July 21, 2016

Court Rules on Key Retiree Health Plan Issue

Recently the US Court of Appeals for the Sixth Circuit issued a significant ruling in the case of *John L. Gallo, et al. v. Moen Incorporated [2016]* that has serious implications for employers that provide bargained for retiree health benefits. Specifically, the Sixth Circuit decision significantly impacts the question of whether retiree health benefits provided under expired collective bargaining agreements (CBAs) are vested for life or whether the benefits can later be altered or eliminated by former employers. Simply put, the Sixth Circuit concluded that the *Moen* retiree benefits were not automatically vested.

Reliance on US Supreme Court Decision

According to the Sixth Circuit, the US Supreme Court decision in *M&G Polymers USA LLC v. Tackett [2015]* created a clear pathway for decisions on the retiree benefit issue. In the *Tackett* case, the Court found that ambiguous CBA provisions should not be construed to create lifetime promises. Instead the Court endorsed the principle that contractual obligations will cease, in the ordinary course, upon termination of a CBA.

The Moen CBA

In the case of *Moen*, the employer (Moen) modified its retiree health benefits several years after its CBAs with the United Auto Workers (UAW) had expired, but the retirees argued that their benefits had already vested and thus were protected from coverage cutbacks. According to the Sixth Circuit court, nothing in any of the Moen-UAW CBAs indicated the health benefits would extend throughout the lives of the retirees and their dependents, and everything the CBAs said about retiree health benefits appeared in a three-year agreement, not an open-ended agreement. Moreover, the CBA clearly vested pension benefits but was “silent” on health benefits. Finally, the CBAs contained a reservation-of-rights clause allowing the company to amend and cancel the policies under the health benefits after the CBAs expired.

Ordinary Contract Principles Apply

In *Moen*, the Sixth Circuit concluded that the retirees were not vested in their retiree health benefits. All courts (including those outside the Sixth Circuit) that are tasked with weighing whether retirees have vested lifetime health benefits will need to apply ordinary contract principles, as required under *Tackett* and the developing case law (which now includes *Moen*). The result is that employers should review the language in their retiree health plans and CBAs (if applicable) to make sure they include the appropriate termination and/or amendment language. To minimize the risk of litigation alleging that retiree health benefits are vested for life, employers might want to include specific language to the contrary. For example, the CBA could note that the right to retiree

health benefits does not extend beyond the expiration date of the CBA, and the retiree health plan might clearly state that the employer retains the right to amend or terminate the plan at any time for any reason.

Absent specific language naming “lifetime” benefits or other specific contractual language creating a lifetime promise, in light of the *Moen* ruling and related cases, employers may be able to modify or discontinue retiree benefits. Employers are encouraged to check with their labor counsel on this issue and to carefully review their CBAs. Contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220 should you have any questions. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online Resource Center.