EMPLOYMENT SERVICES ALERT

6/24/14

Senate Considers Changes to Retiree Group Health Benefits Vesting Laws

By Matthew D. Austin, Partner

The Senate is considering amendments to federal benefits and labor laws that would make any retiree group health benefits vest upon retirement or the completion of 20 years of service.

The Bankruptcy Fairness and Employee Benefits Protection Act was sponsored by Sens. Jay Rockefeller (D-W. Va.) and Elizabeth Warren (D-Mass.). It would amend Section 502 of the Employee Retirement Income Security Act (ERISA) to require that courts hearing cases involving the vesting of retiree health benefits apply a rebuttable presumption of vesting in the absence of clear and convincing language to the contrary in the plan documents themselves. It would also amend the National Labor Relations Act to make it an unfair labor practice for either a labor union or an employer to modify a previous agreement in order to reduce or terminate retiree health insurance benefits after the affected employees have already retired.

According to Jennie G. Arnold, a Cincinnati attorney who represents unions, “The bill will make crystal clear what retirees, their unions, and their lawyers already know: their retirement health care benefits both are and were intended to last for life, with only rare and limited exceptions that must be extraordinarily clear.” Companies and management labor and ERISA lawyers like us, however, argue that while what Ms. Arnold says may be the purpose of the legislation, its actual effect will likely lead some employers to stop offering retiree health benefits.

This bill would codify a stronger version of what has come to be known in ERISA litigation as the *Yard-Man* inference. The inference allows a court reviewing the language of a collective bargaining agreement to infer that the union and employer intended to allow retiree health benefits to be vested and thus survive the expiration of the union contract if there is no language in the agreement indicating duration or the ability to modify or terminate benefits.

Since *Yard-Man*, appellate courts have reversed course and allowed companies to unilaterally modify retiree healthcare benefits without engaging in collective bargaining as long as the modifications were reasonable and did not either terminate the benefits altogether or require retirees to begin contributing to the cost of the benefits.

However, in April 2014, in *Steelworkers v. Kelsey-Hayes Co.*, the notoriously retiree-friendly Sixth Circuit Court of Appeals reinforced the *Yard-Man* inference. There, the court addressed the difference between a presumption of vesting – which the current Senate bill creates – and the *Yard Man* inference by saying that the inference is not a binding requirement that has to be disproved by the employer but is merely a “nudge” in the direction of finding vesting if the collective bargaining agreement is otherwise silent. The U.S. Supreme Court will soon decide whether the *Yard-Man* inference should be used when interpreting a collective bargaining agreement under the Labor Management Relations Act.

Under the Senate bill, both retiree benefits provided through ERISA plans and those provided by collective bargaining agreements would be subject to the presumption that they vest at retirement or after 20 years of service. Benefits that are collectively bargained would have the added protection of being subject to the unfair labor practice provisions of the NLRA and would be unchangeable in later collective bargaining agreements between the employer and union after the affected employees had retired.

The attorneys at Roetzel & Andress will keep you updated on any changes affecting the bill in the Senate or the case pending before the United States Supreme Court.

For additional information about the subject matter of this alert, please contact any of the following members of the Roetzel Employment Services team:

Matthew D. Austin
614.723.2010 | maustin@ralaw.com

Karen D. Adinolfi
330.849.6773 | kadinolfi@ralaw.com

Robert E. Blackham
216.615.4839 | rblackham@ralaw.com

Denise M. Hasbrook
419.254.5243 | dhasbrook@ralaw.com

Paul L. Jackson
330.849.6657 | pjackson@ralaw.com

Douglas M. Kennedy
614.723.2004 | dkennedy@ralaw.com

Douglas E. Spiker
216.696.7125 | dspiker@ralaw.com

David C. Strosnider
312.582.1688 | dstrosnider@ralaw.com