SUPREME COURT OF THE UNITED STATES

No. 93–1783

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, PETITIONER *v.* NEWPORT NEWS SHIPBUILDING AND DRY DOCK COMPANY ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[March 21, 1995]

JUSTICE SCALIA delivered the opinion of the Court.

The question before us in this case is whether the Director of the Office of Workers' Compensation Programs in the United States Department of Labor has standing under §921(c) of the Longshore and Harbor Workers' Compensation Act (LHWCA), 44 Stat. 1424, as amended, 33 U. S. C. §901 *et seq.*, to seek judicial review of decisions by the Benefits Review Board that in the Director's view deny claimants compensation to which they are entitled.

On October 24, 1984, Jackie Harcum, an employee of respondent Newport News Shipbuilding and Dry Dock Co., was working in the bilge of a steam barge when a piece of metal grating fell and struck him in the lower back. His injury required surgery to remove a herniated disc, and caused prolonged disability. Respondent paid Harcum benefits under the LHWCA until he returned to light-duty work in April 1987. In November 1987, Harcum returned to his regular department under medical restrictions. He proved unable to perform essential tasks, however, and the

company terminated his employment in May 1988. Harcum ultimately found work elsewhere, and started his new job in February 1989.

Harcum filed a claim for further benefits under the LHWCA. Respondent contested the claim, and the dispute was referred to an Administrative Law Judge (ALJ). One of the issues was whether Harcum was entitled to benefits for total disability, or instead only for partial disability, from the date he stopped work for respondent until he began his new job. "Disability" under the LHWCA means "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U. S. C. §902(10).

After a hearing on October 20, 1989, the ALJ determined that Harcum was partially, rather than totally, disabled when he left respondent's employ, and that he was therefore owed only partial-disability benefits for the interval of his unemployment. On appeal, the Benefits Review Board affirmed the ALJ's judgment, and also ruled that under 33 U. S. C. §908(f), the company was entitled to cease payments to Harcum after 104 weeks, after which time the LHWCA special fund would be liable for disbursements pursuant to §944.

The Director petitioned the United States Court of Appeals for the Fourth Circuit for review of both aspects of the Board's ruling. Harcum did not seek review and, while not opposing the Director's pursuit of the action, expressly declined to intervene on his own behalf in response to an inquiry by the Court of Appeals. The Court of Appeals *sua sponte* raised the question whether the Director had standing to appeal the Board's order. 8 F. 3d 175 (1993). It concluded that she did not have standing with regard to that aspect of the order denying Harcum's claim for full-disability compensation, since she was not "adversely affected or aggrieved" by that decision within the meaning of §921(c) of the Act, 33 U. S. C. §921(c).[1]

[1]The court found that, as administrator of the §944 special

We granted the Director's petition for certiorari. 512 U. S. ___ (1994).

The LHWCA provides for compensation of workers injured or killed while employed on the navigable waters or adjoining, shipping-related land areas of the United States. 33 U. S. C. §903. With the exception of those duties imposed by §§919(d), 921(b), and 941, the Secretary of Labor has delegated all responsibilities of the Department with respect to administration of the LHWCA to the Director of the Office of Workers' Compensation Programs (OWCP). 20 CFR §§701.201 and 701.202 (1994); 52 Fed. Reg. 48466 (1987). For ease of exposition, the Director will hereinafter be referred to as the statutory recipient of those responsibilities.

A worker seeking compensation under the Act must file a claim with an OWCP district director. 33 U. S. C. §919(a); 20 CFR §§701.301(a) and 702.105 (1994). If the district director cannot resolve the claim informally, 20 CFR §702.311, it is referred to an ALJ authorized to issue a compensation order, §702.316; 33 U. S. C. §919(d). The ALJ's decision is reviewable by the Benefits Review Board, whose members are appointed by the Secretary. §921(b)(1). The Board's decision is in turn appealable to a United States court of appeals, at the instance of "[a]ny person adversely affected or aggrieved by" the Board's order. §921(c).

With regard to claims that proceed to ALJ hearings, the Act does not by its terms make the Director a party to the proceedings, or grant her authority to prosecute appeals to the Board, or thence to the federal court of appeals. The Director argues that

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fund, the Director did have standing to appeal the Board's decision to grant respondent relief under §908(f). That ruling is not before us and we express no view upon it.

she nonetheless had standing to petition the Fourth Circuit for review of the Board's order, because she is "a person adversely affected or aggrieved" under §921(c). Specifically, she contends the Board's decision injures her because it impairs her ability to achieve the Act's purposes and to perform the administrative duties the Act prescribes.

The phrase "person adversely affected or aggrieved" is a term of art used in many statutes to designate those who have standing to challenge or appeal an agency decision, within the agency or before the courts. See, *e.g.*, federal Communications Act of 1934, 47 U. S. C. §402(b)(6); Occupational Safety and Health Act of 1970, 29 U. S. C. §660(a); Federal Mine Safety and Health Act of 1977, 30 U. S. C. §816. The terms "adversely affected" and "aggrieved," alone or in combination, have a long history in federal administrative law, dating back at least to the federal Communications Act of 1934, §402(b)(2) (codified, as amended, 47 U. S. C. §402(b)(6)). They were already familiar terms in 1946, when they were embodied within the judicial review provision of the Administrative Procedure Act (APA), 5 U. S. C. §702, which entitles "[a] person . . . adversely affected or aggrieved by agency action within the meaning of a relevant statute" to judicial review. In that provision, the qualification "within the meaning of a relevant statute" is not an addition to what "adversely affected or aggrieved" alone conveys; but is rather an acknowledgment of the fact that what *constitutes* adverse effect or aggrievement varies from statute to statute. As the U. S. Dept. of Justice, Attorney General's Manual on the Administrative Procedure Act (1947) put it, "The determination of who is `adversely affected or aggrieved . . . within the meaning of any relevant statute' has `been marked out largely by the gradual judicial process of inclusion and exclusion, aided at times by the courts' judgment as to the probable legislative intent derived from the

spirit of the statutory scheme.'" *Id.*, at 96 (citation omitted). We have thus interpreted §702 as requiring a litigant to show, at the outset of the case, that he is injured in fact by agency action and that the interest he seeks to vindicate is arguably within the "zone of interests to be protected or regulated by the statute" in question. *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U. S. 150, 153 (1970); see also *Clarke* v. *Securities Industry Assn.*, 479 U. S. 388, 395–396 (1987).

Given the long lineage of the text in question, it is significant that counsel have cited to us no case, neither in this Court nor in the courts of appeals, neither under the APA nor under individual statutory-review provisions such as the present one, which holds that, without benefit of specific authorization to appeal, an agency, in its regulatory or policy-making capacity, is "adversely affected" or "aggrieved." Cf. *Director, Office of Workers' Compensation Programs* v. *Perini North River Associates*, 459 U. S. 297, 302–305 (1983) (noting the issue of whether the Director has standing under §921(c), but finding it unnecessary to reach the question).[2] There are cases

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[2]In addition to not reaching the §921(c) question, *Perini* also took as a given (because it had been conceded below) the answer to another question: whether the Director (rather than the Benefits Review Board) is the proper party respondent to an appeal from the Board's determination. See 459 U. S., at 304, n. 13. Obviously, an agency's entitlement to party respondent status does not necessarily imply that agency's standing to appeal: The National Labor Relations Board, for example, is always the party respondent to an employer or employee appeal, but cannot initiate an appeal from its own determination. 29 U. S. C. §§152(1), 160(f). Indeed, it can be argued, as an *amicus* in this case has done, that if the Director *is* the proper party respondent in the court of appeals (as her regulations assert, see 20 CFR §802.410

in which an agency has been held to be adversely affected or aggrieved in what might be called its nongovernmental capacity—that is, in its capacity as a member of the market group that the statute was meant to protect. For example, in *United States* v. *ICC,* 337 U. S. 426 (1949), we held that the United States had standing to sue the Interstate Commerce Commission in federal court to overturn a Commission order that denied the Government recovery of damages for an allegedly unlawful railroad rate. The Government, we said, "is not less entitled than any other shipper to invoke administrative and judicial protection." *Id.*, at 430.[3]

(1994)), in initiating an appeal she would end up on both sides of the case. See Brief for Nat. Assn. of Waterfront Employers et al. as *Amici Curiae* 17, n. 14. Our opinion today intimates no view on the party-respondent question.

[3]*United States* v. *ICC* accorded the United States standing despite the facts that (1) the Interstate Commerce Act contained no specific judicial review provision, and (2) the APA's general judicial review provision ("person adversely affected or aggrieved") excludes agencies from the definition of "person." See *infra,* at 7. It would thus appear that an agency suing in what might be termed a nongovernmental capacity escapes that definitional limitation. The LHWCA likewise contains a definition of "person" that does not specifically include agencies. 33 U. S. C. §902(1). We chose not to rely upon that provision in this opinion because it seemed more likely to sweep in the question of the Director's authority to appeal Board rulings that are adverse to the §944 special fund, which deserves separate attention. It is possible that the Director's status as manager of the privately financed fund removes her from the "person" limitation, just as it may remove her from the more general limitation that agencies *qua* agencies are not "adversely affected or aggrieved." We leave those issues to be resolved in a case

But the status of the Government as a statutory beneficiary or market participant must be sharply distinguished from the status of the Government as regulator or administrator.

The latter status would be at issue if—to use an example that continues the ICC analogy—the Environmental Protection Agency sued to overturn an ICC order establishing high tariffs for the transportation of recyclable materials. Cf. *United States* v. *Students Challenging Regulatory Agency Procedures (SCRAP),* 412 U. S. 669 (1973). Or if the Department of Transportation, to further a policy of encouraging so-called "telecommuting" in order to reduce traffic congestion, sued as a "party aggrieved" under 28 U. S. C. §2344, to reverse the Federal Communications Commission's approval of rate increases on second phone lines used for modems. We are aware of no case in which such a "policy interest" by an agency has sufficed to confer standing under an "adversely affected or aggrieved" statute or any other general review provision. To acknowledge the general adequacy of such an interest would put the federal courts into the regular business of deciding intrabranch and intraagency policy disputes —a role that would be most inappropriate.

That an agency in its governmental capacity is not "adversely affected or aggrieved" is strongly suggested, as well, by two aspects of the United States Code: First, the fact that the Code's general judicial review provision, contained in the APA, does not include agencies within the category of "person adversely affected or aggrieved." See 5 U. S. C. §551(2) (excepting agencies from the definition of "person"). Since, as we suggested in *United States* v. *ICC,* the APA provision reflects "the general legislative pattern of administrative and judicial relationships,"

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where the Director's relationship to the fund is immediately before us.

337 U. S., at 433–434, it indicates that even under specific "adversely affected or aggrieved" statutes (there were a number extant when the APA was adopted) agencies as such normally do not have standing. And second, the United States Code displays throughout that when an agency in its governmental capacity *is* meant to have standing, Congress says so. The LHWCA's silence regarding the Secretary's ability to take an appeal is significant when laid beside other provisions of law. See, *e.g.*, Black Lung Benefits Act (BLBA), 30 U. S. C. §932(k) ("The Secretary shall be a party in any proceeding relative to [a] claim for benefits"); Title VII of the Civil Rights Act of 1964, 42 U. S. C. §2000e–5(f)(1) (authorizing the Attorney General to initiate civil actions against private employers) and §2000e–4(g)(6) (authorizing the Equal Employment Opportunities Commission to "intervene in a civil action brought . . . by an aggrieved party . . ."); Employee Retirement Income Security Act of 1974 (ERISA), 29 U. S. C. §1132(a)(2) (granting Secretary power to initiate various civil actions under the Act). It is particularly illuminating to compare the LHWCA with the Occupational Safety and Health Act of 1970 (OSHA), 29 U. S. C. §651 *et seq*. Section 660(a) of OSHA is virtually identical to §921(c): it allows "[a]ny person adversely affected or aggrieved" by an order of the Occupational Safety and Health Review Commission (a body distinct from the Secretary, as the Benefits Review Board is) to petition for review in the courts of appeals. OSHA, however, further contains a §660(b), which expressly grants such petitioning authority to the Secretary—suggesting, of course, that the Secretary would *not* be considered "adversely affected or aggrieved" under §660(a), and should not be considered so under §921(c).

All of the foregoing indicates that the phrase "person adversely affected or aggrieved" does not refer to an agency acting in its governmental

capacity. Of course the text of a particular statute could make clear that the phrase is being used in a peculiar sense. But the Director points to no such text in the LHWCA, and relies solely upon the mere existence and impairment of her governmental interest. If that alone could ever suffice to contradict the normal meaning of the phrase (which is doubtful), it would have to be an interest of an extraordinary nature, extraordinarily impaired. As we proceed to discuss, that is not present here.

The LHWCA assigns four broad areas of responsibility to the Director: (1) supervising, administering, and making rules and regulations for calculation of benefits and processing of claims, 33 U. S. C. §§906, 908–910, 914, 919, 930, and 939 (2) supervising, administering, and making rules and regulations for provision of medical care to covered workers, §907; (3) assisting claimants with processing claims and receiving medical and vocational rehabilitation, §939(c); and (4) enforcing compensation orders and administering payments to and disbursements from the special fund established by the Act for the payment of certain benefits, §§921(d) and 944. The Director does not assert that the Board's decision hampers her performance of these express statutory responsibilities. She claims only two categories of interest that are affected, neither of which remotely suggests that she has authority to appeal Board determinations.

First, the Director claims that because the LHWCA "has many of the elements of social insurance, and as such is designed to promote the public interest," Brief for Petitioner 17, she has standing to "advance in federal court the public interest in ensuring adequate compensation payments to claimants," *id.*, at 18. It is doubtful, to begin with, that the goal of

the LHWCA is simply the support of disabled workers. In fact, we have said that, because "the LHWCA represents a compromise between the competing interests of disabled laborers and their employers," it "is not correct to interpret the Act as guaranteeing a completely adequate remedy for all covered disabilities." *Potomac Electric Power Co.* v. *Director, Office of Workers' Compensation Programs,* 449 U. S. 268, 282 (1980). The LHWCA is a scheme for fair and efficient resolution of a class of private disputes, managed and arbitered by the Government. It represents a "quid pro quo *between employer and employee*. Employers relinquish certain legal rights which the law affords to them and so, in turn, do the employees." 1 M. Norris, The Law of Maritime Personal Injuries §4.1, p. 106 (4th ed. 1990) (emphasis added).

But even assuming the single-minded, compensate-the-employee goal that the Director posits, there is nothing to suggest that the Director has been given authority to pursue that goal in the courts. Agencies do not automatically have standing to sue for actions that frustrate the purposes of their statutes. The Interior Department, being charged with the duty to "protect persons and property within areas of the National Park System," 16 U. S. C. §1a–6(a), does not thereby have authority to intervene in suits for assault brought by campers; or (more precisely) to bring a suit for assault when the camper declines to do so. What the Director must establish here is such a clear and distinctive responsibility for employee compensation as to overcome the universal assumption that "person adversely affected or aggrieved" leaves private interests (even those favored by public policy) to be litigated by private parties. That we are unable to find. The Director is not the designated champion of employees within this statutory scheme. To the contrary, one of her principal roles is to serve as the broker of informal settlements between

employers and employees. 33 U. S. C. §914(h). She is charged, moreover, with providing "information and assistance" regarding the program to *all* persons covered by the Act, including employers. §§902(1), 939(c). To be sure, she has discretion under §939(c) to provide "legal assistance in processing a claim" if it is requested (a provision that is perhaps of little consequence, since the Act provides attorneys' fees to successful claimants, see §928); but that authority, which is discretionary with her and contingent upon a request by the claimant, does not evidence the duty and power, when the claimant is satisfied with his award, to contest the award on her own.

The Director argues that her standing to pursue the public's interest in adequate compensation of claimants is supported by our decisions in *Heckman* v. *United States*, 224 U. S. 413 (1912), *Moe* v. *Confederated Salish and Kootenai Tribes of Flathead Reservation,* 425 U. S. 463 (1976), *Pasadena City Bd. of Ed.* v. *Spangler*, 427 U. S. 424 (1976), and *General Telephone Co. of Northwest* v. *EEOC,* 446 U. S. 318 (1980). Brief for Petitioner 18. None of those cases is apposite. *Heckman* and *Moe* pertain to the United States' standing to represent the interests of Indians; the former holds, see 224 U. S., at 437, and the latter indicates in dictum, see 425 U. S., at 474, n. 13, that the Government's status as guardian confers standing. The third case, *Spangler, supra,* at 427, based standing of the United States upon an explicit provision of Title IX of the Civil Rights Act authorizing suit, 42 U. S. C. §2000h–2, and the last, *General Telephone Co., supra,* at 325, based standing of the Equal Employment Opportunity Commission upon a specific provision of Title VII of the Civil Rights Act authorizing suit, 42 U. S. C. §2000e–5(f)(1). Those two cases certainly establish that Congress *could* have conferred standing upon the Director without infringing Article III of the Constitution; but they do not at all establish that Congress did so. In fact,

General Telephone Co. suggests just the opposite, since it describes how, prior to the 1972 amendment specifically giving the EEOC authority to sue, only the "aggrieved person" could bring suit, *even though* the EEOC *was* authorized to use "`informal methods of conference, conciliation, and persuasion'" to eliminate unlawful employment practices, 446 U. S., at 325—an authority similar to the Director's informal settlement authority here.

The second category of interest claimed to be affected by erroneous Board rulings is the Director's ability to fulfill "important administrative and enforcement responsibilities." Brief for Petitioner 18. The Director fails, however, to identify any specific statutory duties that an erroneous Board ruling interferes with, reciting instead conjectural harms to abstract and remote concerns. She contends, for example, that "incorrect claim determinations by the Board frustrate [her] duty to administer and enforce the statutory scheme in a uniform manner." *Id.,* at 18–19. But it is impossible to understand how a duty of uniform *administration* and *enforcement* by the Director (presumably arising out of the prohibition of arbitrary action reflected in 5 U. S. C. §706) hinges upon correct *adjudication* by someone else. The Director does not (and we think cannot) explain, for example, how an erroneous decision by the Board affects her ability to process the underlying claim, §919, provide information and assistance regarding coverage, compensation, and procedures, §939(c), enforce the final award, §921(d), or perform any other required task in a "uniform" manner.

If the correctness of adjudications were essential to the Director's performance of her assigned duties, Congress would presumably have done what it has done with many other agencies: made adjudication *her* responsibility. In fact, however, it has taken pains to *remove* adjudication from her realm. The LHWCA Amendments of 1972, 86 Stat. 1251, assigned

administration to the Director, 33 U. S. C. §939(a); assigned initial adjudication to ALJ's, §919(d); and created the Board to consider appeals from ALJ's, §921. The assertion that proper adjudication is essential to proper performance of the Director's functions is quite simply contrary to the whole structure of the Act. To make an implausible argument even worse, the Director must acknowledge that her lack of control over the adjudicative process does not even deprive her of the power to resolve legal ambiguities in the statute. She retains the rulemaking power, see §939(a), which means that if her problem with the present decision of the Board is that it has established an erroneous rule of law, see *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), she has full power to alter that rule. See *Estate of Cowart* v. *Nicklos Drilling Co.,* 505 U. S. ___ (1992) (slip op., at 7) ("The [Board] is not entitled to any special deference"). Her only possible complaint, then, is that she does not agree with the outcome of this particular case. The Director also claims that precluding her from seeking review of erroneous Board rulings "would reduce the incentive for employers to view the Director's informal resolution efforts as authoritative, because the employer could proceed to a higher level of review from which the Director could not appeal." Brief for Petitioner 19. This argument assumes that her informal resolution efforts are *supposed* to be "authoritative." We doubt that. The structure of the statute suggests that they are supposed to be facilitative—a service to both parties, rather than an imposition upon either of them. But even if the opposite were true, we doubt that the unlikely prospect that the Director will appeal *when the claimant does not* will have much of an impact upon whether the employer chooses to spurn the Director's settlement proposal and roll the dice before the Board. The statutory requirement of

adverse effect or aggrievement must be based upon "something more than an ingenious academic exercise in the conceivable." *United States* v. *SCRAP,* 412 U. S., at 688.

The Director seeks to derive support for her position from Congress' later enactment of the BLBA in 1978, but it seems to us that the BLBA militates precisely *against* her position. The BLBA expressly provides that "[t]he Secretary shall be a party in any proceeding relative to a claim for benefits under this part." 30 U. S. C. §932(k). The Director argues that since the Secretary is explicitly made a party under the BLBA, she must be meant to be a party under the LHWCA as well. That is not a form of reasoning we are familiar with. The normal conclusion one would derive from putting these statutes side by side is this: when, in a legislative scheme of this sort, Congress wants the Secretary to have standing, it says so.

Finally, the Director retreats to that last redoubt of losing causes, the proposition that the statute at hand should be liberally construed to achieve its purposes, see, *e.g.*, *Northeast Marine Terminal Co.* v. *Caputo*, 432 U. S. 249, 268 (1977). That principle may be invoked, in case of ambiguity, to find present rather than absent elements that are essential to operation of a legislative scheme; but it does not add features that will achieve the statutory "purposes" more effectively. Every statute purposes, not only to achieve certain ends, but also to achieve them by particular means—and there is often a considerable legislative battle over what those means ought to be. The withholding of agency authority is as significant as the granting of it, and we have no right to play favorites between the two. Construing the LHWCA as liberally as can be, we cannot find that the Director is "adversely affected or aggrieved" within the meaning of §921(c).

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For these reasons, the judgment of the United States Court of Appeals for the Fourth Circuit is affirmed.

So ordered.