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A U.S. Supreme Court ruling in January will have a significant impact on collectively bargained retiree health care benefits. If it is the bargaining parties' intent that these benefits are to be vested for life, the written agreement should say so explicitly.

Understanding M & G Polymers v. Tackett

by | Neal S. Schelberg, Lisa A. Schlesinger and Yoni L. Grossman-Boder

On January 26, 2015, the U.S. Supreme Court unanimously ruled that courts must apply ordinary contract principles to determine whether retiree health care benefits vest for life and survive the expiration of a collective bargaining agreement (CBA). The *M & G Polymers USA, LLC v. Tackett* opinion, authored by Justice Thomas, rejected the longstanding Sixth Circuit's "*Yard-Man* inference" that retiree health care benefits vest for life in the absence of specific contract language to the contrary.[1] The Court concluded that this inference was inconsistent with ordinary contract principles and made explicitly clear that such rules alone should be used to decide the parties' intent regarding the duration of retiree health benefits.

This decision paves the way for significant changes in the way employers and plan sponsors with unionized workforces should negotiate future CBAs and analyze provisions of prior agreements.

Prior to the Supreme Court's ruling in *Tackett,* the prevailing appellate court decisions created a patchwork of standards, inferences and presumptions that denied uniformity of law where employers operated in multiple jurisdictions. For example, as opposed to the Sixth Circuit's retiree-friendly inference, the Third Circuit previously required a clear statement that retiree health care benefits are intended to vest for life, and the Second and Seventh Circuits held that there must be at least some CBA language indicating that the parties intended the benefits to continue indefinitely.[2]

Now that the Supreme Court's ruling resolved this circuit court split, courts across the country will apply the same legal principles and will no longer infer a lifetime health care benefit for retirees when a plan is silent on the duration of the benefit. Significantly, silence in an agreement will no longer be viewed as an intention to create vested lifetime retiree benefits.

The Historical and Procedural Background of Tackett

Tackett is the latest in a long line of influential retiree

health benefit decisions from the Sixth Circuit, starting with the 1983 *UAW v. Yard-Man* decision.[3] In that case, the Sixth Circuit remarked that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference that they continue so long as the prerequisite status is maintained" and held that when a CBA is silent or ambiguous on the retiree benefits' duration, "there is an inference that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree."[4] The *Yard-Man* decision also concluded that the inference in favor of vesting outweighed any contrary implications from a general termination provision in the CBA. This reasoning formed the foundation of the so-called *Yard-Man* inference, which has developed and expanded over the past 30 years. The Supreme Court itself acknowledged that the *Yard-Man* inference has grown to encompass more and more presumptions when applied by the Sixth Circuit and noted that, "while th[e] [Sixth Circuit] has repeatedly cautioned that *Yard-Man* does not create a presumption of vesting, [it] ha[s] gone on to apply just such a presumption."[5]

Yet, as the Sixth Circuit slowly expanded and more deeply entrenched the *Yard-Man* inference over the past three decades, the politics and costs surrounding health care benefits changed as well. When *Yard-Man* was decided in the 1980s, the primary concern of unions and retirees appeared to be the potential for a plan to eliminate a retirement health care benefit *fully*, rather than a plan sponsor *gradually* diminishing the company contribution to the plan. Understandably, early cases regarding retiree health care benefit funding primarily were brought by retirees attempting to prevent plan sponsors from terminating their health care benefit, an action not present in *Tackett*. Today, with spiraling health care costs and uncertainty regarding future costs under the Affordable Care Act, a growing number of plan sponsors are interested in reducing their contributions to retiree health care benefits to ensure the continued financial stability of their plans. The Supreme Court's *Tackett* decision represents an important decision in which courts will now attempt to divine the intent of the collective bargaining parties by considering the *presence* of language in the CBA vesting retiree health benefits, not the *absence* of such language.

Tackett was filed by retirees from the Point Pleasant Polyester Plant in Apple Grove, West Virginia when their employer, M & G Polymers, indicated that it would decrease retiree health care benefit contributions. The CBA stated, in relevant part, that employees who qualify for full retirement benefits "will receive a full Company contribution towards the cost of [such] benefits."[6] In 2006, after the CBA containing this language expired, M & G Polymers advised retirees that they would be required to contribute toward the cost of their health care benefits. The retirees filed suit in 2007, alleging that the CBA provided a vested right to lifetime no-employee-contribution retiree health benefits. The district court initially dismissed the case, but the Sixth Circuit relied on the *Yard-Man* inference and reversed the district court's decision.

Following the Sixth Circuit's request on remand in 2011, the district court concluded that the retiree health benefits had vested for life and issued a permanent injunction reinstating the retirees' lifetime health benefits.[7] With the *Yard-Man* inference as a backdrop, the district court found that the "full Company contribution" language indicated an intent to permanently vest retiree health benefits, and concluded that the "[a]pplication of these directions to this case has led this Court to the conclusion that Plaintiffs obtained vested medical benefits."[8] The plan sponsor was held liable for the lifetime retiree health benefits at the contribution level that vested at the time the retiree retired. M & G Polymers then appealed to the Sixth Circuit.

The Sixth Circuit affirmed the district court's holding that the retirees' health benefits vested for life.[9] Further, the court discussed and explained the *Yard-Man* inference, which the court made a point of calling a "presumption." It stated that "the district court's presumption that, in the absence of extrinsic evidence to the contrary, the agreements indicated an intent to vest lifetime contribution-free benefits was in accordance with both *Tackett I* and the CBA language promising a 'full contribution' to 'qualifying employees.' "[10] Noting its approval, the Sixth Circuit affirmed the district court's decision and left the *Yard-Man* inference undisturbed.

The Supreme Court's Decision Overturns the Yard-Man Inference

The Supreme Court granted certiorari in order to address the proper inference when reviewing CBAs that are silent as to the duration of retiree health care benefits. Court observers and commentators initially believed that the Supreme Court would take one of three routes when confronting such an agreement: (1) presume that the parties intended the benefits to vest, as in *Yard-Man*; (2) presume that the benefits do not vest past the expiration of the agreement, as the Third Circuit has held; or (3) require at least some language showing an intent that the retiree health benefits are vested, as the Second and Seventh Circuits have held.

In a unanimous decision, the Supreme Court rejected the Sixth Circuit's *Yard-Man* inference and avoided endorsing presumptions when construing retiree health benefit duration. The Supreme Court held that the *Yard-Man* infer-

ence "violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements," and ordered that the case be remanded "to apply ordinary principles of contract law in the first instance."[11]

The Supreme Court's opinion noted the errors with the Sixth Circuit's prior line of retiree health benefit cases and voiced strong disagreement with the reasoning underlying the *Yard-Man* inference. The Supreme Court noted that the Sixth Circuit had asserted that *Yard-Man* and *Tackett* merely applied ordinary principles of contract law, yet the Court refuted this claim, stating that the *Yard-Man* inference impermissibly distorts any attempts to understand the intention of the parties to the CBA.

The Court recognized five key flaws in the *Tackett* decision and the *Yard-Man* inference. First, the Court noted that, while courts "may look to known customs or usages in a particular industry" in order to understand a contract, the "parties must prove those customs or usages using affirmative evidentiary support in a given case."[12] Instead, the *Yard-Man* court did not rely on record evidence presented at trial that employers and unions usually intend to vest health care benefits for life. It compounded the problem by then applying its vesting inference across other industries as well.

Second, the Court rejected the claim that retiree health care benefits are not the subject of mandatory bargaining, instead remarking that parties often contractually agree to make the provision of such benefits mandatory.

Third, the Court strongly rejected the argument that retiree health care benefits are a form of deferred compensation, noting that the statutory language of the Employee Retirement Income Security Act of 1974 (ERISA) defines pension plans as deferred income and excludes retiree health care benefits from that definition.

Fourth, the Court took issue with the Sixth Circuit's refusal to apply general durational clauses present in CBAs to retiree benefits accounted for in such CBAs. The Court stated that a basic premise of contract law is that the "written agreement is presumed to encompass the whole agreement of the parties."[13] The Court noted that there should therefore be no reason to require specific durational language addressing retiree benefits when a general durational clause is present in the agreement.

Finally, the Court noted that the Sixth Circuit misapplied the *illusory promises* doctrine, which cautions courts to not construe contracts in a way that would render promises illusory. The Sixth Circuit applied the doctrine to a provision that benefited some, though not all, retirees. The Court disagreed with the Sixth Circuit's application of the illusory promises doctrine to these benefits, noting that "a promise that is 'partly' illusory is by definition not illusory" and held that the given benefits promise could still serve as consideration for the contract.[14]

After dissecting the Sixth Circuit's decision, the Court held that the Sixth Circuit failed to apply two ordinary contract principles for interpreting ambiguous contracts. First, the Sixth Circuit ignored a "traditional principle that courts should not construe ambiguous writings to create lifetime promises."[15] Instead, the Sixth Circuit inferred a lifetime retiree health care benefit not otherwise required by law, and this presumption highlighted "*Yard-Man's* deviation from ordinary principles of contract law."[16] Second, the Sixth Circuit failed to consider or apply the ordinary contract principle that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."[17] Neither of these contract principles would have prevented the Sixth Circuit from finding that the parties had intended to create a lifetime vested retiree benefit, yet the Supreme Court still made sure to emphasize that the Sixth Circuit's *Yard-Man* inference fails to adhere to the traditional principles inherent in ordinary contract interpretation. In concluding its opinion, the Supreme Court explicitly stated that, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life" and must instead "apply ordinary principles of contract law."[18]

Justice Ginsburg, in a concurring opinion joined by Justices Breyer, Sotomayor and Kagan, reemphasized Justice Thomas's focus on applying ordinary principles of contract interpretation to retiree health benefit durational language. Justice Ginsburg devoted much of her concurrence to discussing contract provisions and relevant external evidence that could be used to find a vested lifetime right to health care benefits for the retirees in *Tackett*. This concurrence should serve as a reminder to employers, plan sponsors and plan trustees of the limits of the *Tackett* decision. While courts will no longer be permitted to infer an intent to create lifetime vested retiree benefits from an agreement's silence, courts can still use the contract language itself, and relevant external evidence if the contract is found to be ambiguous, to find such a benefit.

Conclusion

The Supreme Court's decision in *Tackett* resolved a long-standing circuit court split over how to construe vesting of retiree health care benefits in CBAs. The Court's holding directs courts to use ordinary contract principles to

construe agreement language relating to retiree health care benefits and prohibits courts from "placing a thumb on the scale" in favor of vested retiree benefits when an agreement is silent as to the duration of such benefits.

It is important to note that the *Tackett* decision does not imply that employers will always prevail when challenged for adjusting retiree health care benefits, and Justice Ginsburg's concurrence demonstrates how contract language and relevant external evidence can be used to demonstrate the parties' intent to vest lifetime retiree benefits. Rather, this Supreme Court decision assists all parties at the bargaining table by providing uniformity of contract language interpretation across all jurisdictions and establishing much-needed certainty as to how an agreement's silence or ambiguity regarding vesting of retiree benefits will be treated.

In light of the *Tackett* decision, plan sponsors should take proactive steps to assess their current retiree health benefit obligations and should decide whether they want to reserve their ability to adjust retiree health care benefits in the future. All bargaining parties should also carefully review prior CBAs to determine whether the agreement language explicitly provides for vesting, as the written terms will govern whether retiree benefits are vested or not. If the agreement is silent on or ambiguous as to vesting, then employers, plan sponsors and plan trustees may want to review any relevant documents surrounding the agreement to determine the existence of extrinsic evidence that could be interpreted as an intent to vest lifetime retiree health benefits.

Finally, in light of the renewed focus on the text of the agreement, bargaining parties should be especially mindful when drafting contractual language that will clearly establish the parties' intent regarding the duration of retiree health benefits and whether the right has been reserved to adjust retiree health benefits in the future.

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Endnotes

1. *M & G Polymers USA, LLC v. Tackett,* 574 U.S. ___ (2015).
2. See *UAW v. Skinner Engine Co.,* 188 F.3d 130 (3d Cir. 199); *Joyce v. Curtiss Wright Corp.*, 171 F.3d 130 (2d Cir. 1999); *Barnett v. Ameren Corp.,* 436 F.3d 830 (7th Cir. 2006).
3. *Int'l Union, United Auto., Aerospace, & Agr. Implement Workers of Am. (UAW) v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983).
4. Id. at 1482.
5. 574 U.S. ___ (2015).
6. Id.
7. *Tackett v. M & G Polymers USA, LLC,* 2:07-CV-126, 2011 WL 3438489 (S.D.Ohio Aug. 5, 2011).
8. Id. at *12.
9. *Tackett v. M & G Polymers USA, LLC,* 733 F.3d 589, 600 (6th Cir. 2013), cert. granted in part sub nom. *M&G Polymers USA, LLC v. Tackett,* 134 S.Ct. 2136, 188 L. Ed. 2d 1123 (2014) and vacated and remanded, 574 U.S. ___ (2015).
10. Id. at 600.
11. 574 U.S. ___ (2015).
12. Id.
13. Id.
14. Id.
15. Id.
16. Id.
17. Id.
18. Id.