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Retiree says FirstEnergy violated labor contracts

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By KYLA ASBURY

YOUNGSTOWN, Ohio (Legal Newsline) – A retiree is suing FirstEnergy in an attempt to halt the company from ending its retiree health benefits at the end of the year.

Elbert White was employed by FirstEnergy Generation LLC from 1977 until Feb. 1, 2005, and was a member of the International Brotherhood of Electrical Workers Local 272.

FirstEnergy Corp. Welfare Plan and the FirstEnergy Corp. Retirement Health Benefits Trust for Represented Employees were also named as defendants in the suit.

White claims he and the approximately 140 other retired workers of the Bruce Mansfield coal plant beginning in 2009 were notified that FirstEnergy would be ending subsidies of health care for retirees as of Dec. 31, according to a complaint filed Sept. 29 in the U.S. District Court for the Northern District of Ohio.

In 2006, FirstEnergy was cited for failure to maintain a plan to address the presence of arsenic in fly ash in violation of regulations promulgated by the Occupational Safety and Health Administration of the U. S. Department of Labor, according to the suit.



Payne

"In 2012, FirstEnergy was cited for failure to provide for its workers protective equipment where necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants capable of causing injury or impairment in any part of the body through absorption, inhalation or physical contact," the complaint states. "Over the last 10 years, OSHA has noted high levels of sulfur dioxide emitted from the Bruce Mansfield plant."

White claims other hazardous chemicals found in heavy concentrations at the Bruce Mansfield plant include ammonia, sulfur bisulfate, arsenic, lead and mercury.

"These exposures date back many years, including the time period before 2005, when plaintiff and members of the class worked at the facility," the complaint states. "In October 2011, FirstEnergy notified its employees for the first time about asbestos containing materials throughout the plant that had been in place throughout the time that plaintiff and members of the class had worked in the plant."

Without knowledge of the location of asbestos containing materials in the plant, employees — including plaintiff and members of the class — did not take precautions to protect themselves from exposure to asbestos, placing plaintiff and class members at risk of serious diseases, including asbestosis, lung cancer and mesothelioma, according to the suit.

White claims the exposures and resulting health problems were but one reason that IBEW Local 272 and members of the class considered retiree health benefits to be so important.

White claims on July 14, FirstEnergy announced that effective Jan. 1, it would discontinue company-subsidized healthcare for all retirees or their surviving spouses and would no longer make contributions toward health insurance premiums or health reimbursement accounts after Dec. 21.

Since the rights of retirees and eligible spouses, surviving spouses and dependents to retiree health benefits were created through agreements between a labor organization and an employer, violation of those agreements is actionable in this court under Section 301 of the Labor Management Relations Act, according to the suit.

The defendants also violated the Employee Welfare Benefit Plan and breached their fiduciary duty under the Employee Retirement Income Security Act of 1974.

White is seeking class certification, for an order enjoining the defendants from modifying or terminating the benefits and monetary damages with pre- and post-judgment interest. He is represented by William T. Payne, Tybe A. Brett and Joel R. Hurt of Feinstein Doyle Payne & Kravec LLC; and Marianne Oliver of Gilardi, Oliver & Lomupo.

The case is assigned to District Judge Benita Y. Pearson.

U.S. District Court for the Northern District of Ohio case number: 4:14-cv-02158

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