No. 07-6275

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Gary T. Winnett, Freda Jackson-Chittum, Casper R. Harris, William H. Dailey, Calvin E. Grogan, Kenneth C. Hammer, Charles A. Waterfield, and Michael J. Finn, on behalf of themselves and others similarly situated,

Plaintiffs-Appellees,

v.

Caterpillar Inc.,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Tennessee
No. 3:06-CV-00235, Judge Aleta A. Trauger

BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF APPELLANT

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Dated: January 16, 2008

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Winnett et al., Plaintiffs-Appellees

v.

Caterpillar Inc., Defendant- Appellant

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to 6th Cir. R. 26.1, Chamber of Commerce of the United States of America
Name of Party

makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

The Chamber of Commerce of the United States of America has no parent corporation.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No publicly owned corporations have a financial interest in the outcome of the litigation.

Daniel L Geyser
Signature of Counsel

11/15/08
Date

IDENTITY OF *AMICUS CURIAE* AND AUTHORITY TO FILE

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. The Chamber has an underlying membership of more than three million businesses and organizations of every size, in every sector and geographic region of the country. An important function of the Chamber is to represent the interests of its members in the federal courts in cases addressing issues of widespread concern to the American business community. The Chamber has participated as *amicus curiae* in hundreds of cases before the United States Supreme Court and the Courts of Appeals.

The Chamber has with this Brief submitted a Motion for Leave to File as *Amicus Curiae* in Support of Appellant Caterpillar Inc.

STATEMENT OF THE CASE AND INTEREST OF *AMICUS CURIAE*

The *Amicus* adopts the Statement of the Case set forth in the Brief of Appellant.

This case, at its core, involves the right of collective bargaining parties to make agreements that set forth the terms and conditions of employment for *actively working* employees, and not be subject to a "judicial inference" about the collective bargaining parties' intent. Appellant Caterpillar Inc. ("Caterpillar" or the "Company") has been in a collective bargaining relationship with the United Auto Workers ("UAW" or the "Union") at several of its facilities since 1948 and,

over the years, has entered into a series of collective bargaining agreements with the Union. In 1988, Caterpillar and the Union entered into a collective bargaining agreement (the "1988 Agreement") that provided certain retirees and surviving spouses with no-cost medical benefits. The 1988 Agreement expired in late 1991, and the parties began negotiations for a successor contract. Caterpillar and the Union bargained to impasse, and on two separate occasions in 1992, Caterpillar lawfully implemented its final offer. The provisions of that final offer included changes to retiree medical coverage, including "caps" on the amount Caterpillar would pay for retiree health coverage for post January 1, 1992 retirees.

Plaintiffs are a class of Caterpillar retirees and surviving spouses who were active bargaining unit employees under the 1988 Agreement, but who retired after expiration of the Agreement in 1991. Plaintiffs assert claims for the retiree health benefits provided under the 1988 Agreement, alleging that Caterpillar breached that Agreement years later, by beginning to charge retirees and their surviving spouses for a portion of the cost of their medical coverage. Plaintiffs filed suit in the United States District Court for the Middle District of Tennessee under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132.

Caterpillar moved to dismiss the suit for lack of subject matter jurisdiction, on the grounds that Plaintiffs retired *after* the 1988 Agreement expired. Caterpillar relied on this Court's holding in *Bauer v. RBX Indus., Inc.*, 368 F.3d 569, 579 n.5 (6th Cir. 2004), that the federal courts do not have jurisdiction to hear Section 301 claims based on an expired or superseded collective bargaining agreement. The Plaintiffs countered by arguing that their rights to "no-cost" retiree medical benefits "vested" while they were working as active employees under the 1988 Agreement. According to Plaintiffs, it does not matter that they actually retired after the labor contract (and its retiree medical promise) expired.

The district court agreed with the Plaintiffs and held that their rights to retiree medical benefits under the 1988 Agreement had vested while they still were working under that agreement, and that the court had jurisdiction to hear the case. *Winnett v. Caterpillar, Inc.*, 496 F. Supp. 2d 904, 922, 930 (M.D. Tenn. 2007). In so holding, the district court explained that "the negotiating context in which the benefits arose indicates that *the benefits were intended to be vested.*" *Id.* at 919, 930 (emphasis added). Importantly, the district court was not referring to some special circumstances in the Caterpillar-UAW negotiations for the 1988 Agreement. Nor was it relying on explicit contract language indicating that the benefit promises would never change. Instead, the district court decided simply to "infer" that the collective bargaining parties intended to vest active employees

with a right to receive no-cost medical coverage, relying on this Court's decision in *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983).

The principal problem with the district court's decision is its application of the so-called *Yard-Man* inference to actively working employees. In *Yard-Man*, the Sixth Circuit permitted an inference that retirees had a vested right to certain medical benefits because they retired from active employment while the benefit promise still was in effect. This Court has not authorized an extension of the inference to cover in-service vesting by active employees.

The district court's extension of the *Yard-Man* inference to active employees is of great concern to the *Amicus* and its members. If accepted by this Court, collective bargaining parties will be left with a judicial overlay on their agreements that is at odds with federal labor policies supporting unencumbered collective bargaining and the freedom to negotiate, interpret and apply their own agreements.

The district court's decision also ignores the critical distinction between active employees, whose terms and conditions of employment are established and changed through mandatory collective bargaining, and retirees who may be the beneficiaries of a labor contract promise, but who are no longer represented by a union. It was the interests of the latter group – not the former – that supported this Court's inference in *Yard-Man*. If the district court decision is affirmed,

countless labor agreements will be subject to new and unexpected interpretations, simply because the collective bargaining parties did not explicitly state an intent not to vest the benefits in question. This uncertainty will undermine federal labor policy that supports stability in collective bargaining relationships. And, both parties to labor contracts will be faced with the prospect of litigation whenever they agree to change a labor contract provision that might be susceptible to an extended *Yard-Man* inference.

The *Amicus* submits this brief in hopes of focusing the Court on the larger policy implications of the district court's decision and the unfortunate extension of the *Yard-Man* inference.

ARGUMENT

I. Extension of the *Yard-Man* Inference to Cover Vesting Among Active Employees is Contrary to Federal Labor Policy and Fundamental Principles of Collective Bargaining

A. Federal Labor Policy Favors the Freedom of the Bargaining Parties to Negotiate, and any Restriction on that Freedom has been Extremely Narrow

Unencumbered, private collective bargaining is fundamental to the nation's federal labor policy. Intended to promote industrial peace, the federal labor relations scheme is designed to provide employers and unions the opportunity and obligation to reach compromises that suit their mutual economic needs, without imposing government-mandated terms. Congress and the courts have been

careful not to interfere in the collective bargaining process, and any intervention has been strictly limited and narrowly applied. Any attempt by this Court to inject itself into collective bargaining must be approached cautiously and against the backdrop of federal labor policy.

Soon after the passage of the National Labor Relations Act, 29 U.S.C. § 151 *et seq.*, the United States Supreme Court recognized that "[t]he theory of the Act is that free opportunity for negotiation with accredited representatives of employees is likely to promote industrial peace and may bring about the adjustment and agreements which the Act in itself does not attempt to compel." *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 45 (1937). This policy is, at its core, a recognition that permitting the parties to negotiate and apply their own contracts without interference from a court or other third parties will maximize the potential for effective and stable labor relations. *See H. K. Porter Co. v. NLRB*, 397 U.S. 99, 103 (1970) ("The object of [the] Act was not to allow governmental regulation of the terms and conditions of employment, but rather to ensure the employers and their employees could work together to establish mutually satisfactory conditions.").

The courts have been guided by this principle in zealously guarding against a variety of potential infringements on the collective bargaining parties' freedom to set their own terms. *See, e.g., NLRB v. American Nat'l Ins. Co.,* 343 U.S. 395,

408-09 (1952) ("Congress provided expressly that the Board should not pass on the desirability of the substantive terms of labor agreements."); *Lumber Prod. Indus. Workers Local #1054 v. West Coast Indus. Relations Assoc., Inc.*, 775 F.2d 1042, 1046 (9th Cir. 1985) ("If we were to adopt the union's implied contract theory, we would be rejecting the fundamental principle of free collective bargaining and would impose, under the guise of a common-law principle of implied contract, the very concept Congress refused to include within the NLRA: compulsory acceptance of a collective bargaining agreement."); *General Elec. Co. v. Callahan*, 294 F.2d 60, 67 (1st Cir. 1961) (holding that a state labor board's interference with a labor contract negotiation "conflict[ed] with the national policy of free and unfettered collective bargaining").

The freedom of collective bargaining parties to negotiate terms they desire without undue government interference applies equally to the parties' ability to interpret their own agreements through a method of their choosing. Section 203(d) of the Act instructs that "[f]inal adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." 29 U.S.C. § 173(d). The Supreme Court's *Steelworkers Trilogy*, through its protection and promotion of parties' agreed-to dispute resolution mechanisms, solidified the importance of respecting the parties' private

agreement. *See United Steelworkers of Am. v. Enterprise Wheel & Car Corp.*, 363 U.S. 593 (1960); *United Steelworkers of Am. v. Warrior & Gulf Navigation Co.*, 363 U.S. 574 (1960); *United Steelworkers of Am. v. American Mfg. Co.*, 363 U.S. 564 (1960). "That policy can be effectuated only if the means chosen by the parties for settlement of their differences . . . is given full play." *American Mfg. Co.*, 363 U.S. at 566. And, once agreement is reached, judicial review of arbitral interpretations is limited to several particularly egregious circumstances. *See, e.g., United Paperworkers Int'l Union v. Misco, Inc.*, 484 U.S. 29, 36-38 (1987) ("[A]s long as the arbitrator is even arguably construing or applying the contract and acting within the scope of his authority, that a court is convinced he committed serious error does not suffice to overturn his decision.").

Any judicial foray into the substance of collective bargaining has been viewed with equal skepticism. "Since any attempt by a court to infer . . . purpose necessarily comprehends the merits, *the court should view with suspicion an attempt to persuade it to become entangled in the construction of the substantive provisions of a labor agreement.*" *Warrior & Gulf*, 363 U.S. at 585 (emphasis added). The federal courts also recognize that the application of traditional rules of contract interpretation in determining the parties' intent must be qualified by a requirement that their application does not contradict basic principles of federal labor policy. *See Yard-Man*, 716 F.2d at 1479; *see also Textile Workers Union of*

Am. v. Lincoln Mills of Alabama, 353 U.S. 448, 456 (1957) ("We conclude that the substantive law to apply in suits under [Section 301] is federal law, which the courts must fashion from the policy of our national labor laws"). As this Court has explained, "the interpretation rendered [must] not denigrate or contradict basic principles of federal labor law." *Yard-Man*, 716 F.2d at 1480.

Restrictions on collective bargaining parties' ability to negotiate the terms they desire and determine the meaning and interpretation of those terms have been extremely narrow. This is the result of Congressional and judicial protection of free collective bargaining, both in terms of allowing parties to determine the substance and meaning of those agreements. Any potential infringement or regulation of these areas must be scrutinized closely to ensure that free collective bargaining is not unduly compromised.

B. In Recognition of Federal Labor Policy Supporting Freedom in Collective Bargaining, this Court's *Yard-Man* Inference is Limited to Retirees and Narrowly Tailored

The United States Supreme Court recognized long-ago that there are critical differences between active employees and retirees that, in the context of collective bargaining and the Act make similar treatment inappropriate. *See generally Allied Chem. & Alkali Workers of Am. v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). These differences ultimately formed the basis for this Court's narrow exception to the general policy favoring free and unfettered

collective bargaining and adoption of a limited inference of vesting in the context of health benefits for *current retirees*. *See, e.g., Yolton v. El Paso Tennessee Pipeline Co.*, 435 F.3d 571, 579-80 (6th Cir. 2006). These differences apparently were lost on the district court, as they are acknowledged nowhere in its decision and extension of the inference to active employees. The *Amicus* submits that consistent with this Court's precedent, this inference only applies, if at all, in the context of vesting among current retirees. The distinction between active employees and retired employees is an important one in the federal labor relations scheme, and the district court's failure to consider or address it is further reason why courts should stay away from interpreting collective bargaining agreements.

It is well established that retired employees are outside the scope of the collective bargaining obligation and have interests so divergent from active employees that it would be inappropriate to include them in the same bargaining unit as active employees. *Pittsburgh Plate Glass*, 404 U.S. at 165, 172-73. Indeed, the inclusion of a limited-interest group like retirees in a unit of active employees only would serve to undermine the collective bargaining process. *Id.* at 172-73 ("mutuality of interest serves to assure the coherence among employees necessary for efficient collective bargaining"). The Supreme Court and this Court have recognized that future retirement benefits are an essential component of the collective bargaining process. *See, e.g., Pittsburgh Plate Glass*, 404 U.S. at 180

("To be sure, the future retirement benefits of active workers are part and parcel of their overall compensation and hence a well-established statutory subject of bargaining."); *Yard-Man*, 716 F.2d at 1482 (recognizing that retirement benefits are "subject to the contingencies of future negotiations"). Active employees must be free to decide that items such as current income are more important than retirement benefits, and should not be required to negotiate on behalf of retirees. *Pittsburgh Plate Glass,* 404 U.S. at 181. Accordingly, benefits afforded current retirees are a non-mandatory subject of bargaining. *Id.* at 182. This means that neither party at the bargaining table may insist to impasse on an issue dealing with the benefits provided to current retirees.

It is this critical distinction that serves as the underpinning for this Court's *Yard-Man* inference and the basis for limiting its application to current retirees. In determining whether ambiguous collective bargaining agreement language vested retirees with a right to lifetime medical benefits, the *Yard-Man* court explained that "employees are presumably aware that the union owes no obligation to bargain for continued benefits for retirees." 716 F.2d at 1482. Employees would not, therefore, leave retirement benefits for retirees subject to the give-and-take of future bargaining. "If they forego wages now in expectation of retiree benefits, they will want assurance that once they retire they will continue to receive such benefits regardless of the bargain reached in subsequent

agreements." *Id.* The *Yard-Man* court instructs that based on these factors, courts interpreting ambiguous contract language should infer that the collective bargaining parties intended to create (*i.e.*, that the union would have negotiated on behalf of its active employees) a vested right for retirees. *Id.*

This Court has explained in more recent decisions that the *Yard-Man* inference is "to provide a contextual understanding about the nature of labor-management negotiations over retirement benefits." *Yolton*, 435 F.3d at 580. Stated differently, the *Yard-Man* inference is a way to account for the unique nature of retiree benefits in the mandatory – non-mandatory dichotomy of bargaining obligations. And, for all the reasons this Court identified in explaining why the inference is necessary for retirees, it is inappropriate for active employees whose retirement benefits are a mandatory subject of bargaining and who continue to be represented by a union up until the moment they stop working and retire.

This distinction between active employees and retirees is an important one that extends well beyond retirement benefits. Nothing in the Act suggests that retirees are or should be within the scope of the collective bargaining obligation that covers active employees and their unions. *See Pittsburgh Plate Glass*, 404 U.S. at 165. Moreover, retirees are not owed a duty of fair representation by the

union, which means the union has no legal obligation to represent them or their interests in dealings with the employer. *See id.* at 181 n.20.

Notwithstanding this important distinction, the district court in this case blindly applied the *Yard-Man* inference in concluding that Caterpillar and the UAW intended to vest a right to lifetime, no-cost retiree medical benefits in current employees. The court does so without acknowledging that the Plaintiffs continued to be represented by the Union – which owed them an ongoing duty of fair representation – after expiration of the 1988 Agreement and that the Union could have insisted that Caterpillar bargain about a continuation of no-cost retiree medical benefits up until their retirement. This contrasts with retirees who no longer can count on the collective bargaining parties maintaining their retirement benefits and who no longer are owed a duty of fair representation by the union. *See id.* Indeed, the district court applied an inference designed to account for a collective bargaining dynamic that did not exist for the Plaintiffs in this case. The result is an unwarranted and unsupportable judicial intrusion into the collective bargaining process in direct contravention of federal labor policy.

Even assuming the language at issue in this case is ambiguous and requires consideration of extrinsic evidence in a forum other than the one selected by the parties, there was no basis for inferring that Caterpillar and the UAW intended to vest active employees in retirement benefits at the expense of wages and other

current benefits. The inference would be directly contrary to this Court's observation that future retirement benefits are something active employees can address through their collective bargaining representative in future negotiations and tend to forego in exchange for more immediate benefits (*i.e.*, through the process of free collective bargaining). *See Yard-Man*, 716 F.2d at 1482. The *Amicus* does not contend that Caterpillar and the UAW could not have agreed to vest active employees with retiree medical benefits; just that there is no contractual language supporting that proposition nor any basis for imposing an inference to that effect. This Court has recognized as much, which likely explains why the district court did not cite a single Sixth Circuit decision extending the *Yard-Man* inference to active employees.[1] *Yolton*, 435 F.3d at 581 n.6 (explaining that where someone is already retired under a collective bargaining agreement "is perhaps where the *Yard-Man* inference makes the most sense").

If anything, in the years following *Yard-Man*, this Court seemingly has gone in the opposite direction by clarifying and redefining the reach of that decision, in adherence to the federal labor policy that judicial review of the

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[1] The district court only cites *Armistead v. Vernitron Corp.*, 944 F.2d 1287 (6th Cir. 1991), where the plaintiffs exercised their right to retire in advance of a plant shut-down, and *Int'l Union UAW Local 91 v. Park-Ohio Indus., Inc.*, 876 F.2d 894 (6th Cir. 1989), where the court merely concluded that the plaintiffs had offered a plausible interpretation of the

substance of collective bargaining agreements should be limited. Indeed, shortly after *Yard-Man*, this Court explained that "there is no legal presumption [of vesting] based on the status of retired employees." *Int'l Union, United Auto Workers v. Cadillac Malleable Iron Co.*, 728 F.2d 807, 808 (6th Cir. 1984). This Court also has made clear that "*Yard-Man* does not shift the burden of proof to the employer, nor does it require specific anti-vesting language before a court can find that the parties did not intend benefits to vest." *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 656 (6th Cir. 1996). Instead, courts may "infer an intent to vest from the context and already sufficient evidence of such intent." *Yolton*, 435 F.3d at 579.

This Court has worked to guard against attempts of both litigants and courts to expand the *Yard-Man* inference. *See, e.g., Wood v. Detroit Diesel Corp.*, 2007 WL 128772, at *3 (6th Cir. Jan. 17, 2007) (finding district court's reasoning faulty because it "implicitly applied a presumption that retirees' health care benefits was vested"). If anything, this Court has narrowed the possible reach of the original *Yard-Man* decision. *See, e.g., Yolton*, 435 F.3d at 579-80. The district court's expansion of *Yard-Man*, albeit in a new and different

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contract to support their in-service vesting argument and remanded for further proceedings and evidence.

direction, is not consistent with the holdings of this Court or with the larger federal labor policy favoring free collective bargaining.

C. Expansion of *Yard-Man* is Directly Contrary to Labor Policy Favoring Free Collective Bargaining

The district court's application of the *Yard-Man* inference to conclude that the parties intended Plaintiffs to vest in no-cost, lifetime medical benefits while working under the 1988 Agreement is precisely what Congress and the courts – including this Court – have guarded against. As a judicial overlay on what the collective bargaining parties meant to negotiate across the bargaining table for active employees (or perhaps in the district court's view, should have negotiated), extending the *Yard-Man* inference is directly contrary to the notion of free collective bargaining. The inference interferes with the bargaining parties' interpretation and application of prior agreements and their negotiation of future agreements.

Future retirement benefits for active employees are an essential part of the collective bargaining process. *Pittsburgh Plate Glass*, 404 U.S. at 180-81. There is no statutory right to lifetime health benefits and if such a right exists, it is because the collective bargaining parties have agreed to it as a matter of contract. *See, e.g., Yolton,* 435 F.3d at 578; *Golden*, 73 F.3d at 655. The contract governs both the level of benefits and the continuation of those benefits following

expiration of the contract. *E.g., Yard-Man*, 716 F.2d at 1479.[2] As such, the parties should be free to negotiate these benefits for their active employees without any inference after-the-fact as to what they actually intended.

Bargaining parties also should be free to negotiate over the full range of terms and conditions of employment going forward. Extending the *Yard-Man* inference to active employees makes bargaining indefinitely subject to potential vested benefits contained in prior contracts, under which some employees never may have worked. Although this is not uncommon for parties at the bargaining table today to be restricted by prior agreements, it nonetheless is not an issue to be taken lightly or with the apparent lack of consideration afforded by the district court.

If the district court's decision in affirmed, collective bargaining parties in this Circuit will, for example, have to take into account those benefits that may be deemed vested under prior agreements when costing and negotiating future labor contract terms. Whether an employer can afford proposed improvements in vital terms and conditions of employment for active employees, such as wages, may depend on whether a *Yard-Man*-type inference exists with respect to other benefit

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[2] The ability of plaintiffs to sustain a breach of contract action for retirement benefits under Section 301 of the LMRA post-contract expiration likewise depends on a showing that the benefits in question vested as a matter of contract. *See Bauer*, 368 F.3d at 579 n.5.

terms in a prior agreement. If there is a potential that a benefit may have vested, neither party may be willing to propose a change for fear of being sued by the affected employees. *See Yard-Man*, 716 F.2d at 1482 n.8 (discussing inability of parties to bargain away vested benefits). Employers understandably will approach the subject of benefits in future negotiations with great hesitation if they recognize the possibility that benefit promises may never be undone. Unions likewise may *decline* to bargain over changes in future retiree benefits for active employees because they understand that the mere act of bargaining could be used as evidence that the benefits are not vested. Similarly, unions may decline to bargain over changes in the language of benefit promises in hopes of preserving existing contract ambiguities and later invoking a *Yard-Man* inference. This result hardly is consistent with the policy of free and unfettered collective bargaining. As such, the district court's decision cannot stand.

II. Extension of the *Yard-Man* Inference to Active Employees Creates Uncertainty and Instability in Labor Relations by Subjecting Countless Expired Collective Bargaining Agreements to New Interpretations

Extending the *Yard-Man* inference to active employees also undermines policies of stability and certainty in labor relations. *See, e.g., Local 174, Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962) (recognizing that interpretation of labor contracts calls for uniform law); *Brooks v. NLRB*, 348 U.S.

96, 103 (1954) (stating that the Act's "underlying purpose" is achieving "industrial peace"). Collective bargaining parties now will have to examine potentially all of their prior agreements to determine whether a court applying a *Yard-Man* inference conceivably could conclude that one or more of those contracts contain benefits that arguably vested in active employees. As one court warned,

> the use of extrinsic evidence to create such obligations nowhere alluded to in the contract would unjustifiably deprive the parties of the limitation of liability that is implicit in the negotiation of a written contract having a definite expiration date. Subject only to the limited protection against unforeseeable contractual obligations that is conferred by the doctrine of impossibility, a party might find itself saddled with obligations for the next twenty or thirty years (or even more, in the case of surviving spouse benefits) even though it had reasonably believed that all its obligations would expire in three years, when the contract expired by its own terms.

Bidlack v. Wheelabrator Corp., 993 F.2d 603, 608 (7th Cir. 1993).

Given the rising costs of health care, it is not difficult to see how uncertainty concerning benefits obligations could lead to instability in collective bargaining relationships. This uncertainty inevitably will be on a mass scale, as the extended *Yard-Man* inference could be applied to virtually all expired collective bargaining agreements and all employees who worked under those agreements. Some employers in negotiations may seek concessionary contracts to account for previously unforeseen financial liabilities and changes that protect

against unintended vesting. Others may find themselves forced to implement more dramatic workplace changes, such plant closings or workforce reductions, to offset possible legacy costs. Employers and unions also may find themselves taking opposing positions on the issue of vesting, which will lead to additional litigation before courts and arbitrators. This judicially-created confusion and uncertainty surrounding an inference of vesting hardly promotes stability in labor relations.

Collective bargaining parties also may face the possibility of inconsistent interpretations of their agreements. Employers with contracts or contract provisions that span the jurisdiction of multiple federal courts now may find that the same contract language, and in some cases the same labor contract, applies differently to active employees depending on their geographic location. This result would have a startling effect on labor relations. As the Supreme Court observed in *Lucas Flour Co.*,

> [t]he possibility that individual contract terms might have different meanings . . . would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of negotiating an agreement would be made immeasurably more difficult by the necessity of trying to formulate contract provisions in such a way as to contain the same meaning under two or more systems of law which might someday be invoked in enforcing the contract. Once the collective bargain was made, the possibility of conflicting substantive interpretation under

> competing legal systems would tend to stimulate and prolong disputes as to its interpretation.

369 U.S. 95 at 103-04 (discussing need for single body of substantive federal labor law); *see UAW, AFL-CIO v. Hoosier Cardinal Corp.*, 383 U.S. 696, 702 (1966) ("The need for uniformity . . . is greatest where its absence would threaten the functioning of those consensual processes that federal labor law is chiefly designed to promote – the formation of the collective agreement and the private settlement of disputes under it.") The *Amicus* submits that retiree health benefits are one of those areas where collective bargaining parties can ill-afford the uncertainty and instability caused by extending the *Yard-Man* principle to active employees.

III. Extension of the *Yard-Man* Inference Will Give Rise to Increased Litigation and Forum Shopping

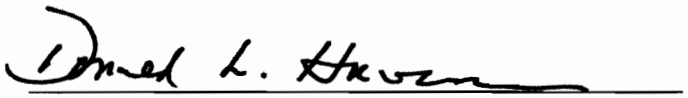
The inevitable result of an extended *Yard-Man* inference will be increased litigation as unions and employees seek to claim benefits offered under prior contracts, many of which employers cannot afford to provide today. *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 541 (7th Cir. 2000) (recognizing the already "much litigated issue of when a right to health benefits that is granted to retired workers . . . survives the termination of the agreement"). The district court's

decision creates a whole new class of plaintiffs who will seek the level of benefits contained in an agreement under which they worked at some point during their careers, rather than the agreement that was in place at the time of retirement. This litigation necessarily will be accompanied by additional forum shopping as potential plaintiffs try to take advantage of an expanded *Yard-Man* inference. It also will be accompanied by potential plaintiffs shopping among those collective bargaining agreements under which they worked to find the most favorable benefit package. This type of opportunistic litigation goes well beyond what this Court intended with the creation of the *Yard-Man* inference and would have a significant, negative impact on employers and collective bargaining.

CONCLUSION

The Chamber respectfully submits that the district court's decision must be reversed. To allow the district court's decision to stand would be to set a flawed and potentially destructive precedent in an area of the law that goes to the heart of federal labor policy.

Respectfully submitted,



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Dated: January 16, 2008

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 32(a)(7)

I certify, pursuant to Fed. R. App. P. 32(a)(7)(C), that this Brief of *Amicus Curiae* Chamber of Commerce of the United States is proportionally spaced, was prepared in 14 point Times New Roman font using Microsoft Word 2000, and contains 5,096 words according to the word count feature of Word. This word count excludes the corporate disclosure statement, table of contents, table of authorities, and signatures and certificates of counsel.

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January 16, 2008

UNPUBLISHED DECISION ADDENDUM

H

Wood v. Detroit Diesel Corp.
C.A.6 (Mich.),2007.
This case was not selected for publication in the Federal Reporter.NOT RECOMMENDED FOR FULL--TEXT PUBLICATIONPlease use FIND to look at the applicable circuit court rule before citing this opinion. Sixth Circuit Rule 28(g). (FIND CTA6 Rule 28.)

United States Court of Appeals,Sixth Circuit.

Daniel WOOD, Ronald Goins, and Priscilla Sue Street, on behalf of themselves and a similarly situated class, Plaintiffs-Appellees, Counter-Defendants,

v.

DETROIT DIESEL CORPORATION, Defendant-Appellant, Counter-Plaintiff, Third Party Plaintiff,

v.

International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America and its Local 163, Third Party Defendant-Appellee.

No. 06-1157.

Jan. 17, 2007.

Background: Retired employees brought class action, alleging employer's attempts to unilaterally modify or reduce their health care coverage by requiring them to make premium contribution payments violated their rights under collective bargaining agreements, Labor Management Relations Act (LMRA), and Employee Retirement Income Security Act (ERISA). The United States District Court for the Eastern District of Michigan, 2005 WL 3579169, issued preliminary injunction restraining employer's efforts to require retirees to make premium contributions to maintain their current health care coverage. Employer appealed.

Holdings: The Court of Appeals, McKeague, Circuit Judge, held that:

(1) employees had burden of proving intent to vest fully-funded health care coverage;

(2) retirees' likelihood of success was sufficient to warrant preliminary injunctive relief,

(3) testimony of retirees about the hardship that a new monthly expense of $260 to $834 would pose was sufficient to establish imminent irreparable harm; and

(4) requiring a security bond of only $1500 to support preliminary injunction was not an abuse of discretion.

Affirmed.

West Headnotes

[1] Labor and Employment 231H ⇐705

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)6 Actions Against Participants or Beneficiaries
231Hk705 k. In General. Most Cited Cases

On motion for preliminary injunction to restrain employer's efforts to require retirees to make premium contributions to maintain their current health care coverage, employees had burden of proving intent to vest fully-funded health care coverage; retirees were not entitled to presumption that their right to health care benefits was vested nor was employer required to rebut presumption by identifying contractual language specifically authorizing modification which required retirees to make premium contribution payments.

[2] Labor and Employment 231H ⇐705

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)6 Actions Against Participants or Beneficiaries
231Hk705 k. In General. Most Cited Cases

In light of letter from employer's senior vice president, indicating that capped responsibility for retiree health care coverage was a lifetime commitment, in consideration of union's agreement to limit employer's liability for health care costs, as well as employer's part in the breakdown in cooperation which resulted in dissolution of status quo for retiree's health care coverage, retirees' likelihood of success on claims under collective bargaining agreements, Labor Management Relations Act (LMRA), and Employee Retirement Income Security Act (ERISA) was sufficient, when balanced in equity with the other relevant considerations, to warrant preliminary injunctive relief restraining employer's efforts to require retirees to make premium contributions to maintain their current health care coverage. Labor-Management Relations Act, 1947, § 301, 29 U.S.C.A. § 185; Employee Retirement Income Security Act of 1974, § 502, 29 U.S.C.A. § 1132.

[3] Labor and Employment 231H ⚿705

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)6 Actions Against Participants or Beneficiaries
231Hk705 k. In General. Most Cited Cases

Testimony of retirees about the hardship, financial and emotional, that a new monthly expense of $260 to $834 would pose was sufficient to establish imminent irreparable harm required for preliminary injunctive relief restraining employer's efforts to require retirees to make premium contributions to maintain their current health care coverage.

[4] Labor and Employment 231H ⚿705

231H Labor and Employment
231HVII Pension and Benefit Plans
231HVII(K) Actions
231HVII(K)6 Actions Against Participants or Beneficiaries
231Hk705 k. In General. Most Cited Cases

Requiring a security bond of only $1500 to support preliminary injunction, restraining employer's efforts to require retirees to make premium contributions to maintain their current health care coverage, was not an abuse of discretion, as court could have required no bond at all from retirees.

***464** On Appeal from the United States District Court for the Eastern District of Michigan.

Andrew Nickelhoff, Sachs Waldman, Detroit, MI, for Plaintiffs-Appellees, Counter-Defendants and Third Party Defendant-Appellee.

Thomas G. Kienbaum, Theodore R. Opperwall, William B. Forrest, Kienbaum, Opperwall, Hardy & Pelton, Birmingham, MI, for Counter-Plaintiff, Third Party Plaintiff.

Before: COLE and McKEAGUE, Circuit Judges; and BREEN, District Judge.[FN*]

FN* The Honorable J. Daniel Breen, United States District Judge for the Western District of Tennessee, sitting by designation.

OPINION

McKEAGUE, Circuit Judge.

**1 This is an appeal from a preliminary injunction restraining efforts by Detroit Diesel Corporation to require retired employees to make premium contributions in order to maintain their current health care coverage. Although the district court's reasoning is flawed, the award of preliminary injunctive relief has not been shown to be an abuse of discretion. For the reasons that follow, the preliminary injunction is affirmed.

I. FACTUAL AND PROCEDURAL BACKGROUND

Employees who retired from employment with Detroit Diesel Corporation between 1993 and 2004 received continuing health care benefits pursuant to various collective bargaining agreements and related documents. The agreements were reached by

Detroit Diesel with the employees' collective bargaining unit, International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America, Local 163 ("UAW"). Pursuant to these agreements, Detroit Diesel continued to provide health care coverage to the retirees, but its annual premium contributions were, during the period 1993 to 2004, limited by so-called "Cap Agreements" to specific dollar amounts. Any "above-cap" costs of continuing coverage were to be paid in accordance with negotiated agreements***465** between Detroit Diesel and the UAW. In furtherance of this purpose, from 1993 to 2004, Detroit Diesel and the UAW established a Voluntary Employee Benefit Association ("VEBA") Trust. The VEBA Trust was jointly funded by the parties and jointly administered by representatives of both parties. Changes in the manner of funding the VEBA Trust were to be resolved in collective bargaining.

In 2004, the VEBA Trust funds were exhausted and no substitute method of paying above-cap costs was agreed to by Detroit Diesel and the UAW. In August 2005, Detroit Diesel informed the retirees that, effective January 1, 2006, they would have to pay premium contributions in order to cover the above-cap costs if they wanted to maintain their existing health care coverage. Depending on the coverage elected, this would entail individual monthly contributions of varying amounts, potentially as much as $834.

Plaintiffs Daniel Wood, Ronald Goins and Priscilla Sue Street, suing on behalf of themselves and a putative class of some 1126 similarly situated retirees and survivors, contend Detroit Diesel has no right to unilaterally modify or reduce their health care coverage by requiring them to make premium contribution payments. They filed suit in the Eastern District of Michigan, contending Detroit Diesel's actions: (1) are in violation of their rights under several collective bargaining agreements, actionable under the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185; and (2) represent the wrongful denial of employee welfare benefits, actionable under the Employees Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132. They allege their health benefits are vested for life at no cost to them.

Plaintiffs asked the district court to preliminarily enjoin Detroit Diesel's wrongful requirement that they make premium contributions as a condition of continued coverage. Finding that plaintiffs had demonstrated a likelihood of success on the merits and that they would suffer irreparable harm if an injunction did not issue, the district court issued a preliminary injunction. Detroit Diesel appeals from this ruling, contending the district court abused its discretion. We have jurisdiction to hear the appeal from the interlocutory injunctive order under 28 U.S.C. § 1292(a)(1).

II. ANALYSIS

A. Standard of Review

****2** The governing standards of review were recently summarized in *Yolton v. El Paso Tennessee Pipeline Co.*, 435 F.3d 571, 577-78 (6th Cir.2006), as follows:

This Court reviews a district court's grant of a preliminary injunction for an abuse of discretion. *Tucker v. City of Fairfield*, 398 F.3d 457, 461 (6th Cir.2005). "A district court abuses its discretion when it relies on clearly erroneous findings of fact, improperly applies the law, or uses an erroneous legal standard." *Id.* This Court reviews the district court's conclusions of law *de novo* and its findings of fact for clear error. *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir.1996). "Questions of contract interpretation are generally considered questions of law subject to *de novo* review." *Id.*

To determine whether to grant a preliminary injunction, a district court must consider: "(1) the plaintiff's likelihood of success on the merits; (2) whether the plaintiff may suffer irreparable harm absent the injunction; (3) whether granting the injunction will cause substantial harm to others; and (4) the impact of an injunction upon the public interest." ***466***Deja Vu of Nashville, Inc. v. Metro. Gov't of Nashville & Davidson County*, 274 F.3d

377, 400 (6th Cir.2001). "None of these factors, standing alone, is a prerequisite to relief; rather, the court should balance them." *Golden*, 73 F.3d at 653.

B. Likelihood of Success on the Merits

In order to succeed on the merits of their claims, plaintiffs must make the threshold showing that their asserted right to fully-funded lifetime health care benefits vested at some time prior to the attempted modification by Detroit Diesel. Again, *Yolton* provides a useful summary of the legal context for plaintiffs' claims:

A retiree health care insurance benefit plan is a welfare benefit plan under ERISA. .... Unlike pension plans, "[t]here is no statutory right to lifetime health benefits."... If lifetime health care benefits exist for the plaintiffs, it is because [the union] and [employer] agreed to vest a welfare benefit plan. .... If a welfare benefit plan has not vested, "after a CBA [collective bargaining agreement] expires, an employer generally is free to modify or terminate any retiree medical benefits that the employer provided pursuant to the CBA."....If a welfare benefit plan has vested, the employer's unilateral modification or reduction of those benefits constitutes a LMRA violation.

Id. at 578 (footnote and citations omitted). Thus, to show that their right to health care benefits vested, plaintiffs must show that the UAW and Detroit Diesel reached an agreement to that effect. In this regard, Yolton further instructs:Whether the benefits vest depends on the intent of the parties. ...."Courts can find that rights have vested under a CBA even if the intent to vest has not been explicitly set out in the agreement."... [I]n determining the intent of the parties to a CBA, "basic rules of contract interpretation apply."... [C]ourts "should first look to the explicit language of the collective bargaining agreement for clear manifestation of intent."... Moreover, "courts should also interpret each provision in question as part of the integrated whole. If possible, each provision should be construed consistently with the entire document and the relative positions and purposes of the parties."... When ambiguities exist, courts may look to other provisions of the document and other extrinsic evidence.

**3 *Id.* (citations omitted). It follows that the first step in discerning the intent of the parties to the CBA requires examination of the language of the pertinent documents.

The district court examined the language of the pertinent documents. The court did not hold that the language evidenced an agreed intent to vest health care benefits. In fact, the court's opinion hardly even mentions the concept of vesting. The court concluded simply that because none of the CBA documents provided that retirees "would be required" to pay premium contributions, the requirement is facially improper. In its motion for reconsideration, Detroit Diesel pointed to language explicitly providing that retirees "may be required to make monthly contributions" and argued this language put employees on notice that their right to continuing health care benefits had not vested. Again, without even commenting on the threshold issue of vesting, the district court simply found this permissive language insufficient to support imposition of a requirement to pay premium contributions.

[1] The district court's reasoning is faulty. The court implicitly applied a presumption that the retirees' right to health ***467** care benefits was vested and then required Detroit Diesel to rebut the presumption by identifying contractual language specifically authorizing the modification it tried to implement. Detroit Diesel correctly argues that such a presumption is improper, as the burden of proving intent to vest rests on plaintiffs. *Yolton*, 435 F.3d at 579-80. The district court failed to find that plaintiffs had demonstrated a likelihood that they will be able to carry this burden. The district court's analysis is therefore flawed as a matter of law. Nonetheless, its issuance of preliminary injunctive relief is not necessarily an abuse of discretion.

The matter of contract interpretation is a question of law which we review *de novo*. Plaintiffs in-

sist they had a vested right to fully-funded health care coverage, but they do not identify CBA language that explicitly supports the argument. They point to language to the effect that "the health care coverages an employee has at the time of retirement .... shall be continued," and "the Corporation shall make contributions .... for health care coverages continued." These provisions support plaintiffs' claim, but fall short of evidencing an agreed intent to vest fully-funded lifetime health care coverage.

Plaintiffs contend the pertinent language is "UAW pattern contract language" which the Sixth Circuit has previously deemed sufficient to substantiate vesting-at least at the preliminary injunction stage. *See* McCoy v. Meridian Auto. Sys., Inc., 390 F.3d 417, 422 (6th Cir.2004); Golden v. Kelsey-Hayes Co., 73 F.3d 648, 656 (6th Cir.1996). Indeed, the determinations in both *Golden* and *Meridian* that the plaintiffs had made a sufficient showing of vesting to warrant preliminary injunctive relief were based in part on similar CBA language. In those cases, as here, the CBAs were devoid of explicit vesting language, but contained provisions possibly supporting an inference of intent to vest. In each case, because the CBA language was inconclusive, the court was forced to look further, to summary plan descriptions (not available in this case) and other extrinsic evidence, to discern the parties' intent. Plaintiffs' assertion that *Golden* and *Meridian* confer a sort of judicial imprimatur on "UAW pattern contract language" is therefore too simplistic.

****4** Detroit Diesel maintains there was no explicit agreement that retiree health care benefits vested. In fact, Detroit Diesel insists the provisions pertinent to retirees who retired from 1993 to 2004, set forth in Supplemental Agreements, expressly advised enrollees in the health care program that rates of payment, coverages, and terms and conditions of the program were all subject to change by Detroit Diesel at any time on reasonable notice. Further, enrollees were advised that they "may be required to make monthly contributions." These provisions are clear and unambiguous, Detroit Diesel contends, and demonstrate, without resort to any extrinsic evidence, that it retained the right to modify the terms of coverage and that there was no agreement on vesting.

In January 1993, moreover, Detroit Diesel contends that a critical element of its agreement with the UAW was memorialized in the Memorandum of Understanding on Retiree Health Care Benefits ("Cap Agreement"). Under the Cap Agreement, Detroit Diesel's obligation to pay premiums was limited to a sum certain per year for each eligible retiree. The Cap Agreement provided for establishment of the VEBA Trust, through which any above-cap premium costs would be paid. In consideration of the UAW's agreement to limit Detroit Diesel's liability for health care costs, Detroit Diesel affirmatively promised in writing, through ***468** Senior Vice President Paul F. Walters, that its capped responsibility for retiree health care coverage was a lifetime commitment:

> DDC fully recognizes, acknowledges and hereby confirms that retiree health care benefits for DDC/UAW employees have been and will continue to be life-time benefits and that the establishment of "contribution limits" in no way modifies or negates this commitment.
>
> Walters letter Jan. 4, 1993, JA 308-09.

This written promise, Detroit Diesel concedes, supports a finding that plaintiffs' right to lifetime health care coverage was vested. However, Detroit Diesel insists plaintiffs' vested right must be deemed subject to the agreed-to contribution limits, which represented the *quid pro quo* for the express, enforceable lifetime commitment. Moreover, Detroit Diesel maintains that it retained the prerogative, pursuant to the Supplemental Agreements, to require retiree contributions for above-cap costs in the event the VEBA Trust failed or proved insufficient to cover the costs. In other words, although Detroit Diesel recognizes that plaintiffs have a vested right to lifetime health care coverage, it maintains they do not have a vested right to *fully-funded* health care coverage. Detroit Diesel thus argues that it is within its rights to require premium contributions from retirees and the preliminary injunction

should be vacated.

In a case such as this, where the language of the pertinent documents is inconclusive, extrinsic evidence is an appropriate and important aid in construing the parties' contractual agreement. However, the available extrinsic evidence, like the Walters letter itself, cuts both ways.

****5** The first Cap Agreement, entered into in January 1993, covered employees who retired in 1993 and 1994 and established Detroit Diesel's contribution limits for those retirees. The contribution limit for 1993 retirees was 110% of the 1992 average cost, or $6,710. The contribution limit for 1994 retirees was 110% of the 1993 average cost, or $7,381. Memorandum of Understanding Jan. 7, 1993, JA 306-07. The Cap Agreement also set forth the manner of funding the VEBA Trust, requiring, for 1993, that Detroit Diesel contribute $200,000, and that the DDC/UAW Joint Training Fund contribute $100,000. *Id.* For 1994, Detroit Diesel and the Joint Training Fund each contributed $100,000.

In connection with the initial Cap Agreement, plaintiffs present several declarations attesting to the parties' understanding. James Brown and Robert King participated on behalf of the UAW in the negotiations that culminated in the initial Cap Agreement. In their declarations, they attest to having sought and obtained express assurances from company representatives that, despite the agreed-to contribution limits, Detroit Diesel would remain liable to provide lifetime health coverage and that retirees would never have to pay out-of-pocket for the benefits. Indeed, these assurances are confirmed in part by the Walters letter of January 4, 1993. The Walters letter stops short, however, of promising that retirees would never have to make premium contributions.

The Walters letter is consistent, though, with plaintiffs' position that it *had been* and would continue to be Detroit Diesel's responsibility to pay the health care costs. The letter not only acknowledges this pre-existing commitment, but also confirms that the Cap Agreement was not intended to modify or negate the pre-existing commitment in any way. The motivating purpose of the Cap Agreement was not to shift or share responsibility for health care coverage premiums between Detroit Diesel and the retirees. As the Walters letter ***469** makes clear, the purpose was to alter Detroit Diesel's method of funding health care coverage in order to meet the new accounting requirements of "Financial Accounting Standard 106" while simultaneously minimizing any negative impact of such accounting disclosures on its ability to attract investors. Furthermore, the Walters letter acknowledges the mutual interest of Detroit Diesel and the UAW in controlling health care costs and the need for joint efforts to serve this mutual interest on an ongoing basis: "It is understood that both parties will begin work immediately to jointly develop innovative approaches to control the cost impact of health care on the corporation." Walters letter Jan. 4, 1993, JA 308-09.

Hence, this much is clear, based on the written assurances of Detroit Diesel's own Senior Vice President: (1) that Detroit Diesel had assumed exclusive responsibility for funding health care costs for pre-1993 retirees; (2) that Detroit Diesel had promised the UAW that the Cap Agreement would in no way modify this pre-existing commitment; (3) that the commitment to provide fully-funded lifetime benefits would continue; and (4) that Detroit Diesel and the UAW would cooperate in continuing efforts to control health care costs so as to minimize the burden on Detroit Diesel.

****6** A second Cap Agreement was entered into in conjunction with the Detroit Diesel/UAW collective bargaining agreement covering the period 1995-1998. Memorandum of Understanding Aug. 26, 1994, JA 429. The 1994 contribution limit of $7,381 was continued for the ensuing four-year period. The method of funding the VEBA Trust was altered, however, requiring contributions totaling $1 million per year: $80,000 from Detroit Diesel; $420,000 from the Gross Profit Sharing Pool (with Detroit Diesel to cover any deficit); and $500,000 from the UAW Joint Training Fund. *Id.*

During negotiations of this agreement, plaintiffs contend Detroit Diesel made oral assurances that it would pay any shortfall if the VEBA Trust funds were insufficient to cover above-cap costs. These assurances are said to be substantiated by letter of Detroit Diesel Chairman and CEO Roger Penske dated August 26, 1994. The letter states:

As discussed during the week of August 15, 1994 if the VEBA Trust asset level became insufficient to cover costs over the retiree premium level contribution amount, Detroit Diesel would make necessary adjustments to their contribution level to correct this situation so that there are no out of pocket costs for retirees.

Penske letter Aug. 26, 1994, JA 428. The letter is unsigned, however, and Penske denies ever signing such a letter or making any such assurances, written or oral. Penske dec. ¶ 9, JA 203-04.

Plaintiffs have been unable to produce a signed copy of the letter, but they maintain its contents are corroborated by the minutes of the parties' negotiations. The minutes do not substantiate the existence of a signed letter from Penske. Nor do they directly evidence oral promises, although they corroborate plaintiffs' argument that oral assurances were made. Significantly, though, the minutes do evidence ongoing collaborative exploration of different methods of funding continuing health care costs with an eye toward avoiding any need for retiree contributions.

A third Cap Agreement was reached in 1999 covering the period 1999-2004. This agreement is memorialized in a terse memorandum dated March 3, 1999. It provides simply that Detroit Diesel's existing contribution limit of $7,381 would continue until 2004 and that the VEBA Trust ***470** would be funded through annual $500,000 contributions from the Joint Training Fund.

By the time Detroit Diesel and the UAW entered into collective bargaining negotiations for the 2005-2010 period, Detroit Diesel had new ownership and management. Viewed from the perspective of the 1993-2004 retirees, the negotiations did not go well. Detroit Diesel and the UAW negotiated a CBA for active employees and post-2004 retirees, but no agreement was reached in relation to continuing health care benefits for the 1993-2004 retirees. According to Joseph Street, UAW spokesperson in these talks, the UAW (1) rejected the company's proposal for substantial reductions in health care benefits for retirees; (2) failed to reach agreement on continuing the contribution limit; and (3) failed to reach agreement as to funding of the VEBA Trust. Street dec. ¶¶ 4-5, JA 112.

****7** Thus, either Detroit Diesel or the UAW, or both, abandoned their ongoing contractual commitment to work together in maintaining continued health care coverage for the retirees while minimizing Detroit Diesel's health care costs. Absent the UAW's participation, something had to give. Either (a) Detroit Diesel's contribution limit had to be exceeded, or (b) health care costs had to be reduced, or (c) retirees had to be required to make premium contributions. Understandably, Detroit Diesel prefers one or a combination of the latter two solutions. Whether it is within its rights to unilaterally impose its preference on the retirees, however, is questionable.

In response to plaintiffs' extrinsic evidence, Detroit Diesel offers little in the way of factual rebuttal. Detroit Diesel correctly maintains that extrinsic evidence is ineffective to vary the clear and unambiguous terms of the Supplemental Agreements. The terms in the Supplemental Agreements, reserving to Detroit Diesel the right to change terms and conditions and even require monthly contribution payments, are said to be so clear and antithetical to vesting as to necessarily defeat any contrary inference that might arguably be drawn from extrinsic evidence of "understandings" and oral assurances.

[2] But for the Walters letter of January 4, 1993, this argument might be more persuasive. The Walters letter contains representations which Detroit Diesel affirmatively asserts and stands on. By virtue of the letter, Detroit Diesel acknowledges that plaintiffs' right to lifetime benefits may well

have vested-but they are funded by Detroit Diesel only up to the capped contribution limit. The Walters letter is thus viewed even by Detroit Diesel as implicitly superseding the language of the Supplemental Agreements. If the right to lifetime benefits, derived from the letter, is to be enforced, Detroit Diesel contends, so must be its *quid pro quo* counterpart, the contribution cap. And if the cap is enforced, then, since the VEBA Trust was exhausted and the UAW did not agree to any other method of funding above-cap costs beyond 2004, Detroit Diesel contends it had no alternative but to (1) advise enrollees that its capped premium contributions alone will not sustain their existing health care coverage, and (2) give them the option of paying the shortfall or choosing reduced coverage.

As indicated above, however, the Walters letter says more. It also observes that Detroit Diesel's commitment to provide lifetime benefits to retirees pre-existed the first Cap Agreement. This concession, from the pen of Detroit Diesel's Senior Vice President, hints at a notion of vesting that preexisted the first Cap Agreement. That is, the Walters letter also supports plaintiffs' argument that their right to lifetime health care benefits ***471** vested apart from any *quid pro quo* consideration for the UAW's agreement to the contribution cap. If their right vested independent of the Cap Agreements, then Detroit Diesel's argument for enforcement of the contribution cap beyond the durational terms of the Cap Agreements is undermined.

****8** Moreover, and no less importantly, the Walters letter acknowledges that the Cap Agreement "fix" was temporary and conditioned upon the agreement of Detroit Diesel and the UAW to continue working toward other solutions to the quandary posed by ever-rising health care costs. That is, for the dual sake of providing quality continuing health care coverage to retirees and controlling the impact of health care costs on Detroit Diesel, the company and the union were to continue to cooperate in jointly developing innovative approaches, including management of the funding needs of the VEBA Trust, through collective bargaining. Detroit Diesel's unilateral decision to cover the above-cap costs through retirees' premium contributions is not the product of cooperation. Its unilateral actions thus appear to be in breach of the condition upon which the contribution limit was premised.

Granted, it takes two to cooperate. Apart from the Street declaration, the record does not disclose the nature or specific cause of the breakdown in negotiations between Detroit Diesel and the UAW on behalf of the 1993-2004 retirees.[FN1] As a consequence of the breakdown and ensuing withdrawal of the UAW, however, the retirees-the third-party beneficiaries of the cooperative scheme that ushered in both the company's contribution limit and the company's explicit lifetime coverage commitment-were left vulnerable.

> FN1. We note that federal law does not impose a duty on the union to continue representing retirees. *UAW v. Yard-Man, Inc.*, 716 F.2d 1476, 1484 (6th Cir.1984). Arguably, though, such a duty arose contractually in this case, by virtue of the cooperative scheme established in the Cap Agreements.

Detroit Diesel's unilateral actions to protect its interests take advantage of this vulnerability. The actions may ultimately be held legally justified. Still, viewing the record as a whole, including particularly the Walters letter, we conclude there are unresolved questions of fact going to the matter of vesting. These unresolved questions demonstrate that plaintiffs have "some likelihood" of success on the merits. It may not be a "strong" likelihood. Plaintiffs may have difficulty ultimately prevailing on the merits of their claims. Yet, considering the import of the Walters letter, as well as Detroit Diesel's part in the breakdown in cooperation which resulted in dissolution of the status quo, plaintiffs' likelihood of success is sufficient, when balanced in equity with the other relevant considerations, to warrant preliminary injunctive relief.

C. Irreparable Harm/Balance of Harms

Detroit Diesel also challenges the district court's conclusion that plaintiffs would suffer irreparable harm if preliminary injunctive relief were denied. Citing *Golden v. Kelsey-Hayes Co.*, 845 F.Supp. 410, 415 (E.D.Mich.1994), *aff'd* 73 F.3d 648 (6th Cir.1996), the district court concluded that "reduction of benefits and imposition of additional insurance costs on retirees constitutes irreparable harm because of the financial hardship on retirees on fixed incomes, emotional distress and possible deprivation of life's necessities by reallocating scant resources to pay for much needed health care." Dist. ct. op. pp. 10-11, JA 26-27. Detroit Diesel contends the ***472** factual record relied on by the district court is too thin to justify class-wide preliminary injunctive relief.

****9** [3] Indeed, none of the three named plaintiffs has presented a factual showing of his or her own imminent irreparable harm. They have relied instead on declarations of five putative class members. Detroit Diesel also points out that even before the January 1, 2006 effective date of its attempted modification, some 100 of the putative class members had already elected the "cash-out" option, suggesting the modification may not be harmful to them at all.

Viewed in the traditional sense, the record evidence does not justify class-wide injunctive relief. Yet, a detailed showing of irreparable harm is not necessarily prerequisite to preliminary injunctive relief. *Golden*, 73 F.3d at 657. The possibility and severity of irreparable harm are among the factors which the court balances in assessing the appropriateness of injunctive relief. *Id.* Moreover, evidence not unlike that presented in this case has been found sufficient by this Court to sustain preliminary injunctive relief in other similar situations. *See Yolton*, 435 F.3d at 584; *Golden*, 73 F.3d at 657. Indeed, the hardship, financial and emotional, that a new monthly expense of $260 to $834 would pose for most working class retirees hardly requires substantiation. In *Yolton*, this Court upheld the determination that a monthly premium contribution of $501 posed a sufficiently severe and irreparable hardship. The court quoted the district court's reasoning with approval:

> [T]he Court can surmise that the putative class members overall cannot afford to contribute such an amount until the case is resolved. Unable to afford the $501 premium, Plaintiffs will lose their health insurance, will not be able to pay for necessary prescription medications, and will not receive all of the medical care that they need. Reimbursing Plaintiffs for their contributions at the end of the case, therefore, will not afford them relief.

435 F.3d at 584. This reasoning is equally compelling in this case.

The impact of injunctive relief on Detroit Diesel is not insignificant. Detroit Diesel contends the injunctive relief costs it $600,000 per month. While this figure appears not to be substantiated in the present record, it can hardly be denied that the injunctive relief is expensive. Still, in view of Detroit Diesel's admitted historical commitment to paying the costs of retirees' health care benefits, as well as Detroit Diesel's partial responsibility for the failure to reach agreement on funding of above-cap costs through the VEBA Trust or otherwise, we conclude the district court's award of preliminary injunctive relief is not an abuse of discretion. *See Yolton*, 435 F.3d at 584; *Golden*, 73 F.3d at 657.

D. Sufficiency of Bond Amount

[4] Finally, Detroit Diesel contends the district court abused its discretion by requiring a security bond of only $1500 to support the preliminary injunction. It is well established in this Circuit that it is within the district court's discretion to require the posting of security or not. *Moltan Co. v. Eagle-Picher Indus., Inc.*, 55 F.3d 1171, 1176 (6th Cir.1995). If the district court would have been within its discretion to require no bond at all, the requirement of a $1500 bond can hardly be held to constitute an abuse of discretion.

III. CONCLUSION

****10** Although the district court's opinion and

preliminary injunction order are not well-reasoned, we nonetheless conclude, on *de* ****473** novo* review of the legal issues presented, that plaintiffs have demonstrated some likelihood of success on the merits of their claims and that they are threatened with irreparable harm if preliminary injunctive relief is not granted. We therefore remain unpersuaded that issuance of the preliminary injunction was an abuse of discretion. Accordingly, the preliminary injunction is **AFFIRMED.**

C.A.6 (Mich.),2007.
Wood v. Detroit Diesel Corp.
213 Fed.Appx. 463, 2007 WL 128772 (C.A.6 (Mich.)), 181 L.R.R.M. (BNA) 2211, 153 Lab.Cas. P 10,787, 39 Employee Benefits Cas. 2649, 2007 Fed.App. 0045N

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