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Supreme Court Paves Way for Employers To Reduce Union Retiree Health Benefits

From Pension & Benefits Daily

By Jacklyn Wille

Jan. 26 — Courts weighing whether union retirees have vested lifetime health-care benefits should apply ordinary contract principles, rather than special inferences or presumptions, the U.S. Supreme Court ruled.

The unanimous Jan. 26 opinion by Justice Clarence Thomas is largely a win for employers, which may now have more freedom to alter, reduce or eliminate the health-care benefits they provide to retired union workers. In the opinion, the court invalidated what has become known as the *Yard-Man* inference, a judicial inference applied by the retiree-friendly U.S. Court of Appeals for the Sixth Circuit to find that retiree health-care benefits are vested for life in the absence of specific language to the contrary in a plan document or collective bargaining agreement (*United Auto Workers v. Yard-Man Inc.*, 716 F.2d 1476, 4 EBC 2108 (6th Cir. 1983)).

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Other circuits—including the Second and Seventh—have required stronger language to infer vesting, with the Third Circuit applying nearly the opposite presumption to require a clear statement of vesting in order to find retiree benefits vested for life. The Supreme Court limited its analysis to the Sixth Circuit's approach and didn't weigh in on the approaches taken by other circuits.

The invalidation of *Yard-Man* won't come as a surprise to most court watchers, as neither party took great lengths to defend the inference when the court heard oral arguments in November.

Rather than determining whether the retirees in the instant dispute were entitled to lifetime health-care benefits, Thomas's majority opinion remanded the case to the Sixth Circuit for further consideration under ordinary principles of contract interpretation.

Justice Ruth Bader Ginsburg filed a short concurring opinion joined by three other justices. Ginsburg used the concurrence to point out several arguments the retirees could advance when the Sixth Circuit reconsiders the case using ordinary principles of contract interpretation.

Unsurprising Decision

Attorneys familiar with the case agreed that the court's short, unanimous opinion rejecting the inference in favor of union retirees didn't come as a big surprise.

“This came down exactly as expected,” Steven W. Suflas, managing partner of Ballard Spahr LLP's Cherry Hill, N.J., office, told Bloomberg BNA on Jan. 26. “When you looked at oral arguments, it was pretty clear that this was where it was going.”

According to Suflas, the opinion “makes very clear that union collective bargaining agreements are supposed to be interpreted according to ordinary contract principles. That's a broad proposition which could have wider connotations and bring some additional clarity.”

In particular, Suflas said he could envision this ruling being of particular importance to the National Labor Relations Board, which he said is “sometimes very quick to craft presumptions as to what collective bargaining agreements mean.”

Nancy G. Ross, a partner with Mayer Brown's Chicago office, also said that the court's ruling was unsurprising, noting that the short, unanimous nature of the decision indicated that the court didn't

have to agonize over the issues at play.

“It seemed to me that this was almost a no-brainer for the court,” Ross told Bloomberg BNA on Jan. 26. “The opinion probably wrote itself.”

Ross added that the court's decision to make it easier for employers to modify benefits for union retirees reflected the court's understanding of this country's “privatized system of welfare benefits,” in which workers rely on their employers to provide welfare benefits.

“It's further evidence that the Supreme Court understands that you don't bite the hand that feeds you,” said Ross, who represents employers and plan sponsors.

Court Leaves Open Window?

While the opinion appears to largely favor employers by discrediting many arguments union retirees have used to seek vested lifetime health benefits, at least one line in Thomas's ruling might give plaintiffs' attorneys something to work with going forward.

In particular, the court announced that it interprets collective-bargaining agreements under ordinary principles of contract law, “at least when those principles are not inconsistent with federal labor policy.”

Suflas said that this statement might be a reference to the level of discretion given to employers in the course of designing plans governed by the Employee Retirement Income Security Act, as compared with the level of discretion they have to administer those plans.

“Under ERISA, the well-established rule is that the plan sponsor is given a great deal of discretion and latitude in terms of deciding what goes into the plan. However, once the plan is written, then the federal courts strictly interpret the plan as written,” Suflas said.

Ross said that this statement by the court “suggests to me that there is nothing else in here that gives the plaintiffs' bar much help.”

Explicit Advice?

The bulk of the court's opinion is devoted to articulating the flaws with the *Yard-Man* inference as applied by the Sixth Circuit. Beyond its analysis of *Yard-Man*, the court provided little explicit guidance for lower courts to use when determining

whether a particular group of retirees are entitled to vested lifetime health benefits.

Ross, however, found a number of “explicit instructions” in the court's consideration of *Yard-Man*.

In particular, Ross said the court specifically identified—and rejected—a number of arguments that union retirees could make in the course of arguing for vested benefits. Ross said the opinion dismissed the idea that a clause specifically limiting the duration of retiree health benefits is necessary for a court to find that such benefits aren't vested.

The court also rejected the idea that contract language tying retiree health benefits to pension benefits is sufficient evidence that the health benefits are vested, Ross said.

Ross and Suflas weren't involved in the litigation.

Plaintiffs' Counsel Reacts

Joseph P. Stuligross, associate general counsel for the United Steelworkers and counsel for the retirees, cautioned that the court's ruling may not be the clear victory for employers that others find it to be.

“The employer sought a rule requiring a clear statement that benefits continue for the life of a retiree must be explicitly set forth in the terms of the contract in order to vest benefits,” Stuligross told Bloomberg BNA in a Jan. 26 e-mail. “But the Court said only that ordinary principles apply and the intent of the parties must be ascertained. We look forward to returning to the 6th Circuit with some of the overwhelming evidence of the parties' intent here (some of which was laid out in the concurrence).”

“We look forward to returning to court to show that the suggestion that the parties only intended benefits to last for a couple of years fails to comport with the parties' intent,” Stuligross said.

Pamina Ewing and Joel R. Hurt, both employee-side attorneys and partners with Feinstein Doyle Payne & Kravec LLC in Pittsburgh, agreed that the ruling wasn't a clear defeat for unions and retirees.

“As expected, the Supreme Court has rejected *Yard-Man*'s ‘thumb-on-the-scales' inference in favor of vesting,” Ewing and Hurt said Jan. 26 in a joint e-mail to Bloomberg BNA. “Rather, the Court has now unanimously ruled, ordinary principles of contract

law control, at least when those principles are not inconsistent with federal labor policy."

"It is now up to the Sixth Circuit to apply the ordinary principles of contract law in the *Tackett* case," they said. "While the final result in *Tackett* is obviously unknown at this point, we are confident that retirees will frequently prevail when contract law is applied."

Ewing and Hurt weren't involved in the litigation.

Court Rejects Inferences, Presumptions

The court used the bulk of its 14-page opinion to detail the flaws in the reasoning underpinning the *Yard-Man* inference.

In particular, the court took issue with the Sixth Circuit's conclusion that parties negotiating post-retirement benefits "likely intended those benefits to continue as long as the beneficiary remains a retiree."

According to the Supreme Court, the Sixth Circuit "derived its assessment of likely behavior not from record evidence, but instead from its own suppositions about the intentions of employees, unions, and employers negotiating retiree benefits."

Moreover, in cases following *Yard-Man*, the Sixth Circuit took these conclusions about likely behavior and "applied them indiscriminately across industries" without regard for any particular industry's history or context, the Supreme Court said.

Yard-Man was also based in part on the idea that post-retirement health benefits are a form of deferred compensation, given by an employer in exchange for an employee's past service.

This characterization by the Sixth Circuit is "contrary to Congress' determination otherwise," the Supreme Court said, explaining that ERISA draws clear lines between pension plans that offer deferred compensation and welfare plans that offer benefits such as medical insurance.

The Supreme Court also took issue with the Sixth Circuit's refusal to interpret "general durational clauses" limiting the term of a collective bargaining agreement as also limiting the time frame in which a retiree could receive health benefits under the agreement.

"These decisions distort the text of the agreement

and conflict with the principle of contract law that the written agreement is presumed to encompass the whole agreement of the parties," the Supreme Court said.

Illusory Promises

In addition to dismantling the reasoning behind the *Yard-Man* inference, the Supreme Court also criticized the Sixth Circuit's application of other principles of contract interpretation.

In particular, the Supreme Court looked to the illusory-promise doctrine, a principle of contract interpretation in which obligations that are fully within the control of the obligated party aren't considered legally binding.

According to the Supreme Court, the Sixth Circuit in *Yard-Man* construed some promises by the employer to be illusory because they benefited some retirees but not others.

"That interpretation is a contradiction in terms—a promise that is 'partly' illusory is by definition not illusory," the Supreme Court said.

Other Contract Principles

Finally, the Supreme Court said that by relying on the *Yard-Man* inference to govern union retiree health benefits, the Sixth Circuit failed to apply several other relevant principles of contract interpretation.

Specifically, the Sixth Circuit ignored the principle that "courts should not construe ambiguous writings to create lifetime promises," the Supreme Court said.

Further, traditional contract principles generally provide that contractual obligations will cease upon the termination of the agreement, a principle squarely at odds with the *Yard-Man* inference.

Ginsburg Guides Retirees

In her concurring opinion, Justice Ginsburg said that the majority opinion "rightly holds that courts must apply ordinary contract principles, shorn of presumptions, to determine whether retiree health-care benefits survive the expiration of a collective-bargaining agreement."

However, Ginsburg took care to emphasize that this holding didn't compel the conclusion that the retirees had lost their bid for benefits.

Rather, Ginsburg said that certain considerations

favoring the retirees should be relevant to the Sixth Circuit on remand, including language in the agreement providing that they "will receive" health benefits if they are receiving a monthly pension.

Further, if the Sixth Circuit finds the agreement to be ambiguous, it should look to extrinsic evidence, including the parties' bargaining history, in determining whether the disputed benefits are vested, Ginsburg said.

Justices Stephen G. Breyer, Sonia Sotomayor and Elena Kagan joined Ginsburg's concurring opinion.

Litigation History

The instant dispute arose from M&G Polymers USA LLC's 2006 announcement that it would begin requiring retirees to contribute to the cost of their health benefits. The retirees filed a lawsuit alleging that M&G's bargaining agreements with the United Steelworkers granted them free lifetime health benefits.

The U.S. District Court for the Southern District of Ohio dismissed the case in November 2007, but the Sixth Circuit revived it in April 2009 by ruling that the retirees might have vested benefits in light of bargaining agreement language stating that they would receive "full company contributions" toward their health benefits.

On remand, M&G pointed to an "unbroken chain" of side agreements providing that the company retained the ability to impose caps on its contributions toward retiree health benefits.

Following a bench trial, the district court found that certain M&G retirees had a vested right to contribution-free lifetime health benefits, while other retirees had a right to capped lifetime benefits, contingent upon their paying above-cap premiums.

In February 2012, the district court awarded a group of retirees a permanent injunction reinstating them in the existing version of M&G's health plan.

M&G appealed, and the Sixth Circuit affirmed the district court's decision to treat the cap letters as inapplicable, along with its ruling that the retirees had a vested right to lifetime health benefits. The Sixth Circuit found that the relevant CBA language "specifically promised a 'full Company contribution' toward health care benefits," making it reasonable for the district court to find the benefits vested.

The Supreme Court granted review of the case in

May 2014, limiting its review to the first question presented by M&G. That question asked whether courts construing collective bargaining agreements in Labor Management Relations Act cases should presume that silence concerning the duration of retiree health benefits means that the parties intended for those benefits to vest for life.

The case garnered nine amicus briefs on behalf of various industry groups, labor organizations and employers, with the majority of the briefs encouraging the court to reject the *Yard-Man* inference.

One brief —filed by the Bethesda, Md.-based law firm of Thomas C. Goldstein, co-founder of the Supreme Court tracking website SCOTUSblog— was unusual in that it announced "no agenda or desire to direct the outcome of the case." Rather, the brief provided data on the terms of collective bargaining agreements across the country, so that the court could have a "thorough understanding of how the legal rule it adopts will affect the interpretation of other CBAs."

None of the amicus briefs were specifically mentioned or cited by Justice Thomas's opinion for the court or in Justice Ginsburg's concurring opinion.

The retirees were represented by David M. Cook and Jennie G. Arnold of Cook & Logothetis LLC, Cincinnati; Joseph P. Stuligross of United Steelworkers of America, Pittsburgh; and J. Penny Clark, Jeremiah A. Collins, Joshua B. Shiffrin and Laurence Gold of Bredhoff & Kaiser PLLC, Washington.

M&G was represented by Allyson N. Ho, John C. Sullivan, Christopher A. Weals, R. Randall Tracht and Andrew Scroggins of Morgan, Lewis & Bockius LLP, Dallas, Washington and Pittsburgh.

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