Sixth Circuit Court of Appeals Rules That Retiree Health Benefits May Be Terminated Based on Ordinary Contract Principles

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Sixth Circuit Court of Appeals Rules That Retiree Health Benefits May Be Terminated Based On Ordinary Contract Principles

Written by Eric Gregory – 3/18/19

In its latest case addressing retiree health benefits, the Sixth Circuit Court of Appeals has held that a collective bargaining agreement's general durational clause controls when retiree healthcare benefits end. *Zino v. Whirlpool Corp*., 2019 BL 50961, 6th Cir. (2019). This is a new data point indicating that the Sixth Circuit has moved away from previous interpretations of retiree healthcare benefit contracts that the United States Supreme Court overruled in *M & G Polymers USA, LLC v. Tackett,* 135 S. Ct. 926 (2015). Nevertheless, the direction of retiree healthcare jurisprudence in the Sixth Circuit remains unclear and inconsistent.

Background: The "*Yard-Man*" Inferences and the *Tackett* Holding

Beginning with the so-called "*Yard-Man*" inferences (based on the 1983 Sixth Circuit opinion in *UAW v. Yard-Man, Inc*., 716 F.2d 1476), the Sixth Circuit maintained a consistent 32-year stretch of requiring inferences in favor of retirees. In that case, the Sixth Circuit applied a presumption of vesting retiree medical

benefits unless there was an explicit termination provision in a collective bargaining agreement.

In *Tackett*, the Supreme Court held that *Yard-Man* improperly "place[d] a thumb on the scale in favor of vested retiree benefits" and "distorts the intent to ascertain the intention of the parties" with respect to collective bargaining agreement. The reliance on the *Yard-Man* inferences was held to be "incompatible with ordinary principles of contract law."

The *Zino v. Whirlpool* District Court Holding

In the latest case, Whirlpool, through a series of acquisitions, had become responsible for providing retiree healthcare benefits. Whirlpool, in a cost-reduction move, announced significant reductions to those benefits, and retirees brought suit to challenge those reductions.

The retirees prevailed in their case in the Northern District of Ohio. There, the district court held that the parties that negotiated the collective bargaining agreement did not intend to give Whirlpool the authority to make these modifications, because the collective bargaining agreements expressly established deductibles, premiums and other terms and did not specify a way to alter the benefits. In distinguishing this case from *Tackett*, the judge ruled that retiree benefit disputes depend on specific language in the collective bargaining agreements that have to be read in context.

The Sixth Circuit's Reversal of the District Court

On appeal, the Sixth Circuit overruled the district court. The court reasoned that, to prevail, the plaintiffs needed to demonstrate that the union contract affirmatively provided vested lifetime healthcare benefits. The collective bargaining agreements provided that the company would pay insurance premiums "in accordance with the terms and conditions of the […] Plan," that coverage for retirees shall be for "pre-65 coverage only," and that retirees "shall have the opportunity to continue healthcare coverage." The court held that none of these statements provided affirmative language guaranteeing lifetime benefits.

The retirees have petitioned for a rehearing. They argue that this case creates a new "threshold requirement" that precludes courts from even considering outside evidence of the parties' intent unless the collective bargaining agreement provides clear language disconnecting healthcare benefits from the general durational clause. They contend that this goes beyond the Supreme Court's ruling in *Tackett*.

What Employers Need to Know

Despite this ruling and others, the Sixth Circuit's approach to retiree healthcare has been inconsistent over the past several years. In 2018, the Supreme Court again overruled the Sixth Circuit in *CNH v. Reese*, 138 S.Ct. 761, holding that it was "*Yard-Man* re-born, re-built, and re-purposed for new adventures." Employers hoping for clarity may find some in the case. Until the courts provide that clear guidance, however,

employers seeking to reduce or modify collectively bargained retiree healthcare would be wise to take stock not only of any affirmative statements of lifetime retiree healthcare benefits, but also outside evidence that might be used to demonstrate an intent to provide lifetime benefits.

About the Author

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