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# Management Alert

## The Long-Awaited Death of *Yard-Man*

*By Ronald J. Kramer and Christopher Busey*

The Supreme Court today put an end to the so-called *Yard-Man* inference that has plagued many employers with collective bargaining agreements that provide retiree health benefits to employees. Under the *Yard-Man* inference, a court would infer that negotiated retiree benefits were intended to continue for the retirees' lives.

In *M&G Polymers USA, LLC. v. Tackett*, the Supreme Court rejected this inference and over three decades of Sixth Circuit precedent. In the matter before the Court, retirees and their former union brought suit against M&G Polymers for requiring retirees to begin contributing for their health benefits. Retirees claimed that an expired collective bargaining agreement entered into between M&G and their former union vested them with contribution-free retiree benefits for the lives of retirees, their spouses and their dependents. They pointed to a clause stating that certain retirees "will receive a full Company contribution toward the cost of [health care] benefits." Retirees claimed that the modification of this vested benefit violated Section 301 of the Labor Management Relations Act of 1947 ("LMRA") and Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA").

After the District Court dismissed the complaint for failure to state a claim, the Sixth Circuit Court of Appeals reversed. The appellate court relied on *International Union, United Auto, Aerospace, & Agricultural Implement Workers of America v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983) in remanding the case. The District Court held a bench trial and interpreted the Sixth Circuit's opinion in the original appeal as conclusively determining that the retirees' health benefits had vested under the terms of the contract. On the second appeal, the Sixth Circuit stated that the District Court erred in finding their original opinion conclusive, but stated that the lower court was correct in "presum[ing]" that "in the absence of extrinsic evidence to the contrary, the agreements indicated an intent to vest lifetime contribution-free benefits."

Justice Thomas delivered the opinion of the Court and dismantled the *Yard-Man* presumption. In *Yard-Man*, the Sixth Circuit professed to apply traditional rules for contract interpretation in finding that retiree medical benefits—under very similar circumstances as in *Tackett*—had vested. In *Yard-Man*, the Sixth Circuit first found that the bargaining agreement was ambiguous as to duration because the contract provided that the employer "will provide" benefits. It then found an intent for retiree medical benefits to vest because the contract contained termination provisions for terminating active employee benefits and a retiree's spouse and dependent's benefits under certain circumstances, but no termination provisions for the retiree health benefits at issue. From this the Sixth Circuit inferred an intent to vest retiree benefits. The Sixth Circuit also employed the "illusory promise" doctrine and stated that a reading of the contract terminating retiree benefits with the expiration of the contract would prove illusory for a subset of employees. The Sixth Circuit then turned to "the context of labor negotiations," reasoning that, since benefits of employees who already retired are a permissive subject of collective bargaining, "it is unlikely that such benefits . . . would be left to the contingencies of future negotiations." Last but not least, the Sixth Circuit rejected the applicability of the general contractual durational clause, concluding that the contextual clues outweighed any contrary implications derived from a routine durational clause.

The Supreme Court found that the *Yard-Man* inference violates ordinary contract principles "by placing a thumb on the scale in favor of vested retiree benefits in all collective bargaining agreements." Instead, as in traditional contract interpretation,

ascertaining the intention of the parties should be paramount. The Court noted that the Sixth Circuit's post-*Yard-Man* opinions have only expanded on this faulty reasoning, noting that the appellate court's requirement that a contract contain a specific durational clause for retiree health care benefits to prevent vesting "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."

In rejecting *Yard-Man*, the Court claimed the Sixth Circuit's assessment of the likely behavior of the bargaining parties was not based on any record evidence, but instead from the court's suppositions about the intentions of the parties. The Court found that "too speculative and too far removed from the context of any particular contract to be useful in discerning the parties' intention." While a court may use custom and usages in an industry to determine the meaning of a contract, those customs and usages must be proven, and are limited to the industry in which they are proven.

The Court also noted the Sixth Circuit's misapplication of the "illusory promise" doctrine, which it used to invalidate provisions that may not ever affect certain employees. While a promise that is "partly" illusory may not benefit all employees covered by a bargaining agreement, those that it does benefit still provides consideration and makes the contract enforceable.

Lastly, the Court found that the Sixth Circuit failed to consider the traditional principle that courts should not construe ambiguous writings to create lifetime promises, and that contract obligations will cease in the ordinary course, upon termination of the bargaining agreement. The Court found that when a contract is silent as to the duration of retiree benefits, "a court may not infer that the parties intended for those benefits to vest for life." The Court remanded the case to the Sixth Circuit to decide under ordinary contract principles.

In a concurrence written by Justice Ginsberg and joined by Justices Breyer, Sotomayor, and Kagan, Justice Ginsberg rejected M&G Polymers' assertion in its brief that "clear and express" language was necessary to vest retiree health benefits. Justice Ginsberg noted that post contract obligations may not only be derived from express contract terms, but implied terms as well. Justice Ginsberg urged the Sixth Circuit on remand to examine the entire agreement to determine whether benefits vested. In particular, she urged the Sixth Circuit to consider two clauses that she believed relevant as to the parties' intent to vest retiree medical benefits. She pointed to the clause that purportedly ties health care to lifetime pension benefits and to the structure of the survivor clause, which provides benefits to spouses beyond the death of the retiree.

The death of *Yard-Man* is welcome news for employers who have collective bargaining agreements with retiree medical benefit provisions. But the decision leaves open many questions as to whether and when contracts will be found to be ambiguous as to the duration of retiree benefits. Nor did the Court address tests applied by other Circuit Courts of Appeal. For example, the Seventh Circuit has a presumption that retiree health benefits expire along with the labor agreement granting those benefits unless the contract unambiguously vests retiree benefits or the contract is genuinely ambiguous. *Bidlack v. Wheelabrator*, 993 F.2d 603, 606-07 (7th Cir. 1993) (en banc). There may be a lot more litigation over whether contracts are ambiguous and, if so, when retiree benefits vest under ordinary principles of contract law before the full impact of *Tackett* is known.

Regardless, the Sixth Circuit has long been the least employer friendly when it comes to determining whether retiree medical benefits have vested. With the end of *Yard-Man*, employers with operations in the Sixth Circuit—and those who have no operations within the Circuit yet made decisions based on the possibility of a retiree nonetheless bringing suit there—should revisit their collective bargaining agreements and analyze them anew in light of this decision.

*Ronald J. Kramer* is a partner in Seyfarth's Chicago office and *Christopher Busey* is an associate in the firm's Chicago office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Ronald J. Kramer at *rkramer@seyfarth.com*, or Christopher Busey at *cbusey@seyfarth.com*.

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