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Retiree Benefits

Whirlpool Retiree Health Benefits Vested, District Court Rules After Bench Trial

By Matthew Loughran

Sept. 22 — Nearly all of the approximately 2,187 retirees from Whirlpool Corp. are entitled to lifetime health-care benefits as a result of language in their collective bargaining agreements, the U.S. District Court for the Northern District of Ohio ruled (*Zino v. Whirlpool Corp.,* 2014 BL 261281, N.D. Ohio, No. 5:11-cv-01676-BYP, 9/19/14).

In a Sept. 19 opinion, Judge Benita Y. Pearson determined after a trial that three of the four subclasses had proven that they were entitled to lifetime health benefits. The fourth subclass included individuals covered by a collective bargaining agreement negotiated in 2003 and only entitled two of its six subgroups to the same lifetime health benefits as the rest of the class members.

In its opinion, the court reversed its earlier ruling granting summary judgment to the company with regard to the retirees who were covered by a 1983 CBA. The court found that the retirees had presented sufficient evidence at trial to show that they too were entitled to lifetime health benefits under the terms of the CBA.

BNA Snapshot

Zino v. Whirlpool Corp., 2014 BL 261281, N.D. Ohio, No. 5:11-cv-01676-BYP, 9/19/14

Key Holding: All but one class of retirees in class action have vested lifetime health care benefits under collective bargaining agreements.

Key Takeaway: Court finds that evidence provided during bench trial shows intent for retiree health benefits to vest for most retirees of spun off Hoover Co. plants

Hoover Retiree Health Benefits

The benefits in question are claimed by retirees from former Hoover Co.'s plants in Canton, Ohio, who retired between 1980 and 2007.

According to the court, Hoover was purchased by Maytag in 1989 and continued as a division of that company until 2006, when Maytag merged with Whirlpool.

On Jan. 31, 2007, Whirlpool sold all of the Hoover manufacturing plants to Techtronic Industries Co., but Whirlpool remained liable for retiree health benefits for all employees who retired before that date.

In May 2011, Whirlpool sent a notice to retirees announcing a plan to significantly reduce their health benefits and reserving the right to terminate any or all health care benefits unilaterally.

After the retirees filed suit challenging the reduction, the court in December 2011granted a motion for class certification, splitting the subclasses up based on their dates of retirement.

In an August 2013 order, the court denied summary judgment to the company on almost all claims, finding sufficient ambiguity in the language of the CBAs to allow the claims of all but one subclass to continue to a bench trial (169 PBD, 8/30/13; 40 BPR 2104, 9/3/13; 56 EBC 2329).

The sole subclass to have summary judgment granted against it was the group of retirees who retired between 1983 and 1992, with the court finding no dispute that the CBAs governing this time period provided that company-sponsored health insurance would terminate upon retirement.

Vested Lifetime Benefits

In its previous summary judgment ruling and in the instant opinion, the court addressed the effect in Sixth Circuit vesting jurisprudence of the inference stated in *United Auto Workers v. Yard-Man, Inc.*, 716 F.2d 1476, 4 EBC 2108 (6th Cir. 1983), in which the appellate court identified retiree benefits as "status benefits" which can be inferred to have vested for the life of the retiree if the context and other available evidence indicates such an intention.

The Sixth Circuit has continually applied this inference since it was announced, with some decisions allowing reasonable modifications to otherwise vested lifetime benefits.

Recently, the *Yard-Man* inference has received attention from the U.S. Supreme Court, with that court granting certiorari to an appeal from a case invoking the inference in the Sixth Circuit which is scheduled for oral argument before the high court on Nov. 10 (*M&G Polymers USA v. Tackett*, 134 S. Ct. 2136, U.S., 13-1010, *cert. granted* 5/5/14) (87 PBD, 5/6/14; 41 BPR

1027, 5/13/14).

The district court in this case acknowledged that the high court's grant of certiorari in the *Tackett* case could result in the *Yard-Man* inference being invalidated, but said in a footnote that both parties in the instant case urged the court not to stay its decision pending the result of that appeal.

CBAs Evinced Intent to Vest

According to the court, the evidence presented during the bench trial showed that the parties intended that the retiree health benefits under almost all of the CBAs were vested for life.

To rule in favor of the retirees in the subclass who retired between 1992 and 2003, the court relied heavily on the language in the CBAs that tied eligibility for health benefits to a retiree's pension eligibility. The court also found that the testimony of Timothy Schiltz, the company's director of human resources from 1992 until 2000 and one of the authors of the employee welfare plan in effect from 1992 until 2003.

According to the court, Schiltz testified that both the company and the union intended that the negotiated retiree health benefits in the CBAs during that time period would vest for life.

Finding that the retirees from 1980 through 1983 were also entitled to vested lifetime benefits, the court again relied on the testimony of, among others, Schiltz, who was the pensions and benefits administrator for Hoover in 1980 and claimed that he had been kept abreast of the CBA negotiations at that time.

According to the court, Schiltz testified that the retiree health benefits provided in 1980 were meant to be a contractual lifetime obligation on the company.

The retirees from 1983 through 1992 were subject to the court's earlier summary judgment motion, which ruled that the welfare benefit plans and CBAs in effect at those times specifically established that health benefits would terminate at retirement.

However, the court granted reconsideration of that ruling with this opinion, finding that the retirees had provided sufficient evidence that the same provisions that vested health benefits for the 1980 to 1983 retirees carried over into the 1983 CBA and every successive agreement until the 1992 agreement.

According to the court, Schiltz's testimony was again key to understanding that both the company and the union intended that a contract settlement entered into between the company and the union in 1980 continued to provide lifetime vested retiree health benefits.

Post-2003 Retirees Different

Finding that the CBA that the company entered into in 2003 was done when the company was under financial stress and trying to control its costs, the only subclass that the court didn't find entitled entirely to lifetime vested retiree health benefits were those individuals who retired after 2003.

The court split the class into six subgroups based on their ages and years of pension credit, based off of an exhibit attached to the welfare plan that was put into place at that time.

According to the court, under the terms of the plan, the first two subgroups were entitled lifetime retiree health benefits the same as if they had retired prior to 2003.

Of the remaining groups, only members of the third and fourth subgroups were entitled to any company-paid health benefits and those would only be available until those individuals reached the age of 65.

In each instance where the court found that retiree health benefits were vested for life, it also said that use of the *Yard-Man* inference wasn't essential to finding the vesting intent and instead that it only further bolstered the court's reasoning.

The classes were represented by Stephen M. Pincus, Ellen M. Doyle, Pamina G. Ewing and William T. Payne of Feinstein Doyle Payne & Kravec in Pittsburgh and Brian L. Zimmerman and Allen Schulman Jr. of Schulman & Zimmerman in Canton, Ohio.

Whirlpool was represented by Andray K. Napolez, Alexis S. Hawley, Douglas A. Darch, J. Richard Hammett, Meagan C. LeGear, Michael A. Pollard and Miriam B. Geraghty of Baker & McKenzie in Chicago and Houston, and Gust Callas and James M. Wherley Jr. of Black, McCuskey, Souers & Arbaugh in Canton, Ohio.

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Text of the opinion is at
http://www.bloomberglaw.com/public/document/Zino_Jr_et_al_v_Whirlpool_Corporation_et_al_2014_BL_261281_ND_Ohi.

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