No. _____

In The Supreme Court of the United States

VOLVO CONSTRUCTION EQUIPMENT NORTH AMERICA, INC.,
Petitioner,

v.

ISAAC ROSE, PEGGY H. KNOX; JOSEPH E. HENDERSON; WILBERT WHITT; OPAL B. WHITT; ANDREW J. BERGANT, JR.; A.C. WADE; METRO BURTYK; INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether healthcare and life insurance benefits granted to Respondents in a collective bargaining agreement should be presumed to survive termination of the agreement and become vested for Respondents' lifetime.

PARTIES TO PROCEEDING AND RULE 29.6 STATEMENT

Petitioner in this case is Volvo Construction Equipment North America, Inc. The Petitioner was the defendant-appellant below. The Respondents, plaintiffs-appellees below, are listed on the front cover caption.

Petitioner Volvo Construction Equipment North America, Inc. is part of the Volvo Group of companies and is a wholly-owned subsidiary of a Swedish company, Volvo AB, its publicly-traded parent company.

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Volvo Construction Equipment North America, Inc., by its undersigned counsel, respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The panel opinion and judgment of the United States Court of Appeals for the Sixth Circuit is reprinted in Petitioner's Appendix ("Pet. Apx.") at 1a-3a. The Memorandum Opinion and Order of the United States District Court for the Northern District of Ohio denying Petitioner's motion for summary judgment and granting Respondents' motion for summary judgment is reported at 542 F. Supp.2d 751, and reproduced at Pet. App. 4a-43a.

STATEMENT OF JURISDICTION

The judgment of the court of appeals was entered on August 18, 2009. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

The district court had jurisdiction over this case pursuant to Section 301 of the Labor Management Relations Act, 29 U.S.C. §185, and Section 502 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1132.

STATUTORY PROVISIONS INVOLVED

Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132, which provide in pertinent part:

29 U.S.C. Section 185 (LMRA). Suits by and against labor organizations

(a) Venue, amount, and citizenship

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. Section 1132 (ERISA). Civil enforcement

(a) Persons empowered to bring a civil action
A civil action may be brought—

(1) by a participant or beneficiary--

(A) for the relief provided for in subsection (c) of this section, or

(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan;

(2) by the Secretary, or by a participant, beneficiary or fiduciary for appropriate relief under section 1109 of this title;

(3) by a participant, beneficiary, or fiduciary --

(A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or

(B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan... .

STATEMENT OF THE CASE

I. INTRODUCTION

This case squarely presents an issue that has divided the circuit courts as to what standards should be applied by courts when determining whether collective bargaining agreements are to be interpreted as providing lifetime vested retiree welfare benefits.

One line of cases follow the Sixth Circuit's decision in *UAW v. Yard-Man,* 716 F.2d 1476 (6th Cir. 1983),which adopted an "inference," or presumption, in favor of lifetime vested retiree welfare benefits. Hand-in-hand with its *Yard-Man* inference, the Sixth Circuit also established several rules for cases presenting the issue of whether collectively bargained retiree welfare benefits are vested, including:

- The use of a different standard in cases regarding retiree welfare benefits that arise under a collective bargaining agreement instead of solely under an ERISA-covered plan;

- The interpretation of phrases such as "shall be continued" or "will continue" contained in collective bargaining agreements;

- The significance of provisions linking welfare benefits to pension benefits; and

- The treatment of durational clauses contained in collective bargaining agreements.

A few of the other circuit courts of appeals have adopted the Sixth Circuit's *Yard-Man* standards, either in whole or in part. See, for example, *United Steelworkers of America, AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 9 (1st Cir. 1987) (citing favorably to *Yard-Man* and finding that contract language stating that retiree medical benefits "shall be provided" is "consistent with a [] promise to pay retirees' insurance costs throughout their retirement, even after the particular collective bargaining agreement expires"); and *Keffer v. H.K. Porter Co.*, 872 F.2d 60, 64 (4th Cir. 1989) (holding that plaintiffs' benefits were intended to continue beyond expiration of a CBA and citing the the *Yard-Man* rationale that "'it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations'").

Other circuits, however, have rejected the *Yard-Man* inference and the principles stemming from that inference. See, for example, *UAW v. Skinner Engine Co.*, 188 F. 3d 130, 139-41 (3rd Cir. 1999) ("With respect to the Sixth Circuit's view that retiree benefits are 'status benefits' which carried with them an inference that they continue so long as the prerequisite status is maintained, we agree with ... the Eighth Circuit, which specifically rejected the notion"); and *Nichols v. Alcatel USA Inc.*, 532 F.3d 364, 378 (5th Cir. 2008) ("[the] inference, known as the Yard-Man inference ... has never been accepted by this court").

This case uniquely demonstrates both the presumptive effect of the *Yard-Man* inference, as well as the impact of several inter-circuit splits regarding whether the Sixth Circuit standards should be applied when determining whether retiree welfare benefits conferred in a collective bargaining agreement are vested beyond the expiration of that agreement.

II. FACTS

A. The Parties

Volvo Construction Equipment North America, Inc. ("VCENA") manufactures construction machinery equipment such as loaders, excavators and haulers. From 1984 until 1993, VCENA (through various predecessor companies) owned and operated a truck manufacturing plant operated in Euclid, Ohio (the "Euclid truck business").

Respondents are a class of plaintiffs consisting of hourly retirees (and/or the hourly retirees' spouses, surviving spouses and eligible dependents) who retired from the Euclid truck business prior to January 1, 1987. At the time Respondent retirees were active employees, they were represented by the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (the "UAW"), which is also a Respondent in this case.

Respondent retirees claim they are entitled to fully-funded, lifetime health and life insurance benefits based on a three-year collective bargaining agreement that was entered into in 1983 by Euclid, Inc., a subsidiary of Daimler Benz AG. In 1984, Euclid, Inc. sold the facility and its operations to Clark Michigan

Company. Thereafter, in 1986, Clark Michigan Company became part of VME Americas, Inc.

In 1993, VME Americas, Inc. entered into a joint venture with Hitachi Construction Manufacturing, Inc. pursuant to which VME and Hitachi formed a new entity, Euclid Hitachi Heavy Equipment, Inc. ("EHHE"), which, after a transfer of assets from VME, became the new owner of the Euclid truck business. In 1996, VME Americas, Inc. changed its name to VCENA, the name it retains today.

In connection with the transfer of the Euclid truck business to EHHE in 1993, EHHE agreed to "timely pay, perform and discharge the Euclid Division Liabilities," which liabilities included, "all debts, liabilities, obligations and claims relating to or in connection with the Employees, including, without limitation, all debts, liabilities, obligations and claims relating to employee benefit plans and arrangements now or previously existing or hereinafter in effect." (See the Record on Appeal before the 6th Circuit "ROA" 971-73, 975-76).

VCENA remained a shareholder of EHHE until HCM purchased VCENA's remaining interest in 2000. Since that time, VCENA has had no involvement in the Euclid truck business.

B. The 1983-1986 Collective Bargaining Agreement Which Forms The Basis For Respondents' Claims

On March 15, 1983, the UAW and Euclid, Inc. executed the 1983-1986 Collective Bargaining Agreement ("the CBA"), which incorporated

supplemental agreements including a pension plan, an insurance plan and an unemployment benefits plan. It is the Insurance Plan Supplement that describes the health care and life insurance benefits. In addition, the Insurance Plan Supplement provided that *the Supplement itself* terminated at the expiration of the CBA: "*This Agreement* and Program as modified and supplemented by this Agreement shall continue in effect *until the termination of the Collective Bargaining Agreement of which this is a part.*" (See VCENA's Appendix in the Court of Appeals "App. Apx." 218-219). (Emphasis added). Thus, a clear reading of the Insurance Plan Supplement is that the benefits provided for therein were to terminate when the CBA terminated, i.e., on March 14, 1986.

1. Retiree health insurance benefits

With respect to health benefits, the Insurance Plan Supplement provided that:

> The Company shall contribute the full premium or subscription charge for Health Care ... coverages continued in accordance with Article III, Section 5, for: (i) a retired employee (including any eligible dependents), provided such retired employee is eligible for benefits under Article II of The Euclid, Inc., Hourly-Rate Employees Pension Plan and (ii) an employee (including any eligible dependents) termination [sic] at age 65 or older for any reason other than a discharge for cause with insufficient credited service to entitle him to a benefit under Article

II of The Euclid, Inc., Hourly-Rate Employees Pension Plan.

(App. Apx. 224).

The relevant portion of Article III, Section 5, referred to in the foregoing provision, stated that "Health Care Coverages [that] an employee has under this Article ... shall be continued thereafter *provided that suitable arrangements for such continuation can be made with the local plans, or insured plan.*" (App. Apx. 261). (Emphasis added).

2. Retiree life insurance benefits

The life insurance benefit created by the Insurance Plan Supplement was described in Article II, Section 3(b) of the Supplement.

For employees reaching age 65, the amount of life insurance was subject to reductions at various stages and under varying circumstances, but the benefit was not to be reduced to "less than $2500," for those employees with ten or more years of participation at age 65. Following the reductions, the "remaining Life Insurance will be continued thereafter until the death of the employee, *subject to the rights reserved to the Company to modify or discontinue this Plan.*" (App. Apx. 235). (Emphasis added).

With respect to employees who did not have ten years or more of participation as of age 65, there would be no life insurance benefit after separation from employment:

> If the employee has less than ten Years of Participation at age 65, such reductions shall be made until the earlier of 25 months of layoff, 12 months of leave of absence other than for disability, *or his separation from active service*, and *any amount remaining in force shall then be discontinued*.[1]

(Id., emphasis added).

C. Later Collective Bargaining Agreements

The UAW negotiated additional collective bargaining agreements with VME in 1986, 1989 and 1992, and with EHHE in 1995 and 1998. Each of those three-year agreements contained a provision stating that "[c]overage for retirees or spouses of retirees, who retired on or before December 31, 1986, will be at the level of benefits as set forth in the 1983 collective bargaining agreement." (ROA 493, 508-27). Once VME (now VCENA) transferred its assets and liabilities related to the Euclid truck business to EHHE in 1993, it no longer had standing or reason to bargain with the UAW over retiree benefits and, therefore, was powerless to bargain for the continuation, modification or termination of the retiree benefits. The 1995 and 1998 collective bargaining agreements that provided for the continuation of those benefits were, therefore, not agreements to which VCENA was a party.

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[1] The Agreement does go on to provide that if an employee attains ten years of participation after turning 65, the life insurance benefit will be calculated as if the employee had attained ten years at age 65. (App. Apx. 235)

D. Respondents' Settlement With EHHE and HCM

In January of 2005, EHHE announced that it had unilaterally decided to cease paying health care and life insurance benefits to Respondent retirees. When Respondents objected to EHHE's decision, EHHE, along with its parent company Hitachi Construction Manufacturing, Ltd. ("HCM"), negotiated a settlement with Respondents, set forth in a Retiree Benefit Agreement ("RBA"). (ROA 495). Under that settlement, HCM, on behalf of EHHE, paid Respondents a fraction of what their alleged vested welfare benefits were worth and sent Respondents in VCENA's direction to pursue any additional recovery for their alleged vested benefits. (ROA 550-56).

In other words, EHHE, with Respondents' acquiescence, shifted the alleged obligation for Respondents' retiree welfare benefits to VCENA over ten years after EHHE assumed that responsibility. As a consequence, VCENA has now been held liable for providing those lifetime health and life insurance benefits even though:

(1) VCENA was never a party to the 1983-1986 Agreement and never employed Respondents;

(2) VCENA was without authority or standing to bargain for the continuation, modification or cessation of the retiree welfare benefits in subsequent collective bargaining agreements by which Respondents' benefits were continued from 1995 forward; and

(3) VCENA transferred any and all liability for such benefits in 1993 and ceased any interest in the Euclid truck business years before EHHE terminated Respondents' retiree welfare benefits in 2005.

III. PROCEEDINGS BELOW

Respondents filed a Complaint against VCENA on February 1, 2005, seeking a permanent injunction requiring VCENA to provide them with fully-funded, lifetime health care and life insurance benefits pursuant to the 1983-1986 CBA. While the lawsuit was pending before the district court, Respondents continued to receive healthcare and life insurance benefits through a Voluntary Employee Benefits Association trust ("VEBA") that was established with the settlement funds paid by EHHE under the terms of the RBA.

The parties filed cross motions for summary judgment on August 24, 2006. On March 17, 2008, the district court denied VCENA's motion for summary judgment and granted Respondents' motion for summary judgment, ruling that VCENA was obligated under ERISA and the LMRA to maintain fully-funded health care insurance benefits for Respondents (including retirees, as well as the spouses, surviving spouses and eligible dependents of the retirees) and fully-funded life insurance benefits to the Respondent retirees for the duration of Respondents' lifetime.

The district court, following the *Yard-Man* rule, held that the phrase "shall be continued thereafter," as used in Article III, Section 5 of the Insurance Plan Supplement, evidenced an unambiguous intent to vest

lifetime retiree healthcare benefits as a matter of law. In so holding, the district court disregarded the phrase "provided that suitable arrangements for such continuation can be made...", which immediately followed the "shall be continued thereafter" language. (Pet. Apx. 25a-26a).

Similarly, relying on the *Yard-Man* line of cases, the district court stated that because some of the retirees' health care benefits were linked to pension eligibility, such a link could be a basis for granting summary judgment to the retirees. (Id. at 26a-27a). In response to VCENA's argument that not all retirees' benefits were tied to pension eligibility, the district court found that such a circumstance did not negate the evidence of intent to vest, but instead created an ambiguity that permitted the court to consider extrinsic evidence in a summary plan description ("SPD"). The SPD was a document summarizing what the benefit plans provided under the 1983-1986 CBA provided and how those benefit plans operated. In reviewing the SPD, the district court determined that, as a matter of law, the SPD would control in the event of a conflict between the SPD and the official plan documents. The district court then found that the SPD manifested an unambiguous intent to confer lifetime, vested health benefits. (Id. at29a-30a). No other extrinsic evidence was considered. (Id. at 30a).

The district court also considered the language of the durational clause set forth in the Insurance Program Supplement, which had been incorporated into the 1983-1986 CBA and which stated, "This Agreement and Program as modified and supplemented by this Agreement shall continue in effect *until the termination of the Collective Bargaining*

Agreement of which this is a part." (Id. at 31a). (Emphasis added). The district court held, as a matter of law, that such a clause was merely a "routine" or "general" durational clause that was insufficient to limit the health or life insurance benefits to the term of the CBA because the durational clause did not specifically refer to retiree health insurance or life insurance benefits. (Id. at 33a). Indeed, according to the district court, such durational language was not even sufficient to create an ambiguity regarding the duration of the retiree health or life insurance benefits and, thus, was insufficient to defeat Respondents' motion for summary judgment.

Finally, the district court reviewed the two reservation of rights clauses in the life insurance provisions within the Insurance Plan Supplement and found that they were insufficient as a matter of law to indicate an unambiguous intent against vesting or even to create an ambiguity whether life insurance benefits were intended to vest. (Id. 38a).

VCENA filed an appeal from the district court's order on April 14, 2008. On April 21, 2008, Respondents filed a Motion to Show Cause requesting that the district court order VCENA to immediately begin paying the full cost of Respondents' benefits at the levels provided under the 1983-1986 CBA. On August 18, 2008, the district court denied Respondents' Motion to Show Cause but ordered VCENA to begin paying 50% of the cost of Respondents' benefits. Since then, Respondents have continued to receive their benefits, which are paid for and administered by the VEBA. VCENA reimburses the VEBA for 50% of the cost of the benefits.

On August 18, 2009, the Court of Appeals for the Sixth Circuit affirmed the judgment of the district court "upon the reasoning employed in [the district court's] opinion dated March 17, 2008." (Pet. Apx. 3a).

VCENA filed a Motion for Stay of Mandate with the Sixth Circuit on September 8, 2009, which the court denied on September 15, 2009.

REASONS FOR GRANTING THE WRIT

I. THE CIRCUITS ARE SPLIT SEVERAL WAYS IN CASES ADDRESSING THE VESTING OF COLLECTIVELY BARGAINED RETIREE WELFARE BENEFITS

The federal courts, as well as employers and retirees whose rights and responsibilities are determined by the federal courts, are in serious need of guidance from this Court regarding the determination of whether collectively-bargained-for retiree welfare benefits are vested for life. This need arises from a series of splits among the circuit courts of appeals surrounding this issue, particularly whether a presumption, or an inference, exists in favor of vesting and various rules of interpretation that flow from an inference in favor of vesting.

A. The Inter-Circuit Split Regarding What Presumption, If Any, Should Apply

The initial court of appeals decision on this issue was *UAW v. Yard-Man*, 716 F.2d.1476 (6th Cir. 1983), cert. denied, 465 U.S. 1007, 104 S. Ct. 1002, 79 L. Ed. 2d 234 (1984), which held that there is an "inference" that collectively bargained retiree welfare benefits are

vested because: (1) "it is unlikely that such benefits, which are typically understood as a form of delayed compensation or reward for past services, would be left to the contingencies of future negotiations," and (2) "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." 716 F.2d at 1482.

Other circuit courts of appeals have followed the *Yard-Man* standard. For example, in *Keffer v. H.K. Porter Co., Inc.*, 872 F.2d 60, 64 (4th Cir. 1989), the Fourth Circuit favorably cited *Yard-Man* and stated :

> Surely the parties to the collective bargaining agreement realized that employees who are willing to forego current compensation in expectation of retiree benefits 'would want assurance that once they retire they will continue to receive such benefits regardless of the bargain reached in subsequent agreements.'

The Eleventh Circuit of Appeals has also followed *Yard-Man*. See *United Steelworkers of America, AFL-CIO-CLC v. Connors Steel Co.*, 855 F.2d 1499, 1504 (11th Cir. 1988) (citing *Yard-Man* and *Weimer v. Kurz-Kasch, Inc.*, 773 F.2d 669 (6th Cir. 1985) and stating that "[w]e fully concur with the decisions of the Court of Appeals for the Sixth Circuit in these two cases"); and *Carriers Container Council, Inc. v. Mobile S.S. Ass'n., Inc. – International Longshoreman's Assoc.*, 896 F.2d 1330, 1339 (11th Cir. 1990) (same).

Other circuit courts of appeals, however, have refused to adopt the inference or "presumption" that was adopted in *Yard-Man*. See, for example, *Senior v.*

NStar Electric & Gas Corp., 449 F.3d 206, 216-18 (1st Cir. 2006) ("[o]ur view is that in a claim for benefits based on a labor agreement under the LMRA federal labor law creates no presumption regarding vesting"); *American Federation of Grain Millers v. International Multifoods Corp.*, 116 F.3d 976, 980 (2nd Cir. 1997) (comparing the *Yard-Man* inference in favor of vesting with the presumption against vesting adopted by the Seventh Circuit in *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603 (7th Cir. 1993), and declining to apply either); *UAW v. Skinner Engine Co.*, 188 F. 3d 130, 139-41 (3rd Cir. 1999) (stating that it agreed with the Eighth Circuit's rejection of the Sixth Circuit's view that "retiree benefits are 'status benefits' which carr[y] with them an inference that they continue so long as the prerequisite status is maintained"); *Nichols v. Alcatel USA Inc.*, 532 F.3d 364, 378 (5th Cir. 2008) ("*Cole* relies on the inference that retiree benefits vest unless there is language in the CBA to the contrary ... This inference, known as the Yard-Man inference ... has never been accepted by this court"); *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512, 1517 (8th Cir. 1988) (specifically rejecting the *Yard-Man* presumption); *Alday v. Raytheon Co.*, 2008 U.S. Dist. LEXIS 62747 (D. AZ Aug. 5, 2008) (declining to adopt any presumption, based on *Yard-Man*, that health and welfare benefits are vested).

The Seventh Circuit, on the other hand, has taken a still different view by adopting a presumption *against* vesting. See *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 543-44 (7th Cir. 2000) (stating that the Seventh Circuit presumes that an employee's entitlement to health benefits expires with the CBA creating the entitlement).

B. The Difference Between How The Circuits Treat Collective Bargaining Cases Versus Pure ERISA Cases

In addition to relying on an inference and presumption rule that is in conflict with the rule that exists in other circuits, the decision in the courts below also departs from other circuits in drawing a distinction between retiree benefits arising under collective bargaining agreements and those arising solely under ERISA plans.

In other words, both the Sixth Circuit and the Fourth Circuit have adopted different standards, depending on whether the retiree welfare benefits were unilaterally provided by the employer under an ERISA plan or were offered as a result of the collective bargaining process. *Cf. Sprague v. General Motors Corp.*, 133 F.3d 388, 400 (6th Cir. 1998) (requiring clear and express statement of vesting in purely ERISA cases) with *Yard-Man,*716 F.2d 1476 (6th Cir. 1983) (inference of vesting in CBA context) and *Maurer v. Joy Techs., Inc.*, 212 F.3d 907, 915-16 (6th Cir. 2000) (not requiring express statement of vesting in CBA cases). See also *Trull v. Dayco Products*, LLC, No. 04-2109, No. 05-1591, 178 Fed. Appx. 247; 2006 U.S. App. LEXIS 10640, *4-6 (4th Cir. April 28, 2006) (explaining the difference between the holdings in *Keffer v. H.K Porter Co.,* 872 F.2d 60 (4th Cir. 1989), a CBA case, and *Gable v. Sweetheart Cup Co.*, 35 F.3d 851 (4th Cir. 1994), an ERISA-only case).

The Tenth Circuit has also suggested that it is appropriate to make distinctions and apply the *Yard-Man* inference when retiree welfare benefits are provided by a collective bargaining agreement, as

distinguished from an ERISA plan. See *Chiles v. Ceridian Corp.*, 95 F.3d 1505, 1514 (10th Cir. 1996) ("Yard-Man emphasized that the context in which benefits are written is important in making the inference; such an inference is more appropriate in the collective bargaining context where parties bargained over the language of retirement benefits").

The distinction that these circuit courts have made between collective bargaining cases and pure ERISA cases, however, is at odds with the Third and Seventh Circuits -- which specifically decline to recognize a distinction between the two types of cases -- as well as with the Second Circuit, which analyzes collective bargaining agreements and ERISA plans under the same standard. See *UAW v. Skinner*, 188 F.3d 130, 139 (3rd Cir. 1999) (stating that the cautionary principles that an employer's commitment to vest retiree welfare benefits is not to be inferred lightly and must be stated in clear and express language "apply without regard as to whether the .... welfare benefits are provided under a collective bargaining agreement, SPD [summary plan description], or other plan document; the same underlying considerations are present irrespective of the particular type of document at issue"); *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 544 (7th Cir. 2000) ("The distinction between collective bargaining agreements and ERISA plans is not recognized in our cases, and we are not minded to embrace it now and make the law even more complicated than it is."); *American Fed'n of Grain Millers v. International Multifoods Corp.*, 116 F.3d 976, 979-80 (2nd Cir. 1997) ("We will examine [both] the CBAs and the ERISA plan documents in light of this [single] standard.").

C. The Impact Of "Shall Be Continued" Language

The courts below considered language from the 1983-1986 CBA stating that the retiree benefits "shall be continued thereafter" and, relying on the *Yard-Man* progeny of *Cole v. ArvinMeritor, Inc.*, 515 F. Supp. 2d 791, (E.D. Mich. 2006), aff'd 549 F.3d 1064 (6th Cir. 2008), concluded that such language evidenced an unambiguous intent to vest retiree benefits as a matter of law, despite the qualifying language that followed this phrase. (Pet. Apx. 24a-26a). The First Circuit has reached a similar finding. See *United Steelworkers of America, AFL-CIO v. Textron, Inc.*, 836 F.2d 6, 10 (1st Cir. 1987) (affirming award of preliminary injunction to plaintiff based on finding that the language "shall be provided" and "Company shall pay" evidenced plaintiff's likelihood of success on claims that the employer must guarantee payment of health and life insurance premiums for retired workers' lives).

However, courts in other circuits that have expressly rejected the *Yard-Man* inference have also reached contrary conclusions about the meaning of such language. See *UAW v. Skinner Engine Co.*, 188 F.3d 130, 141 (3rd Cir. 1999) ("A plain reading of the phrases, 'will continue' and 'shall remain,' certainly does not unambiguously indicate that the benefits will continue ad infinitum ..."); *Senn v. United Dominion Indus.*, 951 F.2d 806, 816 (7th Cir. 1992) ("it requires more than a statement in a CBA that welfare benefits 'will continue' to create an ambiguity about vesting, for the logical interpretation under our rule is that benefits 'will continue' for the duration of the contract.").

D. The Significance Of A Link Between Pension Benefits and Welfare Benefits

In this case, the courts below found it significant that the CBA contained language linking the Respondents' health care benefits to pension eligibility (Pet. Apx. 26a-30a); yet, other circuit courts of appeal have reached the opposite conclusion. See, for example, *Joyce v. Curtiss-Wright Corp.*, 171 F.3d 130, 134 (2nd Cir. 1999) ("We are unpersuaded by [plaintiffs'] attempt to manufacture ambiguity by statements such as 'the [Group Insurance Agreements] state that insurance will be provided for employees receiving or becoming entitled to receive pension payments'..."); and *Vallone v. CNA Fin. Corp.* 375 F.3d 623, 633 n.4 (7th Cir. 2004) (noting that "the packaging of a welfare benefit with pension benefits does not on its own alter our presumption against vesting in the absence of express language to the contrary").

E. The Difference Among the Circuits Regarding Treatment of Durational Clauses That Follows the *Yard-Man* Split

This case also evidences the split in the circuits over the interpretation of durational clauses in collective bargaining agreements. In this case, the durational clause in the Insurance Plan Supplement limited the duration of the Programs to the term of the CBA: "This [Insurance] Agreement and [Insurance] Program as modified and supplemented by the [Insurance] Agreement shall continue in effect until the termination of the Collective Bargaining Agreement of which this is a part." However, relying on *Yard-Man*, 716 F.2d at 1482, the courts below held that when such durational clauses do not refer

specifically to retiree health or life insurance benefits they are only "general" durational clauses, and such "general" clauses not only fail to establish an unambiguous intent to limit the retiree health and life insurance benefits to the life of the CBA, but also fail to even create an ambiguity on the issue of vesting sufficient to defeat summary judgment. (Pet.Apx. at 33a).

The Eleventh Circuit has concurred with this view. See, for example, *United Steelworkers of America, AFL-CIO-CLC v. Connors Steel Co.*, 855 F.2d 1499, 1504 (11th Cir. 1988), and *Carriers Container Council, Inc.*, 896 F.2d 1330, 1339 (11th Cir. 1990), wherein the Eleventh Circuit concurred with the *Yard-Man* holding that general duration clauses in a collective bargaining agreement do not "imply a cutoff date for other clauses of the agreement that have no durational language." (Id. at 1339).

In the Seventh and Eighth Circuits, however, such "general" durational language is held to limit the duration of retiree benefits to the life of the CBA. See *Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560, 567 (7th Cir. 1995) (holding that language stating that the health plan will be not terminated or amended during the term of the collective bargaining agreement meant that the plan could be terminated or amended after expiration of the CBA); and *Anderson v. Alpha Portland Industries, Inc.*, 836 F.2d 1512,1519 (8th Cir. 1988) (stating "[i]t would render the durational clauses nugatory to hold that benefits continue for life even though the agreement which provides the benefits expires on a certain date" and rejecting the argument that benefits were non-terminable because the word "terminate" did not appear in the agreement).

F. The Need for Consistent Standards from This Court

Only this Court is positioned to resolve these several conflicts among the circuits. Indeed, it is "one of the traditional functions of this Court" to "resolve and accommodate" the "diversities and conflicts" that may occur among the courts of the federal circuits. *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 514, 82 S. Ct. 519, 7 L. Ed. 2d 483 (1962).

Petitioner submits that it is imperative that the Court performs this function with respect to the several conflicts discussed here in order to preserve the federal labor policy embodied in Section 301. As the Court has stated, Section 301 is peculiarly one that calls for uniform law." *Teamsters Local 174 v. Lucas Flour Co.*, 369 U.S. 95, 103, 82 S. Ct. 571, 7 L. Ed. 2d 593 (1962). The concern expressed by this Court in *Lucas Flour Co.*, that the "possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements," exists just as much when individual contract terms have different meanings under the law of the different federal circuit courts. Id. at 103-104.

Likewise, ERISA's intent to create uniformity is undermined by the inconsistencies among the circuit courts of appeals described here. See *Tex. Life, Accident, Health & Hosp. Serv. Ins. Guar. Ass'n v. Gaylord Entm't Co.*, 105 F.3d 210, 217 (5th Cir 1997) ("ERISA's pre-emption provisions are designed to protect plan participants by eliminating the threat of inconsistent state and local regulation of employee

benefit plans and establishing a uniform standard to govern employee benefit plans as an exclusive federal concern").

Unless and until this Court addresses the issues discussed here, the splits among the circuits will continue, and both employers and retirees will continue to be exposed to the resulting uncertainty.

II. THE DECISIONS BELOW ARE INCONSISTENT WITH DECISIONS OF THIS COURT

The lower courts' decision in this case, as well as the Sixth Circuit precedent on which they relied, not only conflicts with the law of other circuits, it is also inconsistent with decisions of this Court. In *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78, 115 S. Ct. 1223, 131 L. Ed. 2d 94 (1995), this Court recognized that "ERISA does not create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits. Employers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." The rationale underlying Congress' decision to carve out welfare benefits from the mandatory vesting provisions applicable to pension benefits under ERISA has been explained by the Second Circuit as follows:

> With regard to an employer's right to change medical plans, Congress evidenced its recognition of the need for flexibility in rejecting the automatic vesting of welfare plans. Automatic vesting was rejected because the costs of such plans are subject to fluctuating

> and unpredictable variables. Actuarial decisions concerning fixed annuities are based on fairly stable data, and vesting is appropriate. In contrast, medical insurance must take account of inflation, changes in medical practice and technology, and increases in the costs of treatment independent of inflation. These unstable variables prevent accurate predictions of future needs and costs.

Moore v. Metropolitan Life Ins. Co., 856 F.2d 488, 492 (2d Cir. 1988).

In addition, in *Litton Financial Printing Div. v. NLRB*, 501 U.S. 190, 207, 111 S. Ct. 2215, 115 L. Ed. 2d 177 (1991), this Court stated that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement."

The Sixth Circuit's *Yard-Man* "inference" is at odds with both of these legal principles. See *UAW v. Skinner*, 188 F.3d at 141 (3rd Cir.) ("the *Yard-Man* inference may be contrary to Congress' intent in choosing specifically not to provide for the vesting of employee welfare benefits").

Moreover, ERISA was enacted in 1974, at which time Congress conspicuously chose to exempt welfare benefit plans from the full breadth of ERISA's extensive requirements, including ERISA's vesting requirements. See *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361, 100 S. Ct. 1732, 1726, 64 L. Ed. 2d 354, 358 (1980) ("[o]n September 2, 1974, following almost a decade of studying the Nation's private pension plans, Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA)");

and *Wise v. El Paso Natural Gas Co.*, 986 F.2d 929, 935 (5th Cir. 1993) (comparing the definition of "employee pension benefit plans" under 29 U.S.C. § 1002(2)(A) with the definition of "employee welfare benefit plans" under § 1002(1)).

Thus, the understanding at the time the 1983-1986 CBA was negotiated was that welfare benefit plans differed from pension plans and were exempt from ERISA's vesting requirements. The *Yard-Man* inference, however, was not established until September 9, 1983 -- months after the 1983-1986 CBA was executed. When VCENA's predecessor finalized the CBA with Respondents in March of 1983, it could not have anticipated that the language of the CBA, which does not refer to either "lifetime" or "vested" benefits, would nevertheless be construed to provide lifetime, vested welfare benefits based on a judicially-created presumption that did not yet exist.

CONCLUSION

There exists a deep-rooted split among the circuit courts regarding what standard the federal courts are to apply when determining whether a collective bargaining agreement should be interpreted as providing lifetime vested retiree welfare benefits. This inter-circuit split is inconsistent with the concept of a uniform federal labor law under Section 301. Likewise, there is a strain between Congress' intent to exempt welfare benefits from ERISA's mandatory vesting requirements and the presumptive effect of the *Yard-Man* standards. For these reasons, as well as the other reasons set forth herein, this Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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