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Retiree Benefits

Whirlpool Retirees' Benefits Revised Under *Tackett*

By Carmen Castro-Pagan

Nov. 2 — Members of a subclass of former Whirlpool Corp. workers who retired between 1983 and 1992 aren't entitled to lifetime health-care benefits, the U.S. District Court for the Northern District of Ohio ruled (*Zino v. Whirlpool Corp.,* 2015 BL 358768N.D. Ohio, No. 5:11CV01676, 10/30/15).

In the Oct. 30 opinion, Judge Benita Y. Pearson, relying on U.S. Supreme Court precedent, abandoned use of the *Yard-Man* presumption and concluded that pursuant to the language of a collective bargaining agreement, this subclass of retirees' benefits weren't vested and could be changed or eliminated by Whirlpool.

The ruling is significant because it applies the recent Supreme Court decision in *M&G Polymers USA, LLC v. Tackett*, and it expressly rejects the argument that any intent to vest retiree health benefits must be stated in "clear and express" language in the CBA.

BNA Snapshot

Zino v. Whirlpool Corp., 2015 BL 358768N.D. Ohio, No. 5:11CV01676, 10/30/15

Holding: Relying on U.S. Supreme Court precedent, court revises previous ruling and concludes that Whirlpool retirees aren't entitled to lifetime health-care benefits.

Takeaway: A collective bargaining agreement doesn't have to contain clear and express language for a determination that health-care benefits vested for life.

Pre-*Tackett* Litigation

A group of Whirlpool retirees who retired between 1980 and 2007 brought suit against the company after it announced a reduction of their health benefits.

In an August 2013 opinion, the court granted summary judgment to Whirlpool on a claim regarding workers who retired between 1983 and 1992. The court held that the CBAs between 1983 and 1992 didn't promise lifetime company-paid health benefits. On the remaining three claims, the court denied summary judgment and proceeded to trial (169 PBD, 8/30/13).

After concluding the bench trial, the court ruled that almost all retirees were entitled to lifetime health-care benefits pursuant to the language used in the CBAs. At the retirees' request, the court also revised its previous decision denying lifetime health benefits to those who retired between 1983 and 1992. Since the CBA language was ambiguous, the court relied on extrinsic evidence—the testimony of union representatives and the author of the plan—and found that these retirees were entitled to lifetime health benefits too (184 PBD, 9/23/14).

In response to the *Tackett* decision, Whirlpool requested reconsideration.

Current Interpretation

In *Tackett*, the Supreme Court struck down the Sixth Circuit's *Yard-Man* presumption adopted in *United Auto Workers v. Yard-Man, Inc.,* 716 F.2d 1476, 4 EBC 2108 (6th Cir. 1983), and ordered lower courts to use ordinary principles of contract law and first look to the language of CBAs to determine the intention of the parties. The court explained that contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement and courts shouldn't construe ambiguous writings to create lifetime promises.

In reconsideration and in light of *Tackett*, the district court in its most recent decision held intact its ruling that the retirees outside the 1983-1992 time frame were entitled to lifetime benefits. But the district court reversed its earlier ruling as to those plaintiffs that retired between 1983 and 1992.

The court rejected Whirlpool's argument that *Tackett* required a CBA to contain clear and express language for a determination that health benefits vested for life.

As to its ruling on the plaintiffs who retired between 1983 and 1992, the court also explained that there wasn't any ambiguity in the applicable CBAs that would permit the use of extrinsic evidence. Therefore, the court reversed its previous ruling and held that according to the language in the CBAs, these retirees weren't entitled to lifetime health benefits.

The retirees were represented by Feinstein Doyle Payne & Kravec LLC; Brian L Zimmerman; and Allen Schulman Jr. Whirlpool was represented by Baker & Mackenzie LLP in Chicago; Baker & Mackenzie LLP in Houston; and Black, McCuskey, Souers & Arbaugh Law Firm.

To contact the reporter on this story: Carmen Castro-Pagan in Washington at ccastro-pagan@bna.com

To contact the editor responsible for this story: Jo-el J. Meyer at jmeyer@bna.com

For More Information

Text of the opinion is at
http://www.bloomberglaw.com/public/document/Zino_v_Whirlpool_Corp_No_511CV01676_2015_BL_358768_ND_Ohio_Oct_30.

ISSN 1523-5718