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Can We Have That in Writing? Clear Reservation-of-Rights Saves Company from ERISA Class Action Over Change in Retiree Benefits

Can an employer modify or terminate the medical benefits of retired employees? The answer depends on the language in the employer's medical benefit plan. A recent federal court ruling highlights the importance of medical benefit plans unambiguously reserving the right to modify or terminate plan benefits. Without this language, an employer makes itself vulnerable to "he said/she said" disputes in which retirees claim that their former managers promised the retirees that their medical benefits would remain unchanged through retirement.

Changing Retiree Benefits in Non-Union Setting

Generally, an employer may unilaterally modify or terminate retiree medical benefits at any time absent the employer's contractual agreement to the contrary. Therefore, if no contractual provision exists that vests the retirees with continued and unchanged medical benefits, an employer may modify or terminate the benefits at will. Several courts have concluded that an unambiguous reservation-of-rights provision that is not otherwise contracted in the medical benefit plan is sufficient to defeat a claim that retiree medical benefits are vested.

This rule is illustrated in a recent class action brought by 5,000 retirees against Deere & Company ("Deere"). A class of retirees sued their former employer because of changes Deere made to their medical benefits. The retirees alleged that Deere made repeated promises of lifetime medical benefits while they were salaried employees, which they contend Deere breached when it changed their medical benefits from those that they enjoyed as active employees. The retirees' claims were brought primarily under the Employee Retirement Income Security Act of 1974 ("ERISA"), and sought restoration of medical benefits.

Deere denied that its managers made the alleged promises of lifetime medical benefits, and emphasized that the controlling plan documents unambiguously reserved the right to change benefits as it deemed appropriate. For example, one of the relevant Deere plans provides:

Deere & Company reserves the right to suspend or terminate the Plan; to modify the Plan to provide different cost sharing between the Company and participants; or to amend the Plan in any respect. Changes may occur at any time.

After a two-week bench trial, an Iowa federal district judge ruled against the retirees because the reservation-of-rights in the plan documents unambiguously informed retirees that their medical benefits were subject to change. In light of the clear disclaimer in Deere's plan documents, the court concluded that the retirees' reliance on supervisors' alleged promises of continued medical benefits "were not justified or reasonable."

Changing Retiree Benefits in Union Setting

Under longstanding Supreme Court precedent (Pittsburgh Plate and Glass), employers are not required to bargain with unions over changes to retiree health benefits because the changes are considered a non-mandatory or permissive subject of bargaining. In a union setting, benefit-related lawsuits against employers are generally brought in federal court under Section 301 of the Labor Management Relations Act for breach of contract.

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Retirees and their former unions allege that employers breached collective bargaining agreements by terminating vested medical benefits.

The outcomes of these lawsuits depend largely on the circuit in which they are brought. Nearly every jurisdiction has developed its own test to determine whether the employer and union mutually intended to provide benefits that lasted beyond the life of the agreement. All circuits recognize that ERISA does not specifically mandate that welfare benefits vest upon creation; parties, though, may contract around this. Indeed, in analyzing these cases, courts are guided by traditional principles of contract law. If language in the collective bargaining agreement unambiguously describes the duration of the retirees' benefits, the language will be enforced. If the language is ambiguous, however, circuit courts disagree on the proper test to apply to interpret the language. Although all circuits will permit extrinsic evidence to clarify the parties' intentions regarding vesting, such as evidence of employee expectations, they differ with respect to burdens, presumptions, and thresholds that apply.

According to published decisions, the Sixth Circuit (which includes Kentucky, Michigan, Ohio, and Tennessee) is the most receptive towards union/retiree claims that medical benefits have vested. By contrast, the Seventh Circuit (which covers Illinois, Indiana, and Wisconsin) has proven to be the most employer-friendly circuit in denying these types of claims. In Texas, the Fifth Circuit requires that employees identify clear and express statements promising vested benefits. Further, in the Fifth Circuit, language found in a benefits plan document (for instance, in a reservation-of-rights clause) does not vitiate contractually vested or bargained-for rights.

Practical Effects for Employers

The Deere Case emphasizes the necessity of including a clear reservation-of-rights in plan documents, and educating your supervisors and managers on this plan language. Similarly, in a union setting, employers should insist on language in the collective bargaining agreement explicitly permitting employers the right to modify or terminate retiree medical benefits.

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