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## Employer May Make "Reasonable Modifications" to Retiree Healthcare Benefits

A recent federal court ruling offers clarity and potential benefits for employers with retiree benefit plans that have been subject to collective bargaining.

Recently the Sixth Circuit court has ruled that an employer was entitled to make "reasonable modifications" to its retiree health care benefits (*Reese v. CNH America, LLC*), reversing a district court's Grant of Summary judgment to the retirees. The district court found that the employer lacked the ability to modify any benefits except with the approval of the union that once represented the employees. The appeals court majority concluded that, whatever else "vesting in the healthcare" context means, it does not mean that beneficiaries receive a bundle of services fixed once and for all.

In their 1998 collective bargaining agreement (CBA), the parties imposed managed care on all retirees, which represented a reduction in the effective choices of coverage available. Pre-1998 retirees saw their coverage downgraded because they generally had to pay more for choosing an out-of-plan doctor. In view of the distinction between vesting of eligibility for a benefit and the scope of that commitment, and in view of the parties' 1998 CBA altering healthcare benefits, the appeals court concluded that the employer could make reasonable changes to the healthcare plan covering eligible retirees.

The Sixth Circuit concluded that the retirees and the district court misread a prior ruling of the panel. In holding that the employer could reasonably alter the retirees' benefits, the appeals court recognized that the employer could alter them on its own, not as part of a new collective bargaining process. In answering the question "what does vesting mean in the healthcare setting?" the appeals court rejected the suggestion that the employer could make no changes to the healthcare benefits provided to retirees. Unlike pension obligations, health care benefits cannot readily be monetized at retirement, explained the court. Thus, vesting in the context of healthcare benefits provides an evolving, not a fixed, benefit. In this instance, the appeals court observed that past changes to retiree health care benefits had not been collectively bargained, which comes as no surprise because "a union does not represent retired employees when it bargains for a new contract for its employees." Thus, the district court erred when it disregarded the appeals court's holding that the company may make reasonable modifications to the retirees' healthcare benefits.

In remanding the decision, the appeals court noted that to gauge whether the employer has

proposed reasonable modifications to its healthcare benefits for retirees, the district court should consider whether the new plan provides benefits “reasonably commensurate” with the old plan, whether the changes are “reasonable in light of changes in healthcare,” and whether the benefits are “roughly consistent with the kinds of benefits provided to current employees.”

As employers contend with the complexities of sustaining costly retiree benefits plan, especially in collective bargaining plans, this new ruling offers hope that changes may be effectively installed.

**Employers are encouraged to carefully review this case and confer with counsel when considering such changes. If you have any questions about this case or how to develop an effective retiree health plan strategy, contact your Conner Strong & Buckelew account representative.**



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