Bloomberg BNA

Pension & Benefits Daily ™

The Supreme Court Rejects the *Yard-Man* Presumption




By Chris Meyer, Mark Blocker, Eric Mattson and Anne Rea

On January 26, 2015, the Supreme Court vacated longstanding Sixth Circuit precedent that had created a presumption of vesting of collectively bargained retiree welfare benefits, such as health or life insurance benefits.[1] In doing so, the Court reiterated the primacy of a contract's written terms in evaluating whether a plan sponsor intended to confer irrevocable (or "vested") welfare benefits to retirees. This article discusses the opinion's potential impact on the legal landscape of retiree welfare benefits, and offers some practical tips for plan sponsors and employee benefit practitioners.

Case Background

Plaintiffs were retirees covered under a collective bargaining agreement and a pension and insurance side agreement. The side agreement provided that retirees who met certain eligibility requirements would receive a full company contribution towards the cost of health care benefits. It further provided for renegotiation of its terms after three years, and included a general duration clause stating that the employer would provide health care benefits "[e]ffective January 1, 1998, and for the duration of this Agreement thereafter."

Several years later, after the side agreement had expired, M&G announced that it would begin requiring retirees to contribute to the cost of their health care benefits. The retirees sued, alleging that M&G had promised them free lifetime health care benefits.

The district court ruled in favor of the retirees, and the Sixth Circuit affirmed, based largely on *International Union, United Auto, Aerospace, and Agricultural Implement Workers v. Yard-Man, Inc*, 716 F.2d 1476, 4 EBC 2108 (6th Cir. 1983) and its progeny. In *Yard-Man*, the Sixth Circuit had effectively created a presumption of vesting in the context of collectively bargained retiree welfare benefits. Under this line of cases, agreements are construed in light of the "context" of labor negotiations, which in the Sixth Circuit's view meant that retiree welfare benefits, being "status" benefits to which those who attain the pertinent status as retirees are entitled, carry an inference that they continue, rather than being "left to the contingencies of future negotiations." For example, in *Yard-Man* and other rulings, the Sixth Circuit:

- found the language "will continue to provide [benefits] for Pensioners aged 65 and over" to confer lifetime benefits,
- found an intent to vest where an agreement's durational provisions do not specifically refer to retiree benefits, and
- concluded that retiree benefits normally "are interminable."

[1] *See M&G Polymers USA, LLC v. Tackett*, 574 U.S. ___, 59 EBC 1425 (2015)(17 PBD, 1/27/15; 42 BPR 181, 2/3/15).

Chris Meyer (cmeyer@sidley.com), Mark Blocker (mblocker@sidley.com), Eric Mattson (emattson@sidley.com) and Anne Rea (area@sidley.com) are partners in the ERISA litigation practice at Sidley Austin LLP in Chicago.

 ISSN

The Sixth Circuit continued to follow this approach in *M&G Polymers*.

Supreme Court Strikes Down Presumption in Favor of Vesting

The Supreme Court unanimously rejected the *Yard-Man* presumption underlying the Sixth Circuit's decision in *M&G Polymers*, vacating and remanding the case for reconsideration without that presumption. The Court reaffirmed the familiar principle that retiree welfare benefits, unlike pension benefits, are not vested under ERISA.

Although a plan sponsor may choose to confer a vested welfare benefit by including such a promise in the applicable plan document or collective bargaining agreement, the Court held that collective bargaining agreements must be interpreted according to ordinary principles of contract law. The Sixth Circuit's approach ''violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements,'' a presumption that ''has no basis in ordinary principles of contract law.''

Guidance on Contract Interpretation

The Court ordered the Sixth Circuit to review the agreement at issue under ''ordinary principles of contract law,'' and provided guidance on those principles:

Specific vs. General Durational Clauses. The Court rejected the Sixth Circuit's requirement that any durational clause specifically refer to retiree welfare benefits in order to prevent vesting. The Court held that this approach conflicts with the contract law principle that ''the written agreement is presumed to encompass the whole agreement of the parties.'' This principle should help sponsors of plans with general durational clauses that do not expressly refer to retiree welfare benefits.

Obligations Ordinarily Cease Upon Expiration of the Agreement. The Court held that the Sixth Circuit ignored the principle that contractual obligations ordinarily cease upon termination of an agreement. While this does not prevent parties from negotiating for benefits that continue after an agreement expires, the Court held that ''when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life.''

Ambiguous Contracts Should Not Be Construed to Create Lifetime Promises. The Court also explained that the Sixth Circuit failed to consider the traditional principle that courts should not construe ambiguous writings to create lifetime promises, and that ''traditional rules of contractual interpretation require a clear manifestation of intent before conferring a benefit or obligation.'' This aspect of the Court's opinion should be helpful to plan sponsors where a plan document does not clearly state an intent to provide irrevocable benefits but lacks an express durational or reservation of rights clause.

Industry Custom. The Court held that although a court may look to known customs or usages in a particular industry to determine the meaning of a contract, the court may not rely on its own unsupported suppositions. Instead, the parties must prove those customs or usages with actual evidence.

Tips for Practitioners

The Supreme Court's decision is not the end of the story for M&G Polymers or the retirees. Rather than decide whether plaintiffs' benefits vested, the Court remanded the case to the Sixth Circuit to make that determination without the ''thumb on the scale'' of the *Yard-Man* presumption. But by rejecting the use of a presumption in favor of vested retiree welfare benefits, *M&G Polymers* promotes an employer's flexibility to modify those benefits in light of changing business conditions, and will make it more difficult for retirees to demonstrate a right to irrevocable benefits.

Although *M&G Polymers* involved a collective bargaining agreement, much of the Court's guidance may apply in other contexts as well. For example, the Court reiterated its opinion in *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 57 EBC 1265 (2013)(241 PBD, 12/17/13; 40 BPR 2885, 12/17/13), a non-collective bargaining case, that the rule that contracts be enforced as written ''is especially appropriate'' in the welfare benefit context.

The Court also noted that *Yard-Man* stood in ''stark contrast'' to the Sixth Circuit's ERISA jurisprudence outside the collectively bargained context, under which the Sixth Circuit has held that ''the intent to vest [welfare benefits] must be found in the plan documents and must be stated in clear and express language.'' *Sprague v. General Motors Corp.*, 133 F.3d 388, 400, 21 EBC 2267 (6th Cir. 1998). A central theme of *M&G Polymers* is that whether welfare benefits vest should not turn on whether the benefits arose out of collective bargaining. Thus, *M&G Polymers* will likely be cited in future lawsuits involving non-union welfare benefits.

Below are some steps plan sponsors and employee benefit litigators can take in light of the Supreme Court's decision:

- Plan sponsors considering modifications to retiree welfare benefit plans should review all applicable plan documents before reducing or eliminating benefits. While *M&G Polymers*, as a general matter, gives sponsors more flexibility to modify retiree benefits prospectively, the opinion underscores the importance of the written plan terms, which may vary from case to case.

- Even plan sponsors with no current intention to modify welfare benefits should check their plan documents to assess their flexibility to do so should circumstances change.

- Companies considering mergers or acquisitions should review the target corporation's welfare plan documents as part of their due diligence.

- Companies currently involved in litigation over modifications to welfare benefits, even in the non-union context, should evaluate whether *M&G Polymers* appreciably impacts the law in their jurisdiction. While the opinion dramatically changes the legal landscape in the Sixth Circuit, *M&G Polymers* is in many respects consistent with the law already developed in other circuits.

- Plan sponsors and employee benefit litigators should keep close watch on the case as it returns to the Sixth Circuit on remand.

  ISSN