform very little of his maintenance job. Ammons wanted the company to create a new position for him that would encompass only those tasks that he was able to perform (e.g., to be a "troubleshooter" who could advise other mechanics). The company concluded that Ammons' request was not a reasonable accommodation, and, because Ammons could not perform the essential functions of his maintenance job, he was terminated when his leave of absence expired.

Ammons sued under the ADA. He argued that if the company had allowed his attorney and vocational rehabilitation counselor to attend the interactive meetings, some sort of reasonable accommo-

dation could have been reached. The district court rejected Ammons' argument, granting summary judgment to ARAMARK. On appeal the Seventh Circuit agreed that "[t]he duty to engage in an interactive process does not mandate a meeting with an employee's attorney and vocational counselor." Since there was no accommodation that would allow Ammons to perform the essential functions of his maintenance job, and since employers have no duty to create a new position for a disabled employee, the Seventh Circuit agreed with the lower court that the company was entitled to terminate Ammons' employment.

This case also highlights the importance of communication with disabled employees regarding workplace accommodation issues. An employer that fails to discuss accommodations with a disabled employee risks an ADA lawsuit based on a claim that a reasonable accommodation could have been reached if the employer had only taken the time to discuss the issue. Although employers will generally be allowed to meet only with the disabled employee, that does not mean the employer can ignore input that it does receive from third parties. Also, the meeting must allow for a thorough exploration of all of the possibilities regarding workplace accommodations.

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## NLRA

### NLRB Voids Weingarten Rights For Non-Union Employees

On June 9, 2004, the National Labor Relations Board (NLRB), in a 3-2 decision favoring IBM Corporation, overruled its four-year-old news-making decision in *Epilepsy Foundation of Northeast Ohio*. In that case, an NLRB majority held that an employer violated the National Labor Relations Act (NLRA) by denying a non-union employee's request for the presence of a co-worker in

an investigatory interview that the employee reasonably believed might result in discipline. The now-overruled *Epilepsy Foundation* decision had extended to non-union employees the right to the presence of a union representative in such investigatory interviews (which was established for union-represented employees in the U.S. Supreme Court's 1975 *Weingarten* decision).

NLRB - continued on page 3