

Supreme Court Dispenses With the Yard-Man Inferences

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In a decision watched closely by both employers and unions, a unanimous Supreme Court has resolved a thirty-plus year split among the circuit courts on the standards governing claims for retiree health-care benefits arising from collective bargaining agreements.

M&G Polymers USA, LLC v. Tackett, No. 13-1010, 2015 WL 303218 (U.S. Jan. 26, 2015). In *Tackett*, the Supreme Court rejected the longstanding Sixth Circuit inferences, known as the *Yard-Man* inferences, that parties to a collective bargaining agreement intend to vest retirees with lifetime health benefits in the absence of a specific contractual provision or extrinsic evidence to the contrary. In an opinion authored by Justice Clarence Thomas, the Supreme Court held that the inferences were inconsistent with ordinary contract principles, which should govern the interpretation of a collective bargaining agreement.

The Impact of *Yard-Man* and its Progeny

The *Yard-Man* inference developed over thirty years ago from the Sixth Circuit's 1983 ruling in *International Union, United Auto, Aerospace, & Agricultural Implement Workers of Am. v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), which was one of the earliest decisions to consider collectively-bargained retiree medical benefits. The facts of *Yard-Man* are common: The company told the union that it was shutting down a factory and would end the payment of retiree medical benefits on the last day of the collective bargaining agreement. The union sued, claiming that the retiree medical benefits were lifetime benefits that could not be terminated. The company responded that retiree benefits did not outlive the termination of the union contract. The key provisions of the contract stated that "[w]hen the former employee has obtained the age of 65 years then . . . [t]he [c]ompany will provide insurance benefits equal to the active group benefits . . . for the former employee and his spouse."

The Sixth Circuit found this language ambiguous as to whether it established a durational limitation on the availability of the benefits. To resolve this ambiguity, the court looked to other provisions of the agreement, including provisions for terminating both active employees' insurance benefits and a retiree's spouse and dependent benefits in certain circumstances. Because there was no corresponding termination provision specifically addressing retiree benefits, the court inferred an intent to vest lifetime retiree benefits. The *Yard-Man* court also reasoned that, if construed to terminate with the expiration of the agreement, the promise of retiree benefits would be "completely illusory for many early retirees" who would not reach retirement age before the contract expired. Lastly, the court relied on the "context" of labor negotiations to resolve the contract's ambiguity in favor of the union. The Sixth Circuit opined that "parties to collective bargaining would intend retiree benefits to vest for life because such benefits are 'not mandatory' or required to be included in collective bargaining agreements," and are "typically understood as a form of delayed compensation or reward for past services and are keyed to the acquisition of retirement status." The *Yard-Man* court accordingly characterized these benefits as "status" benefits, which carry with them an inference that they will continue so long as the prerequisite "status" is maintained. The *Yard-Man* court concluded that these contextual clues "outweigh[ed] any contrary implications derived from a routine duration clause."

In *Tackett*, the Supreme Court noted that the Sixth Circuit subsequently extended its reasoning in *Yard-Man* even further by holding that "absent specific durational language referring to retiree benefits themselves, a general durational clause says *nothing* about the vesting of retiree benefits," and a provision that "ties eligibility for retirement-health benefits to eligibility for a pension . . . [leaves] little room for debate that retirees' health benefits vest upon retirement." The Supreme Court also noted that despite the Sixth Circuit's "repeated[] caution[s] that *Yard-Man* does not create a presumption of vesting, [it] ha[s] gone on to apply just such a presumption."

The Sixth Circuit's *Yard-Man* inferences conflict with the overwhelming majority of decisions in other circuits that hold that there is no right to lifetime benefits unless the language of the collective bargaining agreement manifests a clear intent that they be nonforfeitable. As a result, for employers operating in multiple jurisdictions, disputes over the employers' right to alter the benefits of union retirees have often been less about the relative merits of the legal positions of the parties than about which circuit's precedents would control.

The *Tackett* Litigation

The plaintiffs in *Tackett* are retirees who had worked for Point Pleasant Polyester Plant in West Virginia. M&G Polymers USA, LLC purchased the plant in 2000, at which point M&G entered into a collective bargaining agreement and a Pension, Insurance, and Service Award Agreement (P & I Agreement) with the union. In relevant part, the P & I Agreement provided that M&G would pay all of the health costs for retirees who met certain criteria. The P & I Agreement provided for renegotiation of its terms in three years. There was no specific provision regarding the duration of the provisions governing retiree benefits.

In December 2006, M&G announced that it would begin requiring retirees to contribute to the cost of their health-care benefits. The retirees sued, arguing that the agreements created a "vested right" to lifetime health benefits for themselves and their families at no cost, which extended beyond the expiration of the agreement, and that the new requirement thus violated both the Labor Management Relations Act (LMRA) and the Employee Retirement Income Security Act (ERISA). The district court dismissed the case for failure to state a claim. Applying the *Yard-Man* inferences, the Sixth Circuit reversed, concluding that the retirees had stated a claim, and finding it "unlikely" that the union would agree to language that provides for a full company contribution if the company could unilaterally change the level of contribution. On remand, the district court conducted a bench trial and ruled in favor of the retirees. The district court declined to revisit the question of whether the P & I Agreement created a vested right to retiree benefits, finding that the Court of Appeals had definitively resolved that issue. The district court issued a permanent injunction requiring M&G to reinstate contribution-free health benefits. The Sixth Circuit affirmed, holding that although the district court erred in finding that the Court of Appeals' reversal conclusively resolved the meaning of the P & I Agreement, it had not erred in "presum[ing]" that "in the absence of extrinsic evidence to the contrary, the agreements indicated an intent to vest lifetime contribution-free benefits."

The Supreme Court Rejects the *Yard-Man* Inferences

The Supreme Court granted certiorari for the purpose of addressing, among other things, whether, when construing collective bargaining agreements in LMRA cases, courts should presume that silence concerning the duration of retiree health-care benefits means the parties intended those benefits to vest (and therefore continue indefinitely). In a unanimous opinion, the Supreme Court rejected the Sixth Circuit's use of the *Yard-Man* inferences, finding that they are "inconsistent with ordinary principles of contract law," insofar as they "plac[e] a thumb on the scale in favor of vested retiree benefits in all collective bargaining agreements."

The Court found that the Sixth Circuit's reasoning for applying the inferences was flawed in multiple respects. Among other things, it found that the Sixth Circuit had failed to apply two "traditional principles" that should govern the construction of ambiguous contracts: first, "courts should not construe ambiguous writings to create lifetime promises"; and second, "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement." To that end, the Supreme 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."

Furthermore, while the Supreme Court conceded that courts "may look to known customs or usages in a particular industry to determine the meaning of a contract," as *Yard-Man* purported to do in construing the durational provisions of the collective bargaining agreement, it held that "the parties must prove those customs or usages using affirmative evidentiary support in a given case," and noted that the Sixth Circuit did not ground its *Yard-Man* inferences in any record evidence. The Supreme Court further rejected two of the premises on which the *Yard-Man* inferences were based, namely, the Court of Appeals' incorrect assertion that retiree health-care benefits are a form of deferred compensation and its supposition – incorrect in this case – that retiree health-care benefits are not subjects of mandatory collective bargaining.

The Supreme Court also took issue with the Sixth Circuit's refusal to apply a general durational clause to provisions governing retiree benefits, stating that this approach "distort[s] the text of the agreement and conflict[s] with the principle of contract law that the written agreement is presumed to encompass the whole agreement of the parties." Additionally, the Supreme Court noted that the Sixth Circuit misapplied the illusory promises doctrine, which instructs courts to avoid constructions of contracts that would render promises illusory, insofar as it construed provisions that benefited some class of retirees as "illusory" merely because they did not benefit all retirees. As the Court explained, "a promise that is 'partly' illusory is by definition not illusory."

Because application of the *Yard-Man* inferences affected the outcome in the rulings below, the Supreme Court vacated and remanded the case to the Sixth Circuit to review the agreements at issue under ordinary principles of contract law.

Justice Ginsburg filed a concurring opinion, joined by Justices Breyer, Sotomayor, and Kagan. In her concurrence, Justice Ginsburg agreed with Justice Thomas's emphasis on the rules of contract interpretation, but stated that these rules required consideration of all extrinsic evidence that could have a bearing on the construction of an ambiguous contract. She also identified contractual provisions that, she felt, could lead to a construction of the agreement so as to vest the retirees in their benefits.

View from Proskauer

Employers with unionized workforces in the Sixth Circuit can breathe a little easier knowing that when a court looks to extrinsic evidence to interpret ambiguous contracts, it will be without a thumb on the scale in either direction. The Supreme Court's opinion rejects the three rationales most commonly employed in support of claims for lifetime retiree health benefits – that the benefits are deferred compensation, that to prevent vesting the agreement must explicitly curtail the duration of the benefits, and that the duration of the health benefit is tied to the lifetime payment of pension benefits. This does not mean that employers will always prevail, but it should lessen the concerns by employers about litigating retiree benefit claims in the Sixth Circuit, as well as the inconsistency multi-jurisdictional employers faced by having different outcomes in different circuits.

Given the skyrocketing costs of healthcare, it is certain that, even post-*Tackett*, contractual vesting claims will continue to pose a substantial risk to employers seeking to cut back on retiree benefits. The risk is heightened by the fact that the Court did not provide clear guidance as to the role of extrinsic evidence in adjudicating these cases, particularly given that four justices – but not a majority – opined that such evidence must always be considered. Therefore, as we have previously espoused, employers should do their best when negotiating collective bargaining agreements to draft contractual language that will clearly protect their rights to reduce or eliminate retiree welfare benefits.

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