High Court Orders Sixth Circuit to Clean Up Its Retiree Health Benefits Case Law 'Mess'

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Collective bargaining agreements, including those that establish ERISA plans, should be interpreted according to ordinary principles of contract law, the U.S. Supreme Court has reaffirmed in a per curiam opinion. *CNH Industrial N.V. v. Reese*, No. 17-15 (Feb. 20, 2018).

The Court reversed the decision of the U.S. Court of Appeals for the Sixth Circuit in which the lower court, employing its own "*Yard-Man* inference," inferred vesting of retiree health benefits in the collective bargaining context. This is the second time since 2015 that the Court has rejected the use of *Yard-Man* inferences.

The Court stressed that a contract is not ambiguous unless it is subject to more than one reasonable interpretation, and the inferences made by the Sixth Circuit under its own precedent cannot generate a reasonable interpretation because they are not "ordinary principles of contract law."

Six days after Reese, and continuing its attack on the Sixth Circuit's retiree health benefits case law, the Court granted *certiorari* to another Sixth Circuit case, *Kelsey-Hayes Co. v. International Union,* No. 17-908 (Feb. 26, 2018), immediately vacated the lower court's judgment, and remanded the case for further consideration in light of *Reese.*

Supreme Court 2015 *Tackett* Decision

In *M&G Polymers USA, LLC v. Tackett,* 135 S.Ct. 926 (2015), the Supreme Court held that collective bargaining agreements must be interpreted according to "ordinary principles of contract law."

Tackett overturned Sixth Circuit case law that applied a series of Yard-Man inferences, named after the Sixth Circuit's decision in *International Union, United Auto, Aerospace and Agricultural Workers of America v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983). Based on such inferences, courts had presumed that collective bargaining agreements vested retiree welfare benefits for life, and that employers were thereafter unable to modify or eliminate them. These inferences included a presumption that a general durational clause in a collective bargaining agreement "says nothing about the vesting of retiree benefits" in that agreement, and a presumption of lifetime vesting "whenever a contract is silent as to the duration of retiree benefits."

In *Tackett,* the Supreme Court rejected these inferences as "inconsistent with ordinary principles of contract law." For example, the Court took issue with the refusal to apply general durational clauses to provisions governing retiree benefits, finding it "distorted the text and conflicted with the principle of contract law that the written agreement is presumed to encompass the whole agreement of the parties." Similarly, the Court found the inference of vesting absent durational specification of retiree benefits violated the "traditional principle" that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."

A Mess

Two years after the Supreme Court's decision in *Tackett,* a judge on the Sixth Circuit said "[o]ur post-*Tackett* case law is a mess." *International Union, United Auto, Aerospace and Agricultural Workers of America v. Kelsey-Hayes Co.,* 872 F.3d 388, 390 (6th Cir. 2017) (Griffin, J., dissenting from denial of rehearing *en banc).*

Like *Tackett, Reese* involved a dispute between retirees and their former employer over whether an expired collective bargaining agreement created a vested right to lifetime retiree health benefits. The agreement was silent as to the duration of retiree benefits, but it contained a general durational clause stating that it would terminate in May 2004.

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The retirees sued in district court, seeking a declaration that their benefits vested for life and an injunction prohibiting the company from changing them. Notwithstanding the Supreme Court's *Tackett* (which was decided while the case was pending), the district court granted summary judgment to the retirees.

The Sixth Circuit affirmed, applying the *Yard-Man* inferences once used to presume lifetime vesting to create ambiguity as a matter of law, and therefore permitted the court to consult extrinsic evidence about the parties' intent regarding vesting. *CNH Industrial N.V. v. Reese,* 854 F.3d 877 (6th Cir. 2017). The Sixth Circuit found the general durational clause inconclusive because it carved out certain unrelated benefits and was tied to pension plan eligibility. This "ambiguity," the Sixth Circuit held, allowed the court to consider extrinsic evidence (which is permitted to interpret an ambiguous contract). The Sixth Circuit found that such evidence supported lifetime vesting.

On appeal, the Supreme Court noted that this amounted to "*Yard-Man* re-born, re-built and re-purposed for new adventures" (quoting Judge Sutton's dissent in *CNH Industrial N.V. v. Reese,* 854 F.3d at 891). Not surprisingly, the Supreme Court found that "the decision below does not comply with *Tackett*'s direction to apply ordinary contract principles." The Court reversed the Sixth Circuit's judgment and remanding the case.

The Court noted that a contract is not ambiguous unless, "after applying established rules of interpretation, it remains reasonably susceptible to at least two reasonable but conflicted meanings." The contract at issue, therefore, would be ambiguous only if it could reasonably be so read as vesting retiree benefits. The Court, however, found the Sixth Circuit's perceived ambiguity did not stem from any contractual provision or industry practice; the ambiguity stemmed wholly from the application of several of the *Yard-Man* inferences (such as the failure to apply the general durational clause and an inference of vesting absent a specified termination date). Finding that *Tackett* clearly rejected those inferences because they are not "established rules of interpretation," the Court concluded the *Yard-Man* inferences "cannot be used to create a reasonable interpretation any more that they can be used to create a presumptive one."

If you have any questions about this or other benefits developments, please contact a Jackson Lewis attorney.

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