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Retiree Health Benefits Dispute Returns to Trial Court

Last year, the Supreme Court rejected the Sixth Circuit's so-called *Yard-Man* inference — the presumption that collectively bargained retiree health benefits vest for life unless the collective bargaining agreement expressly provides otherwise — and sent the case back to the Sixth Circuit to determine whether the retirees were entitled to lifetime benefits according to ordinary principles of contract law. The Sixth Circuit has now remanded the case to the trial court to make new factual determinations "outside the 'shadow of *Yard-Man.*'" While not deciding on the merits, the Sixth Circuit's opinion offers employers some insight into how courts may interpret contract provisions addressing retiree welfare benefits going forward.

Background

ERISA does not impose automatic vesting requirements for retiree health benefits, but collective bargaining agreements (CBAs) between an employer and a union may do so. When CBAs that provide for retiree health benefits are silent as to their duration, the extent to which an employer may eliminate or modify those benefits can become hotly contested.

In 1983, the Sixth Circuit Court of Appeals adopted the so-called "*Yard-Man* inference" favoring lifetime retiree health benefits. The court presumed that retiree benefits vest — and survive an expired CBA — unless the CBA expressly provides otherwise, but other circuit courts disagreed.

Last year, the Supreme Court resolved the issue. In *M&G Polymers USA, LLC v.Tackett*, it held that courts may not infer the parties to a CBA intended retiree benefits to vest for life when the contract is silent on their duration. Rejecting the *Yard-Man* inference, the Court held that whether retiree benefits are vested should be determined using ordinary contract law principles — including the rules that ambiguous writings should not be construed to create lifetime promises and contractual obligations ordinarily end when the CBA terminates. The Court sent the case back to the Sixth Circuit, with instructions to apply these "ordinary principles" of contract law in analyzing the duration of the contested benefits at issue. (See our January 27, 2015 *FYI Alert*.)

The Sixth Circuit Weighs In

In its January 21 opinion, the Sixth Circuit acknowledged that courts can no longer presume that retiree benefits vest in the absence of specific durational language in the CBA. But it also stressed that the lack of such language does not necessarily show "an intent *not* to vest benefits" nor does a general durational clause necessarily say "*everything* about the intent to vest." Concluding that *Yard-Man* may have influenced both the lower court's determination of which documents were part of several agreements outlining retiree health care benefits and which documents could be considered as extrinsic evidence of the parties' intent, the Sixth Circuit remanded the case to the trial court to make new factual findings.

While recognizing the need to apply ordinary principles of contract law, the Sixth Circuit said courts may consider extrinsic evidence in determining what the parties intended when the CBA is ambiguous. In determining whether retiree health benefits survive the expiration of a CBA, the relevant inquiry may include whether express or implied terms of the CBA limit the employer's ability to modify or eliminate those benefits after the CBA expires. The court also noted that CBAs do not incorporate subsequent changes in the law unless the contract "so indicates."

In applying ordinary contract principles, the Sixth Circuit expressly instructed the lower court to decide: (1) what documents comprise the parties' agreements; (2) whether reference to extrinsic evidence is appropriate; and (3) whether the retiree benefits vest under those agreements, and any extrinsic evidence that may be considered.

Meanwhile in the Sixth Circuit

On February 8, the Sixth Circuit **ruled** in *Gallo v. Moen Inc*. that retirees were not entitled to vested health care benefits for life. Applying the principles set out in the Supreme Court's *Tackett* decision, the Sixth Circuit reversed a lower court ruling that the CBAs and plant closing agreement required Moen to offer unalterable lifetime health care benefits to a class of retirees. Notably, the court found that when a specific provision of the CBA does not include an end date, the general durational clause of the CBA controls. Employers will welcome this finding that, when a contract does not specify that employees are entitled to lifetime health care benefits, the benefits expire when the contract ends.

In Closing

While not a determination on the merits, the Sixth Circuit's decision gives employers some idea about how it, and other courts within its jurisdiction, will approach retiree claims for lifetime health benefits going forward. Employers that offer collectively bargained retiree health benefits will want to familiarize themselves with this opinion.

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