“Controlling the Context: PATCO, Wal-Mart and the Constitutionalization of Employment Law”

Abstract

by

Rafael Gely, University of Missouri Law School
and
Leonard Bierman, Mays Business School, Texas A&M University

This Article will argue that the 1981 firing of members of the Professional Air Traffic Controllers Organization or PATCO by President Ronald Reagan and the U.S. Supreme Court’s decision thirty years later in the Wal-Mart Stores, Inc. v. Dukes case both represent seminal events in changing the “context” of U.S. employment relations and employment law. These events have arguably left employees bereft of “group” workplace protections and altered an historical context where both employees and the employer controlled the context of workplace dynamics. Instead, the paper argues that control of the context of the U.S. workplace today rests firmly in the hands of employers. It is further argued that while employees (especially public employees) do indeed still have constitutionally-oriented or based individual rights protections, the U.S. Supreme Court in cases like O’Connor v. Ortega, and City of Ontario v. Quon has interpreted these rights in ways that arguably further compound the contextual problems created by PATCO and the Wal-mart decision.