

U.S. Supreme Court: Ordinary Contract Principles Apply to Whether Retiree Health Benefits Survive Expired Bargaining Agreement

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The U.S. Supreme Court has established a new standard requiring that collective bargaining agreements, including those that establish ERISA plans, be interpreted by using ordinary principles of contract law. *M&G Polymers USA, LLC, et al. v. Tackett, et al.*, No. 13-1010 (U.S. Jan. 26, 2015).

The decision dealt a crushing blow to an inference of vesting of retiree health benefits in the collective bargaining context that has been upheld by the U.S. Court of Appeals for the Sixth Circuit, in Cincinnati, for more than 30 years, beginning with *International Union, United Auto, Aerospace & Agricultural Implement Workers of Am. v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983). That court's "Yard-Man Inference" found an intent to vest for life certain collectively bargained retiree health care benefits absent language to the contrary in the bargaining agreement.

Yard-Man and Progeny

Yard-Man involved a 1974 collective bargaining agreement that stated that the employer "will provide" retiree health benefits for an unspecified duration. The company sought to eliminate these benefits after expiration of the agreement's term and the retirees filed suit to compel the company to continue the retiree benefits. While acknowledging the agreement was ambiguous as to the duration of the benefits, the Sixth Circuit ruled the employer had breached its contractual obligations by canceling the retiree health insurance. The Sixth Circuit said that "retiree benefits are in a sense 'status' benefits. As such, they carry an inference that they will continue so long as the prerequisite status is maintained." Therefore, the Sixth Circuit explained, "when the parties contract for benefits which accrue upon achievement of retiree status, there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree."

In the years that followed, the Sixth Circuit adhered to the *Yard-Man* Inference while the First (Boston), Fourth (Richmond) and the Eleventh (Atlanta) Circuits accepted it in varying degrees.

Other circuits, however, flatly rejected *Yard-Man*, holding that upon the expiration of a collective bargaining agreement that is silent on the vesting of retiree benefits, there should be a presumption against the vesting of retiree health benefits for life. *See, e.g., Nichols v. Alcatel USA, Inc.*, 532 F.3d 364 (5th Cir. 2008); *Int'l Union v. Skinner Engine Co.*, 188 F.3d 130 (3d Cir. 1999); *American Fed'n of Grain Millers v. International Multifoods Corp.*, 116 F.3d 976 (2d Cir. 1997); *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993).

Supreme Court

The agreement in *M&G Polymers* provided that certain retirees "will receive a full Company contribution toward the cost of [health care] benefits." When the company reduced the contribution, the retirees sued. The Sixth Circuit found that the lower court was correct in presuming that "in the absence of extrinsic evidence to the contrary, the agreements indicated an intent to vest lifetime contribution-free benefits."

After stating "collective bargaining agreements, including those establishing ERISA plans" must be interpreted "according to ordinary principles of contract law," a unanimous Supreme Court rejected the Sixth Circuit's "assessment that the inferences applied in *Yard-Man* and its progeny represent ordinary principles of contract law." The Court found the Sixth Circuit decision violated ordinary principles of

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contract law “by placing a thumb on the scale in favor of vested retiree benefits in all collective bargaining agreements,” which distorted the attempt to ascertain the intent of the parties.

The Court also criticized *Yard-Man’s* assessment of likely behavior in collective bargaining as being too speculative and far removed from the context of any particular contract to be useful in discerning the parties’ intent. It found that the Sixth Circuit’s decision in *M&G*, and *Yard-Man* itself, were not based upon record evidence, but rather upon the Sixth Circuit’s “own suppositions about intentions of employees, unions and employers negotiating retiree benefits.” Further, the Sixth Circuit had not found any affirmative industry-specific evidentiary support of known customs and usage regarding the vesting of retiree benefits, and (in an action that the Supreme Court described as “worse”) had “taken the inferences in *Yard-Man* and applied them indiscriminately across industries.”

The Supreme Court further rejected *Yard-Man’s*:

- (1) reliance on the premise that retiree benefits are a form of deferred compensation (a premise the Court found wrong as a matter of law);
- (2) reliance on the illusory promises doctrine (the Court noting that a “partly illusory” promise, because it benefits some class of retirees, but not all retirees, was by definition not illusory);
- (3) failure to apply general duration clauses to retiree benefits by requiring a specific durational clause for retiree health care benefits to prevent vesting; and
- (4) ignoring the traditional principles “that contractual obligations will cease in the ordinary course, upon termination of the bargaining agreement” (*Litton Financial Printing v. NLRB*, 501 U.S. 90, 207 (1991)), and that “courts should not construe ambiguous writings to create lifetime promises.”

Since the Sixth Circuit “framed its analysis from beginning to end in light of the principles it announced in *Yard-Man* and its progeny,” the case was remanded for review under ordinary contract principles.

Takeaways

Highlights of the decision include:

- Collective bargaining agreements, including those establishing ERISA plans, should be interpreted according to ordinary principles of contract law (at least when those principles are not inconsistent with federal labor policy).
- While ERISA prescribes elaborate minimum funding and vesting rules for pension plans, welfare plans, including retiree medical plans, are expressly exempted from those rules.
- Although welfare plans must be established and maintained pursuant to a written instrument under ERISA, employers or other plan sponsors generally are free under ERISA to specify that they may adopt, modify, or terminate welfare plans for any reason at any time.
- The rule that contracts should be enforced as written is especially appropriate in enforcing an ERISA welfare plan.

Strategic Considerations

Although *M&G Polymers* provides Sixth Circuit employers (in Kentucky, Michigan, Ohio, and Tennessee) with an enhanced ability to defend class actions seeking to invalidate an employer’s reduction or elimination of retiree benefits, employers should recognize that the issue of vested retiree benefits in a collective bargaining context still exists.

M&G Polymers holds that courts must apply ordinary contract principles to determine whether retiree health benefits survive the expiration of a collective bargaining agreement. As the concurring opinion in *M&G Polymers* noted, however, no rule requires clear and express language to show that parties intended retiree benefits to vest; such intent also may arise from the implied terms of an expired agreement.

Consequently, employers and counsel must be cautious and precise in negotiating and drafting provisions relating to retiree benefits. In the best case, express language that retiree benefits do not survive term expiration should be included. If express language outlining the intent of the parties is not possible for some reason, the intent of the parties should be made clear during the negotiations resulting in the agreement. This can be accomplished through contract proposals or oral statements made during negotiation sessions, and, consistent with best practices, by detailed, contemporaneous notes of the negotiations. Employers must take care to avoid any language that could be susceptible of an interpretation (under ordinary principles of contract law) that the parties intended to provide for vested retiree benefits.

Finally, many employers in the Sixth Circuit already have fought (and lost) the battle over retiree



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benefits. Therefore, some employers may remain subject to permanent injunctions mandating that they pay lifetime, unalterable retiree benefits. *M&G Polymers* may provide these employers with a basis to reopen and ultimately invalidate any such injunctions. See *Federal Rule of Civil Procedure 60(b)(5)*; *Agostini v. Felton*, 521 U.S. 203 (1997).

Employers should consult with appropriate counsel to determine whether and how their particular situations are affected by this decision. Please contact a Jackson Lewis attorney if you have any questions.

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