City of Lansing

OFFICE OF THE CITY ATTORNEY

James D. Smiertka, City Attorney

TO: Ways and Means Committee

FROM: James D. Smiertka

DATE: July 31, 2017

SUBJECT: Denise Estee Claims

I have been asked to provide a written response to this committee regarding a series of claims made by Denise Estee about her retirement healthcare insurance premium payments. As I understand Ms. Estee's claims, they all have a common thread. It is her belief that pursuant to the Union (Teamsters 580) 2003-2007 collective bargaining agreement (CBA or the Contract), which was in place when she retired in 2005, that she vested for unalterable healthcare benefits. She also claims that her insurance premium cost in place in 2005, were frozen at the level in place when she retired. To support her claims, Ms. Estee says the City/Employer must look to historical background outside the CBA promises in the 2003-2007 contract.

In evaluating Ms. Estee's claim, the starting point is the actual contract itself. If the CBA language is clear, it controls the interpretation. It is Michigan contract law that a party may only look beyond a contract expressed terms if it is ambiguous.

> A contract must be interpreted according to its plain and ordinary meaning. When the language of the contract is clear and unambiguous, interpretation is limited to the actual words used, and an unambiguous contract must be enforced according to its terms. *Ajax Paving Indus,* 289 Mich App at 644 (internal citations omitted). Therefore, "[w]here a contract is to be construed by its terms alone, it is the duty of the court to interpret it …" *Klapp v United Ins Group Agency, Inc,* 468 Mich 459, 469; 663 NW2d 447 (2003) (internal quotation marks and citation omitted).

These principles of contract law also apply to the CBA. "The foundational principle of our contract jurisprudence is that parties must be able to rely on their agreements, which applies no less strongly to collective bargaining agreements." *Macomb Co v. AFSCME Council* 25, 494 Mich. 65, 80; 833 NW2d 225 (2013).

Here, there is nothing in the CBA language that is unclear. The CBA states unequivocally "eligible retirees…. Shall be covered by the same insurance as active bargaining unit members…" This CBA language starts and ends the discussion. Had the parties to the CBA intended a different meaning –

the meaning Ms. Estee asserts – they could have easily expressed this by limiting the quoted CBA statement. They could have added at the end of the statement qualifying text, such as "under this CBA" or "at the time this contract is ratified" or some similar text that established the limited meaning Ms. Estee wants to advance. However, this is not the case.

Simply put, the clear and unambiguous meaning of "eligible retirees ... shall be covered by the same insurance as active bargaining members" is that retirees are to receive what the active members of the union receive for healthcare. Because the active union members will receive healthcare under current CBAs, the retirees' health care will change from time to time to match the current benefit. For Ms. Estee, this reserves in the contract the ability to change the healthcare she is entitled to receive. There is nothing in the 2003-2007 CBA that says a specific level of healthcare will forever be vested.

Since the ratification of the 2003-2007 CBA, there has been much litigation concerning retirement healthcare provision in collective bargaining agreements. This has resulted in further clarification of the law in this area. The clarification started when the United States Supreme Court decided *M&G Polymers USA, LLC v Tackett,* 574 US __; 135 S CT 926; 190 L Ed 2d 809 (2015).

Since *Tackett,* both Michigan and Federal Courts have cited it and applied its legal principles. In the Michigan case of *Harper Woods Retirees Ass'n v Harper Woods,* 312 Mich App 500 (2015), the court provided a synoptic review of the state of Michigan law. Because it is instructive, *Harper Woods* is quoted here at length:

> In *M&G Polymers USA, LLC v Tackett,* 574 US __; 135 S Ct 926; 190 L Ed 2d, 809 (2015) the United States Supreme Court rejected the Sixth Circuit's decision in *UAW v Yard-Man, Inc.* 716 F2d 1476 (CA 6, 1983), which held that in the absence of contrary extrinsic evidence, courts should presume that retiree benefits provided in a CBA are guaranteed for the lifetime of any employee who retires under the CBA. The *Yard-Man* court "inferred that parties would not leave retiree benefits to the contingencies of future negotiations, and that retiree benefits generally last as long as the recipient remains a retiree ... [which] 'outweigh[ed] any contrary implications derived from a routine duration clause terminating the agreement generally.'" *Tackett,* 574 US at __, quoting *Yard-Man,* 716 F2d at 1482-1483 (second alteration in original). Thus, although the *Yard-Man* court recognized that "traditional rules of contractual interpretation require a clear manifestation of intent before conferring a benefit or obligation," the duration of the conferred benefit was not subject to this conventional restraint. *Tackett,* 574 US at __ (citation and quotation marks omitted).
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> In *Tackett,* the Supreme Court overruled *Yard-Man,* holding that a presumption of lifetime vesting of retirement benefits violates traditional rules of contract interpretation. The Supreme Court explained that under traditional contract interpretation principles, courts should not construe ambiguous writing to create lifetime promises and that generally, "'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Tackett,* 574 US at __, quoting *Litton Fin Printing Div, Litton Business Sys, Inc v NLRB,* 501 US 190, 207; 111 S Ct 2215 L Ed 2d 177

(1991). The Supreme Court noted that traditional contract principles do not "prelude the conclusion that the parties intended to vest lifetime benefits for retirees" because "a collective-bargaining agreement [may] provid[e] in explicit terms that certain benefits continue after the agreement's expiration." *Tackett,* 574 US at __, (citation and quotation marks omitted; alterations in original). However, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." *Id.* at __. We conclude that the Supreme Court's reasoning in *Tackett* is consistent with Michigan's contract jurisprudence regarding CBAs, which applies with equal force in both the public and private sectors in this regard.

Also, recently the Michigan Supreme Court had the opportunity to review and adopt principles announced in *Tackett,* albeit in a case involving coordination of workers comp. benefits with disability pension benefits involving postretirement changes made because of collective bargaining. In *Arbuckle v Gen Motors, LLC,* 499 Mich 521 (2016), the court chose to quote from *Tackett* and apply as governing its decision the following:

> Indeed, basic principles of contract interpretation instruct that "courts should not construe ambiguous writings to create lifetime promises." For "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life."

The court also included within the footnote to the last sentence above, the following about what it takes to "vest" benefits:

> See also *Bland v Fiatallis North America, Inc,* 401 F3d 779, 784 (CA 7, 2005) ("Upon vesting, benefits become forever unalterable, and because employers are not legally required to vest benefits, the intention to vest must be found in 'clear and express language' in plan documents."), citing *Inter-Modal Rail Employees Ass'n v Atchinson, T & SF R Co,* 520 US 510, 515; 117 S Ct 1513; 137 L Ed 2d 763 (1997); *Vallone v CNA Fin Corp,* 375 F3d 623, 632, (CA 7, 2004) (stating that "a modification that purports to vest welfare benefits must be contained in the plan documents and must be stated in clear and express language"); *Sengpiel v BF Goodrich Co,* 156 F3d 660, 667 (CA 6, 1998) (stating that the intent to vest must be found in the plan documents and stated in clear and express language); *UAW v Skinner Engine Co,* 188 F2d 130, 139 (CA 3, 1999) (stating that an employer's commitment to vest welfare-plan benefits must not be inferred lightly and must be stated in clear and express language).

The principles announced by the courts above are directly applicable to Ms. Estee's claims. She seeks to interpret the CBA as establishing a certain level of retirement healthcare to which she would be entitled for life. She does so without any clear statement to that effect in the CBA language. The CBA text says nothing about any level being "vested" nor does the document state such a benefit level in clear expressed language. Her interpretation cannot be inferred. In fact, the clear expression in the CBA provides exactly the opposite conclusion.

The plain language of the CBA provides that retirees under the 2003-2007 contract will have their healthcare benefit adjusted based upon active bargaining unit employees benefits. The level of

healthcare for retirees becomes that which active bargaining members receive. The CBA language explicitly has left the retiree benefits to the contingencies of future union negations and CBAs. [1] Ms. Estee's CBA claims are, therefore, without merit and are denied.

More recently, Ms. Estee has raised a second claim. She feels she has vested right to retirement healthcare because of a personnel rules pamphlet she received in 1971. This claim also fails for a number of reasons.

First, Ms. Estee did not retire under these rules. She continued in the City's employment and became a member of a union before she retired; thereafter, any claim she may have made to a contract right before union membership was relinquished unless incorporated clearly into the CBA. Nothing in the CBA governing union contracts benefits grandfathered the previously mentioned healthcare. The CBA rights to healthcare are those in place when she retired. Ms. Estee's contract rights are thus limited to those in the CBA in effect at that time. What those rights actually were is the discussion of Ms. Estee's first claim above.

Second, we are not aware that there is anything in the 1971 pamphlet that says it was intended to establish employee contract rights in the benefits described for someone who did not retire at that time. It says nothing about the benefit described being "vested" or that the pamphlet forms a relationship, such as a "contract" or a "covenant." See *Studier v Michigan Public Sch Employees Retirement Bd,* 472 Mich 642, 663-664 (2005). The pamphlet was not intended to create a contract nor did it create any contract rights.

Ms. Estee also raises a third claim that in some way a 1969 resolution describing healthcare benefits could never be altered or changed.

For the reason that Ms. Estee's pamphlet argument fails, her contention that the 1969 resolution provides an unalterable benefit must also fail. In Michigan, there is a strong presumption that statutes do not create contractual rights. *Studier*, 472 Mich at 661. As such, "in order for a statute to form the basis of a contract, the statutory language must be plain and susceptible of no other reasonable construction than that the legislature intended to be bound to a contract." *Id.* at 662.

The aforesaid principle applies equally to ordinances as it does to statutes. But here, Ms. Estee does not even point to an ordinance. Her claim is based on a resolution, which by its very nature is for a short-term purpose and not intended to be lasting. *McKane v City of Lansing,* No. 96-2228, 1998 WL 25002 (6th Cir Jan. 14, 1998).

Neither the pamphlet nor the resolution form a contract that provides a right to retirement healthcare for Ms. Estee.

For the reasons provided in this memo, all Ms. Estee's claims are once and for all denied.

1. The legal contract principles in light of *Tackett* and its progeny also supports the conclusion that the continuing thread of CBA benefits was allowed to be broken by the Union. The 2003-2007 CBA was terminated by the Union and not extended. This resulted in healthcare benefits for retirees being further limited by new CBA provisions.