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SIXTH CIRCUIT ALLOWS REASONABLE MODIFICATIONS OF RETIREE HEALTH BENEFITS

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On September 13, 2012, the Sixth Circuit in *Reese v. CNH Am. LLC*, 11-1359, 2012 WL 4009695 (6th Cir. Sept. 13, 2012) reiterated its 2009 ruling in the same case that an employer could unilaterally modify a retiree health plan, as long as the modifications were reasonable. The September 13th ruling was the Court's second review of the case on appeal; the sequel to an unfolding drama.

In this case, the employer and labor union entered a collective bargaining agreement which stated the employer would provide healthcare benefits for retirees and their eligible surviving spouses. The issue was whether the lifetime healthcare benefits had vested and, if so, whether, and to what extent, the employer could modify the benefits. In 2009, the Court found that the lifetime health care benefits had vested pursuant to the collective bargaining agreement, but that the employer could modify the benefits as long as the modifications were reasonable. The Court reasoned that the collective bargaining agreement provisions on retiree health benefits had not been perceived as unalterable by the parties, since they had been altered on various occasions, such as to implement a managed health care plan and to take into account the enactment of Medicare Part D.

In 2009, the Court sent the case back to the lower court to determine if the modifications of the retiree health benefits were reasonable. The lower court incorrectly assumed that the modification had to be agreed to as part of the collective bargaining process. Comparing the district court's ruling to a disappointing film sequel, the Court reversed and remanded the case to the district court a second time, since the district court had misread its original opinion and had not resolved the reasonableness question as instructed.

The Court listed three considerations for the district court to examine in making its reasonableness determination: (1) Does the modified plan provide benefits "reasonably commensurate" with the old plan? (2) Are the proposed changes "reasonable in light of changes in health care?" and (3) Are the benefits "roughly consistent with the kinds of benefits provided to current employees?"

This case will be an interesting one to follow going forward. As plan sponsors are aware, other cases have taken much more of an "all or nothing" approach to the vesting of retiree benefits or required the consent of the union to modify the benefits. However, it is not clear how the lower court

will resolve the reasonableness question or whether we'll find ourselves tuning in for yet another disappointing sequel to this unfolding saga.

We thank our extern, Uche Enemchukwu, for her help in preparing this post.

MEET THE TEAM

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