APPENDIX

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APPENDIX A

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Pursuant to Sixth Circuit I.O.P. 32.1(b)

File Name: 18a0108p.06

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-3277

[Filed June 8, 2018]

BARBARA FLETCHER; TIMOTHY PHILPOT; MARCIA FINK; LUCINDA SMITH, *Plaintiffs-Appellees*,	)
v.	)
HONEYWELL INTERNATIONAL, INC., *Defendant-Appellant*.	)

Appeal from the United States District Court
for the Southern District of Ohio at Dayton.
No. 3:16-cv-00302—Walter H. Rice, District Judge.

Argued: December 5, 2017

Decided and Filed: June 8, 2018

Before: CLAY, GIBBONS, and BUSH,
Circuit Judges.

COUNSEL

ARGUED: K. Winn Allen, KIRKLAND & ELLIS LLP, Washington, D.C., for Appellant. John G. Adam, LEGGHIO & ISRAEL, P.C., Royal Oak, Michigan, for Appellees. **ON BRIEF:** K. Winn Allen, Craig S. Primis, P.C., Matthew P. Downer, KIRKLAND & ELLIS LLP, Washington, D.C., for Appellant. John G. Adam, Stuart M. Israel, LEGGHIO & ISRAEL, P.C., Royal Oak, Michigan, William Wertheimer, LAW OFFICE OF WILLIAM WERTHEIMER, Bingham Farms, Michigan, for Appellees.

GIBBONS, J., delivered the opinion of the court in which CLAY and BUSH, JJ., joined. CLAY, J. (pg. 16), delivered a separate concurring opinion.

OPINION

JULIA SMITH GIBBONS, Circuit Judge. Plaintiffs, on behalf of themselves and other similarly situated retirees, retirees' surviving spouses, and eligible dependents, filed suit against Defendant Honeywell International, Inc. to enforce their rights to retirement healthcare benefits under a series of Collective Bargaining Agreements ("CBAs"). The district court held that the CBAs were ambiguous and relied on extrinsic evidence for its conclusion that the parties intended retiree healthcare benefits to vest for life. Because we hold that the CBAs are unambiguous, we reverse the district court's judgment.

App. 3

I.

A.

Plaintiffs are retirees who worked at Honeywell's plant in Greenville, Ohio. Honeywell owned and operated the Greenville plant from 1960 until it sold the plant in 2011. While employed at the Greenville plant, plaintiffs were members of a bargaining unit represented by the Fram Employees' Independent Union ("FEIU") until 2000, and after 2000 by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") and UAW Local 2413.

The bargaining unit and Honeywell negotiated a series of CBAs containing the terms that would govern employer-employee relations. Although Honeywell sold the plant in 2011, the final CBA did not expire until May 22, 2014. Honeywell continued to provide healthcare benefits for retirees and their spouses after the CBA expired, but on December 28, 2015, it sent them a letter informing them that it "intend[ed] to terminate the retiree medical and prescription drug coverage currently provided to you and your covered dependents as of December 31, 2016." DE 15-2, Defendant' Ex. B: 12/28/2015 Letter, Page ID 393. Plaintiffs filed suit on behalf of themselves and other similarly situated retirees, retirees' surviving spouses, and eligible dependents[1] under Section 301 of the

[1] Plaintiffs filed their complaint as a class action complaint, but no motion for class certification was filed. However, the district court reasoned that plaintiffs' failure to file a class certification motion would not alter the outcome of the case, since a verdict in plaintiffs' favor would impact all similarly-situated individuals.

Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132, claiming that Honeywell was obligated under the CBAs to provide retirees with lifetime healthcare benefits.

Honeywell argued that the 2011 CBA's general durational clause, which stated that the agreement remained in effect until May 22, 2014, governed its duty to provide retiree healthcare benefits. Thus, it claimed that plaintiffs had no right to healthcare benefits beyond May 22, 2014. It did promise to continue providing healthcare coverage to certain surviving spouses and dependents since the 2011 CBA expressly promised that "[u]pon the death of a retiree, the Company will continue coverage for the spouse and dependent children for their lifetime," provided that particular conditions were met. JA 18, 2011 CBA, at GR001053.

B.

Honeywell filed a 12(b)(6) motion to dismiss for failure to state a claim, arguing that under *M&G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015) and *Gallo v. Moen Inc.*, 813 F.3d 265 (6th Cir. 2016), the district court was required to dismiss plaintiffs' LMRA and ERISA claims. Honeywell argued that the Greenville CBAs are legally indistinguishable from those in *Gallo*: they contain no clear language promising to provide lifetime retiree healthcare benefits while explicitly vesting *other* benefits for life, and they are governed by general durational clauses. The district court denied Honeywell' motion to dismiss.

Although the district court acknowledged that the CBAs did not expressly provide for vested retiree healthcare benefits, it pointed to language from this circuit emphasizing that the Supreme Court's *Tackett* decision does not mean that "the *absence* of such specific language, by itself, evidences an intent *not* to vest benefits . . . ." *Tackett v. M&G Polymers USA, LLC*, 811 F.3d 204, 209 (6th Cir. 2016). The district court thus found that the lack of express vesting language was not dispositive.

The district court further identified "critical differences" between the instant case and *Gallo*. DE 29, Decision and Entry Overruling Mot. to Dismiss, Page ID 953. The most important difference, the court reasoned, was the language in Honeywell's CBA promising lifetime healthcare benefits to retirees' surviving spouses and dependents. Article 33, Section D.5 of the 2011 CBA states: "[u]pon the death of a retiree, the Company will continue coverage for the spouse and dependent children for their lifetime," provided certain conditions are met. JA 18, 2011 CBA, at GR001053. According to the district court, such express vesting of lifetime healthcare benefits for surviving spouses and dependents strongly implied that the parties also intended to vest lifetime healthcare benefits for the retirees themselves. While not dispositive, the court found that the express language vesting healthcare benefits for surviving spouses and dependents was "highly unusual" and created ambiguity about the parties' intentions. DE 29, Decision and Entry Overruling Mot. to Dismiss, Page ID 957.

The district court also noted that the *Gallo* CBA contained a reservation-of-rights clause, while the 2011 Honeywell CBA does not. Furthermore, unlike the *Gallo* CBA, the Honeywell CBA does not have a provision stating that "*continued* [healthcare benefits] will be provided. . . . " *Gallo*, 813 F.3d at 269 (emphasis added). In *Gallo*, we held that the use of "continued" as a modifier suggested that retiree healthcare benefits were not vested because if they were, the CBA would not need to "continue" them.

Lastly, the district court relied on Article 33, Section D.1 of the 2011 Honeywell CBA, which provides: "[e]mployees ages 50–55 with 30 years of service, who leave the company prior to becoming pension eligible, will be eligible for retiree health care benefits when they commence their pension benefits (age 55 or later)." JA 18, 2011 CBA, at GR001051. The court agreed with plaintiffs that intent to vest could be implied from the fact that eligibility for healthcare benefits could arise years after the CBAs expired.

C.

Based on its conclusion that the CBAs were ambiguous under ordinary principles of contract law, the district court conducted an evidentiary hearing to resolve the ambiguities. It considered extrinsic evidence from both the pre- and post-2000 CBA negotiations that largely consisted of testimony from various participants in the negotiation process. After the hearing, the district court concluded that plaintiffs proved by a preponderance of the evidence that Honeywell agreed to provide lifetime healthcare benefits to retirees at the Greenville plant. It permanently enjoined Honeywell from terminating

healthcare benefits for all putative class members who retired from the Greenville plant before June 1, 2012, and for their eligible spouses and dependents. Honeywell appealed.

II.

A.

After a bench trial, this court reviews the district court's findings of fact for clear error and its conclusions of law *de novo*. *T. Marzetti Co. v. Roskam Baking Co.*, 680 F.3d 629, 633 (6th Cir. 2012). Questions of contract interpretation are legal questions that this court reviews *de novo*. *See Royal Ins. Co. v. Orient Overseas Container Line Ltd.*, 514 F.3d 621, 634 (6th Cir. 2008).

B.

Plaintiffs filed suit under LMRA § 301 and ERISA § 502. LMRA § 301 gives federal district courts jurisdiction over "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce . . . ." 29 U.S.C. § 185. ERISA § 502 allows a participant in an "employee welfare benefit plan" to bring a civil action "to enforce his rights under the terms of the plan . . . ." 29 U.S.C. §§ 1002, 1132. ERISA "explicitly exempts welfare benefits plans" from its detailed rules for vesting pension plans, so employers are "generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans." *Tackett*, 135 S. Ct. at 933 (quoting *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995)). Unlike pension plans, then, health benefits are purely a matter of contract and must be "established and

maintained pursuant to a written instrument." *Id.* (citations omitted). Thus, finding for plaintiff-retirees in this case requires us to determine that Honeywell violated a contract between itself and the labor organization representing the retirees—contract that gave the retirees "rights" to lifetime healthcare benefits.

The contracts governing this case are the CBAs negotiated by Honeywell and the labor organizations representing Honeywell' employees. We must "interpret collective-bargaining agreements, including those establishing ERISA plans, according to ordinary principles of contract law, at least when those principles are not inconsistent with federal labor policy." *Tackett* 135 S. Ct. at 933. "[W]e look first to the CBAs' explicit language for clear manifestations of the parties' intent . . . . If, however, the plain language is susceptible to more than one interpretation, we then consider extrinsic evidence to supplement the parties' intent." *Moore v. Menasha Corp.*, 690 F.3d 444, 451 (6th Cir. 2012). Plaintiffs can succeed on their claims only if they prove one of two things: (1) the CBAs unambiguously provide retirees with lifetime healthcare benefits, or (2) the CBAs are ambiguous, and the extrinsic evidence demonstrates that the parties intended to vest retiree healthcare benefits.

C.

Our circuit's law on interpreting CBAs to determine whether retiree healthcare benefits have vested has recently undergone significant changes. Until 2015, we followed the "*Yard-Man* framework," named for the case *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983). In *Yard-Man*, this court interpreted a CBA to

provide for vested lifetime healthcare benefits for retirees. *Id.* at 1479. As it evaluated the CBA, the *Yard-Man* court purported to apply "traditional rules for contractual interpretation [as long as they are] consistent with federal labor policies." *Id.* However, in *Tackett*, the Supreme Court found numerous faults with *Yard-Man* and its progeny, specifically noting that "*Yard-Man* violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements." *Tackett*, 135 S. Ct. at 935.

The Court admonished the Sixth Circuit to look to record evidence of industry customs or usages, not to our own assumptions about the intentions of employees, unions, and employers negotiating retiree benefits. *Id.* It then criticized the *Yard-Man* cases for their "refus[al] to apply general durational clauses to provisions governing retiree benefits," *id.* at 936, emphasizing "the traditional principle that contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement," *id.* at 937 (internal quotation marks and citation omitted). It stressed that "courts should not construe ambiguous writings to create lifetime promises." *Id.* at 936.

In April 2017, we released a trio of decisions, all addressing the issue of whether particular CBAs provided for vested retiree healthcare benefits: *Int'l Union, United Auto., Aerospace and Agric. Implement Workers of America (UAW) v. Kelsey-Hayes Co.*, 854 F.3d 862 (6th Cir. 2017), *Reese v. CNH Indus. N.V.*, 854 F.3d 877 (6th Cir. 2017), and *Cole v. Meritor, Inc.*, 855 F.3d 695 (6th Cir. 2017). In *Cole*, we found the CBA to be materially indistinguishable from the one in *Gallo*;

thus, we held that the CBA unambiguously did not provide for vested retiree healthcare benefits. *Cole*, 855 F.3d at 700–02. However, in *Kelsey-Hayes* and *Reese*, we found the CBAs ambiguous and looked to extrinsic evidence, ultimately concluding that the parties intended retiree healthcare benefits to vest. *Kelsey-Hayes*, 854 F.3d at 869–71; *Reese*, 854 F.3d at 883. In *Kelsey-Hayes*, we relied chiefly on the fact that the CBA at issue "include[d] three distinct kinds of durational language for specific provisions": specific-duration periods for less than life, specific-duration periods for life, and the healthcare provisions, which stated that healthcare "shall be continued" without clarifying for how long. *Kelsey-Hayes*, 854 F.3d at 868. Lastly, in *Reese*, we held that the CBA's general durational clause and the absence of specific durational language for healthcare benefits created ambiguity because "the parties in this case carved out certain benefits, such as life insurance and healthcare insurance, and stated that those coverages ceased at a time different than other provisions of the CBA." *Reese*, 854 F.3d at 882. We emphasized that under *Tackett*, we could not infer an affirmative intent to vest from the absence of specific durational language for healthcare benefits, but reasoned that such absence did create *ambiguity*, allowing us to consult extrinsic evidence. *Id.* 882–83.

But on February 20, 2018, the Supreme Court reversed our decision in *Reese* and in a *per curiam* opinion explained that "[*Reese's*] analysis cannot be squared with *Tackett*." *CNH Indus. N.V. v. Reese*, 583 U.S. ___ (2018), slip op. at 1. The Court saw *Reese* as impermissibly applying "the same *Yard-Man* inferences [the Sixth Circuit] once used to presume lifetime vesting . . . to render a collective bargaining agreement

ambiguous as a matter of law." *Id.* Absent the *Yard-Man* inferences, the Court reasoned that *Reese* was "straightforward"—the CBA contained a general durational clause, and "[n]o provision specified that the health care benefits were subject to a different durational clause." *Id.* at 8. Therefore, the CBA did not provide retirees with vested healthcare benefits. *Id.* And on February 26, 2018, in light of this decision, the Court also vacated our judgment in *Kelsey-Hayes* and remanded the case "for further consideration." *Kelsey-Hayes Co. v. Int'l Union*, 138 S. Ct. 1166 (2018).

The Court's *Reese* opinion indicates that where a CBA has a general durational clause, that clause must be enforced absent a specific alternative end date provided for retiree healthcare benefits, or some other clear indication in the CBA that the general durational clause is not intended to apply to retiree healthcare. Two of our most recent cases align with this principal, *Watkins v. Honeywell International, Inc.* and *Cooper v. Honeywell International, Inc*. In *Watkins*, the CBA stated, "[f]or the duration of this Agreement, the Insurance Program shall be that which is attached hereto, hereinafter referred to as the Program." 875 F.3d 321, 325 (6th Cir. 2017). Based on the language expressly limiting insurance benefits to "the duration of this Agreement," we unanimously held that the CBA was unambiguous and thus, "Honeywell's obligation to pay for its Fostoria retirees' healthcare ended when the agreement expired." *Id.* at 322.

In *Cooper*, unlike in *Watkins*, the CBA did not contain express language limiting retiree healthcare benefits to the agreement's expiration date; in fact, it stated that "Retirees under age 65 . . . will continue to

be covered under the [health insurance plan], *until age 65* . . . ." 884 F.3d 612, 614 (6th Cir. 2018) (emphasis added). Nonetheless, we reversed the district court's grant of a preliminary injunction enjoining Honeywell from terminating healthcare benefits. *Id.* In reversing the preliminary injunction, we held that the retirees were unlikely to succeed on the merits because the CBA was governed by a general durational clause and the "until age 65" language "did not clearly provide an alternative end date" for the healthcare benefits. *Id.* Instead, we concluded that the promise to continue providing benefits until the retirees reached age 65 only lasted until the CBA expired. *Id.* at 618–21.

Thus, from all of this circuit's precedent and the Supreme Court's holdings in *Tackett* and *Reese*, we can distill a clear rule— CBA's general durational clause applies to healthcare benefits unless it contains clear, affirmative language indicating the contrary.

III.

Two sets of CBAs are at issue in this case: the CBAs negotiated before 2000, when the FEIU was the union representing the plant employees, and the CBAs negotiated after 2000, between Honeywell and the UAW. After reviewing the CBAs in light of the applicable case law, we conclude that neither set is ambiguous.

A.

In its order granting plaintiffs a permanent injunction, the district court stated that "[i]t is undisputed that [the] pre-2000 CBAs contain no language indicating that retiree healthcare benefits were vested, or that Honeywell was obligated to

provide lifetime coverage to retirees or their family members." DE 58, Op. and Order, Page ID 2993. Despite this finding—which the retirees do not challenge in their brief—the court's injunction applied to all "putative class members who retired from the Greenville, Ohio, plant before June 1, 2012, and for their eligible spouses and dependents." DE 58, Op. and Order, Page ID 3023–24. Thus, its injunction prevents Honeywell from terminating benefits even for those putative class members who retired before 2000, under the unambiguous CBAs.

Since health benefits are purely contractual in nature, *see, e.g.*, *Cole*, 855 F.3d at 698, if the pre-2000 CBAs are in fact unambiguous in their failure to provide for vested retiree healthcare benefits, the district court's injunction should be modified. A review of the pre-2000 CBAs confirms the district court's statement that they are unambiguous. For example, the 1997 CBA contained only the following two provisions regarding retiree health benefits:

> G. Employees retiring on or after January 1, 1985 (except those eligible for deferred vested pension benefits) will be eligible to enroll for the Blue Cross/Blue Shield Gold Standard Comprehensive Health Care Plan.
>
> H. The Company agrees to pay the premium cost of single coverage for any retiree enrolled for Blue Cross/Blue Shield Health Care Coverage. Retirees enrolled for family coverage will be required to pay the difference in premium costs between single and family coverage.

JA 14, 1997 CBA, at GR000758–59. The 1997 CBA also had a general durational clause providing that it would remain in effect until May 22, 2000. The other pre-2000 CBAs contain language that is materially the same.

Nothing in these provisions suggests intent to vest healthcare benefits. They contain no promise to provide benefits for the lifetime of the retiree and no indication that they are exempt from the general durational clause governing the agreement. They simply provide that retirees will be eligible for a particular healthcare plan and that the company will pay the premium costs for that plan. Further, the pre-2000 CBAs do expressly provide for other kinds of vested benefits—for example, the 1997 CBA refers to "referred *vested* pension benefits." JA 14, 1997 CBA, at GR000758 (emphasis added). "[W]e must assume that the explicit guarantee of lifetime benefits in some provisions and not others means something." *Gallo*, 813 F.3d at 270. Absent any suggestion to the contrary, both provisions are time-limited by the CBA's general durational clause. The pre-2000 CBAs therefore unambiguously do not provide for vested retiree healthcare benefits.

B.

We also hold that the post-2000 CBAs are unambiguous and do not provide for vested retiree healthcare benefits. The 2011 CBA[2] states: "Employees ages 50–55 with 30 years of service, who leave the company prior to becoming pension eligible, will be eligible for retiree health care benefits when they

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[2] The language in the other post-2000 CBAs is the same in all material respects.

commence their pension benefits (age 55 or later)." JA 18, 2011 CBA, at GR001051. The agreement also contains a provision capping Honeywell's healthcare contributions, not to take effect until 2012. Finally, Honeywell promises to "continue coverage for the spouse and dependent children for their lifetime" after the retiree's death. *Id.* at GR001053. There is no similar promise to provide lifetime healthcare for the retirees themselves.

As an initial matter, the district court was correct when it noted that the absence of specific vesting language does not automatically signify intent to terminate those benefits when the agreement expires. *See Tackett*, 811 F.3d at 209. However, the absence of such language also does not automatically signify ambiguity. *See Reese*, 583 U.S. ___ (2018), slip op. at 5–7. After reviewing the CBAs, we conclude that the features of the post-2000 CBAs that the district court used to find ambiguity actually suggest that the CBAs are *unambiguous*.

In finding the post-2000 CBAs ambiguous, the district court relied primarily on their provision of lifetime healthcare benefits for surviving spouses and dependents. Honeywell argues that contrary to the district court's interpretation, the fact that the agreement explicitly provides lifetime healthcare benefits for surviving spouses and dependents shows that the parties knew how to communicate their intent to vest such benefits for life. In response to the district court's conclusion that providing benefits to surviving spouses and dependents but not the actual retirees is "inconceivable," Honeywell points out that "limiting [its] lifetime obligation to only surviving spouses and

dependents would have made eminent sense," because it would be much less expensive than providing lifetime healthcare for all retirees but still protect "the most vulnerable population in its care." CA6 R. 19, Appellant Br., at 34.

We have not yet considered a CBA that grants lifetime healthcare benefits to surviving spouses and dependents but is silent on the duration of healthcare benefits for the retirees themselves. Honeywell refers us to a Second Circuit case, *Bouboulis v. Transp. Workers Union of America*, 442 F.3d 55 (2d Cir. 2006). In *Bouboulis*, spouses were promised lifetime health benefits "upon the death of a plan participant." 442 F.3d at 62. The Second Circuit held that "the promise to the surviving spouses does not require lifetime benefits for the Retirees, and does not constitute affirmative language that could reasonably be interpreted as creating a promise to vest the Retirees' benefits." *Id.* at 62–3. It affirmed the district court's grant of summary judgment to the employer since the disputed language "concerns only the benefits of spouses of deceased participants, *not* the benefits of the participants themselves." *Id.* at 63 (citing *Bouboulis v. Transp. Workers Union*, 2004 WL 1555129, at *4 (S.D.N.Y. July 9, 2004)).

Honeywell's arguments, and the reasoning of the Second Circuit, are persuasive. If the parties included language expressly granting lifetime healthcare benefits to surviving spouses and dependents in the CBA, this tends to show that they knew how to provide for vested benefits and chose not to for retirees. As we reasoned in *Gallo*, "we must assume that the explicit guarantee of lifetime benefits in some provisions and

not others means something." *Gallo*, 813 F.3d at 270. The CBA here explicitly provides for lifetime benefits for surviving spouses and dependents only, and so the retirees cannot claim a contractual right to such benefits.

The cases that plaintiff-appellees cite in support of the district court's conclusion that the surviving-spouse provision creates ambiguity are unavailing. They cite an unpublished decision from this circuit, *Winnett v. Caterpillar, Inc.*, where we stated that "there is no reason for the spouses to have thought they would get benefits that *exceeded* those of the retirees from whom their benefits derive . . . ." 510 F. App'x 417, 421 (6th Cir. 2013). Not only was *Winnett* decided before the Supreme Court abrogated *Yard-Man* in 2015, *see Tackett*, 135 S. Ct. at 933, but the facts of that case are completely different from the facts here—in *Winnett*, surviving spouses challenged Caterpillar's deduction of healthcare premiums from retirees' pensions, and the issue was whether the statute of limitations had expired for their claim. 510 F. App'x at 418–19. Nor do the other two cases from this circuit help plaintiffs. *UAW v. Loral Corp.*, which the district court cited favorably in its decision overruling Honeywell's motion to dismiss, was decided when *Yard-Man* was the governing case for CBA interpretations. *See Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW v. Loral Corp.*, 873 F. Supp. 57, 62–64 (N.D. Ohio 1994) (citing *Yard-Man* numerous times). And *Sloan v. Borgwarner, Inc.* actually granted summary judgment for the employer, not the retirees.

No. 09-cv-10918, 2016 WL 7107228, at *1 (E.D. Mich. Dec. 5, 2016).[3]

We acknowledge that the arrangement in the CBA—lifetime benefits for surviving spouses and dependents but not for retirees—is, as the district court put it, "highly unusual." DE 29, Decision and Entry Overruling Mot. to Dismiss, Page ID 957. The average person would find it very strange if her spouse and dependents were to receive lifetime healthcare benefits only after she has died, while prior to her death neither she nor her family is entitled to any benefits. But this strangeness cannot overcome the simple fact that the agreements expressly provide lifetime healthcare for surviving spouses and dependents *but not* for the retirees themselves. Additionally, as Honeywell points out, CBA terms are often the product of compromise. As a compromise, Honeywell may have decided it would be much cheaper to provide lifetime healthcare benefits only to a limited class rather than to *all* retirees and their spouses and dependents. The important point, however, is that the CBA clearly promises lifetime benefits to surviving spouses and dependents but not to retirees. We also find it noteworthy that the 2011 BA refers to "referred vested pension benefits" several times, but never uses "vested" to describe retiree healthcare benefits. Such a distinction points to the conclusion that we reached in *Gallo*—"[t]he difference in language demands a difference in meaning." *Gallo*, 813 F.3d at 270.

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[3] The other cases plaintiff-appellees cite are not from this circuit, were decided before the Supreme Court's decision in *Tackett*, and are of otherwise limited usefulness.

There is only one feature of the surviving-spouse provision that arguably raises an ambiguity: it states, "[u]pon the death of a retiree, the Company will *continue* coverage for the spouse and dependent children for their lifetime . . . ." JA 18, 2011 CBA, at GR001053 (emphasis added). Read naturally, this phrase implies that lifetime healthcare benefits for the spouse of a deceased retiree proceed from the period during which the retiree was receiving healthcare benefits. Thus, if the retiree did not have healthcare when he died, then his spouse's lifetime healthcare would not be a continuation of coverage. Why, then, doesn't this "continue" language create ambiguity as to whether the retirees had healthcare for life? Because not all spouses of retirees are guaranteed healthcare for life upon the death of their retiree-spouse.

The post-2000 CBAs promised to provide lifetime healthcare to a retiree's spouse "[u]pon the death of a retiree." But like the other promises in the CBAs, this promise expired when the CBA expired, on May 22, 2014. Thus, if a retiree died during the term of a CBA that contained the surviving spouse promise, the surviving spouse is entitled to lifetime healthcare benefits. But if a retiree died after the last CBA expired, then Honeywell's promise has expired, and Honeywell is not obligated to provide the surviving spouse with lifetime healthcare benefits. The reality for plaintiffs here is that the CBAs expressly promise to provide lifetime benefits for particular surviving spouses of retirees—those whose retiree-spouse died during the term of a CBA that contained the surviving spouse provision. They do not make that promise to the retirees themselves. In the absence of such a promise,

the general durational clause should govern the agreement.

Aside from the surviving spouse provision, the district court identified several other features of the post-2000 CBAs that it believed contributed to their ambiguity. These features are insufficient to overcome the presence of a general durational clause. The fact that Honeywell's contribution caps became effective after the CBAs expired has been rejected by this circuit as a justification for finding ambiguity. *See Cole*, 855 F.3d at 701 ("[T]he caps section of the 2000 CBA indicates that the parties contemplated that retiree healthcare benefits would continue . . . . But the fact that they anticipated, or even hoped, that these benefits would continue does not mean that Meritor is bound to provide these benefits for the life of the retirees."); *Watkins*, 875 F.3d at 327 ("[T]hat the caps contemplated healthcare benefits into the future did not mean that Honeywell had promised to provide benefits forever."). Furthermore, as Honeywell pointed out in its 12(b)(6) motion and as we stated in *Watkins*:

> There is a good reason for a company to adopt healthcare caps, even if caps take effect only far in the future: because companies must recognize as a liability on their balance sheet the present value of their anticipated future healthcare costs, caps keep companies from needing to recognize millions (or more) in future potential liability.

Watkins, 875 F.3d at 327 (citing *Wood v. Detroit Diesel Corp.*, 607 F.3d 427, 428–29 (6th Cir. 2010)).

The district court also gave weight to plaintiffs' argument that Art. 33, Section D.1 of the CBA, tying eligibility for pension benefits to eligibility for healthcare benefits, implied intent to vest because a retiree could become eligible for healthcare benefits up to fifteen years after the CBA expired. The district court's rationale here is erroneous because, as we have held, the fact that Honeywell anticipated providing healthcare benefits in the future does not mean that Honeywell is bound to provide such benefits forever. *See Cole*, 855 F.3d at 701; *Watkins*, 875 F.3d at 327. While there are minor differences between the Honeywell CBA and the CBA in *Gallo*, such as the absence of a reservation-of-rights clause in the Honeywell CBA, both agreements share one crucial feature: a general durational clause. None of the features to which the district court points are sufficient to overcome that clause here.

Under the general durational clause in the 2011 Honeywell CBA, the agreement expired on May 22, 2014. Although "a contract's general-durational clause will not always apply to a promise to provide healthcare," *Watkins*, 875 F.3d at 325, "ordinary principles of contract law . . . dictate that 'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Cole*, 855 F.3d at 700 (quoting *Gallo*, 813 F.3d at 279). Because the post-2000 CBAs do not contain any features overriding the general durational clauses, the general durational clauses should govern. We therefore hold that the district court erred by finding the CBAs ambiguous.

IV.

The parties devote a great deal of time to disputing the significance of the extrinsic evidence in this case. Because the CBAs in this case are unambiguous, however, the parties' arguments about the extrinsic evidence can no longer be considered. *See, e.g.*, *Tackett*, 135 S.Ct. at 938 (Ginsburg, J., concurring) ("[W]hen the contract is ambiguous, a court may consider extrinsic evidence to determine the intentions of the parties."); *Watkins*, 875 F.3d at 323 ("We do not look at extrinsic evidence unless the contract is ambiguous."). Thus, our finding that the CBAs unambiguously do not provide for lifetime retiree healthcare benefits ends the inquiry.

V.

For the foregoing reasons, we reverse the judgment of the district court.

CONCURRENCE

CLAY, Circuit Judge, concurring. I reluctantly concur because I am required to do so by binding case law. However, it is not obvious that the intent of the parties was as clearly expressed as our cases indicate. Indeed, the agreements at issue appear on their face to be ambiguous, and they were drafted prior to the line of cases beginning with the Supreme Court's decision in *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015), which completely upended the way that our Circuit interprets the vesting of benefits in collective-bargaining agreements. I believe that the Court should permit the admission of extrinsic evidence in this case

in order to ascertain the intent of the parties. Nonetheless, our cases preclude us from doing so.

Now, at least, the unions and the retirees that they represent are on notice as to what their agreements must say in order to vest retiree healthcare benefits. Although it seems less than fair to impose this new, heightened standard upon these retirees, that is what the cases require, and I therefore reluctantly concur in the majority opinion.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Case No. 3:16-cv-302
JUDGE WALTER H. RICE

[Filed February 28, 2017]

BARBARA FLETCHER, *et al.*,	)
	)
Plaintiffs,	)
	)
v.	)
	)
HONEYWELL INTERNATIONAL, INC.,	)
	)
Defendant.	)

OPINION AND ORDER INCLUDING FINDINGS OF FACT AND CONCLUSIONS OF LAW; JUDGMENT TO ENTER IN FAVOR OF PLAINTIFFS AND AGAINST DEFENDANT; TERMINATION ENTRY

On behalf of themselves and other similarly situated retirees and their spouses and other eligible dependents, Plaintiffs, Barbara Fletcher, Timothy Philpot, Marcia Fink and Lucinda Smith, filed suit

against their former employer, Defendant Honeywell International, Inc. ("Honeywell").[1] They challenge Honeywell's plan to terminate healthcare benefits for those who retired from Honeywell's Greenville, Ohio, plant. Plaintiffs maintain that Honeywell promised them lifetime retiree healthcare benefits, and that the proposed termination of such benefits breaches a series of collective bargaining agreements ("CBAs"). They seek to enforce Honeywell's promises under Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132.

Honeywell, however, denies that it agreed to provide lifetime retiree healthcare benefits. According to Honeywell, because the right to retiree healthcare benefits was not vested, any obligation to provide such benefits ended on May 22, 2014, when the last in a long series of CBAs expired.

On November 15, 2016, the Court issued a Decision and Entry overruling Honeywell's Motion to Dismiss. Doc. #29. That Decision and Entry, which contains a detailed discussion of the governing case law, including *M&G Polymers USA, LLC v. Tackett,* 135 S. Ct. 926 (2015) (abrogating *UAW v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983)), and *Gallo v. Moen, Inc.,* 813 F.3d

[1] Although filed as a class action complaint, no motion for class certification was filed. Nevertheless, this does not alter the outcome, given that a verdict in favor of the four named Plaintiffs will benefit all similarly-situated individuals.

265 (6th Cir. 2016), *cert. denied,* 137 S. Ct. 375 (2016), is fully incorporated herein.[2]

In its Decision and Entry, the Court concluded that, because the language contained in the 2000-2003 CBA and subsequent CBAs was ambiguous concerning the parties' intent to vest retiree healthcare benefits, the Court would have to resort to extrinsic evidence to resolve the ambiguity. Rather than convert the motion to dismiss into a motion for summary judgment, the Court found it preferable to hold an evidentiary hearing and rule on the merits of Plaintiffs' claims as soon as possible, given that the retiree healthcare benefits were, at that time, scheduled to be terminated on December 31, 2016.

Thereafter, Honeywell agreed to extend healthcare coverage through February 28, 2017, so that the Court had time to hold the hearing and issue its decision. The Court held the evidentiary hearing on January 30-31, 2017. Sharon Meadows, Edward "Buzz" Fink, Edward Bocik and Eric Warren testified at the hearing. In addition, the parties presented deposition testimony of Steve Shelton, Rick Hancock, Robert McKeage and Edward Thompson. The parties then filed post-hearing briefs. Docs. ##52, 53, 54, 55.

I. Discussion

This case concerns Honeywell's proposed termination of retiree healthcare benefits at its

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[2] To the extent that the Court has already determined that the relevant contracts are ambiguous, and that extrinsic evidence is necessary to resolve the ambiguity, the Court sees no need to repeat a lengthy discussion of the holdings of these cases.

Greenville, Ohio, plant. On December 28, 2015, Honeywell notified Greenville retirees and their spouses that it intended "to terminate the retiree medical and prescription drug coverage currently provided to you and your covered dependents as of December 31, 2016 ." JX48.

Plaintiffs filed suit on behalf of themselves and other similarly situated retirees, alleging that Honeywell had promised them lifetime healthcare benefits, and that the proposed termination of those benefits violated the terms of a long series of CBAs. Honeywell admits that it promised to provide lifetime healthcare benefits to *surviving spouses and dependents* of Greenville retirees, but denies that it promised lifetime healthcare benefits to the *retirees themselves.*

Plaintiffs bear the burden of proving, by a preponderance of the evidence, that Honeywell agreed to provide those lifetime benefits. If the retirees have a vested right to healthcare benefits, Honeywell cannot unilaterally terminate those benefits; however, if there is no vested right, Honeywell was free to terminate retiree healthcare benefits upon the expiration of the final CBA. *Winnett v. Caterpillar, Inc.,* 553 F.3d 1000, 1008-09 (6th Cir. 2009).

For the reasons set forth below, the Court finds that Plaintiffs have satisfied their burden of proving that Honeywell agreed to provide lifetime healthcare benefits to its retirees.

A. Pre-2000 CBAs

Employer-employee relations at Honeywell's Greenville, Ohio, plant have been governed by a long

series of CBAs spanning many decades. Prior to 2000, employees were represented by the Fram Employees Independent Union. Pre-2000 CBAs generally provided that Honeywell (or its predecessor companies) would pay the premium cost of single coverage for any retiree enrolled in the health care plan. Retirees who enrolled in family coverage were required to pay the difference in premium costs between single and family coverage. JX001-JX014.

It is undisputed that pre-2000 CBAs contain no language indicating that retiree healthcare benefits were vested, or that Honeywell was obligated to provide lifetime coverage to retirees or their family members. Trial Tr. at 84, 87. Honeywell maintains that its obligation to provide retiree healthcare benefits was subject to the general durational clause contained in each CBA, and ended when the CBA expired.

Honeywell points out that the pre-2000 CBAS contain none of the provisions that the Court found, in later CBAs, to create an ambiguity concerning an intent to vest, *e.g.,* lifetime healthcare benefits to surviving spouses, or deferred caps on company contributions. Honeywell maintains that, because the language in the pre-2000 CBAs is unambiguous, it would be inappropriate to consider any extrinsic evidence of the parties' understanding of the duration of Honeywell's obligation to provide retiree healthcare benefits. Citing *Sprague v. General Motors Corp.,* 133 F.3d 388, 402-03 (6th Cir. 1998), Honeywell also argues that, absent any ambiguity, oral communications cannot be used to modify the terms of the written agreements.

If the Court were being asked to construe the language contained in the pre-2000 CBAs, these rules would certainly apply. However, the Court's *only* task in this case is to resolve the ambiguities contained in the 2000-2003 CBA and subsequent CBAs to determine the parties' intent, at the time of contracting, with respect to the duration of Honeywell's obligation to provide retiree healthcare benefits. To the extent that evidence of the parties' pre-2000 understanding of the duration of Honeywell's obligation to provide retiree healthcare benefits sheds light on the ambiguous language used in the 2000-2003 CBA and subsequent CBAs, such extrinsic evidence may be considered regardless of whether the pre-2000 CBAs are unambiguous.

Honeywell notes that Edward Bocik, now Vice President of Labor Relations for Honeywell, is the only witness who participated in negotiating any of the pre-2000 CBAs. Bocik was not the chief spokesperson, but was at the bargaining table for most of the negotiations for the 1989-1992 CBA. Trial Tr. at 198, 200. Bocik testified that there was no discussion at the bargaining table concerning lifetime retiree healthcare benefits, and it was his understanding that the company's obligation to provide healthcare coverage would expire when the CBA expired. *Id.* at 210, 213-215.

Bocik was not present at the bargaining table when the 1994-1997 or 1997-2000 CBAs were negotiated, but participated in a supervisory role. In setting the company's overall economic parameters for the negotiations, he operated under the assumption that Honeywell was obligated to provide retiree healthcare benefits only for the term of each contract. *Id.* at 220-

21. According to Bocik, it would have been against company policy to provide lifetime retiree healthcare benefits. *Id.* at 227. Bocik testified that it was not his intent to confer lifetime healthcare benefits to retirees. Nor was he made aware of any unspoken understanding that healthcare benefits would be provided for the lifetime of each retiree at the Greenville plant. *Id.* at 224-25.

As explained below, Mike Rihm, Honeywell's Manager of Labor Relations at the Greenville plant, disagreed. Rihm, a long-time employee at the Greenville plant, had bargained on behalf of Honeywell and its predecessors in 1989, 1994, and 1997. *See* JX12, GR000660; JX13, GR000707; JX14, GR000760. It was his understanding that Greenville retirees had lifetime healthcare benefits.

B. 2000-2003 CBA

1. Negotiation Preparation

In 2000, a National Labor Relations Board election was held, and the United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") became the new bargaining unit for the employees at the Greenville plant. Trial Tr. at 154. Sharon Meadows, an attorney and benefits consultant for the UAW, was assigned to assist with negotiations held after the election. *Id.* at 56.

At that point, the union was "very much in the dark about the existing benefits." *Id.* at 76. Meadows testified that, it was "unfortunate" that the 1997-2000 CBA was "very vague" and lacked "a lot of the basic information." *Id.* at 63. Likewise, Steve Shelton, the UAW's lead negotiator for the 2000-2003 CBA, testified

that, because not all of the current practices had been put in writing, the scope of existing benefits was unclear. Shelton Dep. at 127, 176. The UAW sought to change this. *Id.* at 127; Trial Tr. at 63, 86.

Meadows decided that her first task was to determine the scope of existing benefits. Only then could she make recommendations for bargaining proposals. Trial Tr. at 62. After Honeywell failed to respond to her initial requests for information about existing benefits, she met with members of the UAW bargaining committee who told her that retirees at the Greenville plant had lifetime healthcare benefits. *Id.* at 87. Meadows then met with Mike Rihm, who verified this information. *Id.* at 64, 87-88. Rihm, who is now deceased, was the person most familiar with current practices at the Greenville plant. *Id.* at 61, 88, 94.

Robert McKeage was Honeywell's labor relations representative and lead negotiator for the 2000 contract. McKeage Dep. at 12, 20, 128-29. However, he was not personally familiar with the existing benefits at the Greenville plant. *Id.* at 80. He repeatedly testified that if Meadows needed to clarify existing benefits, Mike Rihm would have been an appropriate person to ask.[3] *Id.* at 30, 80, 169-170. McKeage admitted that he was not aware of any specific

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[3] Honeywell argues that Rihm was a "junior human resources employee," second-in-command to Bert Willingham, Trial Tr. at 156, and had no authority to bind Honeywell to any specific contract terms. McKeage Dep. at 152-153, 159-160. Rihm, however, did not make any statement purporting to contractually bind Honeywell. He simply told Meadows about his understanding of the scope of existing benefits at the Greenville location. McKeage has admitted that Rihm was qualified to do so.

conversations that Meadows may have had with Rihm. *Id.* at 33, 95-96. McKeage also testified that he and Rihm never discussed whether retiree healthcare benefits at the Greenville plant were vested. *Id.* at 150.

Rihm explained to Meadows that, with respect to healthcare benefits, Honeywell paid the full premium for single coverage for all retirees.[4] The retiree could also elect healthcare benefits for his or her spouse and dependents, but was responsible for the full cost of that additional coverage. When the retiree died, coverage for the family members would continue, but only if the spouse paid 100% of the cost. Trial Tr. at 66-67.

When Rihm told Meadows that Honeywell paid the full premium cost for single coverage for the retiree, she asked him "for how long?" Rihm responded, "until he dies or for his life or something to that effect." Meadows testified, "I can't tell you exactly which words he used because it's been 17 years but he clearly conveyed that it was for the life of the retiree and then he said upon the death of the retiree they continue to provide coverage for the surviving spouse ." *Id.* at 100.[5]

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[4] Rihm's statements to Meadows fall within the hearsay exclusion set forth in Federal Rule of Evidence 801(d)(2)(D). The statements are offered against Honeywell, and were made by Rihm, a Honeywell employee, on a matter within the scope of that employment relationship and while it existed. They are, therefore, admissible as non-hearsay.

[5] Honeywell notes that Meadows admitted that Rihm's statements were in response to her inquiry about "current practices" at the Greenville plant as opposed to what was "contractually required" under the CBA. Trial Tr. at 88-90. In the Court's view, this is a distinction without a difference. The relevant fact is that,

Meadows told Steve Shelton that Rihm had confirmed that retirees had lifetime healthcare benefits. Shelton asked her if she was absolutely sure; she said she was. *Id.* at 132-33. Meadows noted that this "changed things dramatically" in terms of how to proceed. *Id.* at 133.

Based on her discussions with Rihm and the members of the UAW bargaining team, Meadows created a chart to be used during negotiations. The first column listed current benefits, the second column listed the UAW's proposed changes, and the third column listed Honeywell's response. *Id.* at 68; Shelton Dep. at 185-86. With respect to *current* benefits, under the heading "Retiree Premium Sharing & Dependent Coverage," Meadows wrote, "Company agrees to pay the premium cost of single coverage for any retiree. To have family coverage for spouse and/or dependents, retiree must pay the difference in cost between single and family." Immediately below that, under the heading "Surviving Spouses of Retirees," she wrote, "[u]pon the death of a retiree, the Company continues coverage for the spouse and dependents for the life of the spouse provided 1) the retiree elected a joint & survivor form of benefit payment under the pension plan, and 2) the surviving spouse pays 100% of the cost of the coverage." JX22, at 3.

2. At the Bargaining Table

Meadows testified that it was "very unusual and deficient" that the Company did not contribute anything to the cost of healthcare coverage for the

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according to Rihm, the understanding at the Greenville plant was that Honeywell would provide lifetime retiree healthcare benefits.

retirees' family members. Trial Tr. at 67. Therefore, this became one of the union's key proposals in the negotiations. The UAW proposed that Honeywell pay 50% of the cost of family healthcare coverage and, upon the death of the retiree, pay the full cost of healthcare coverage for the surviving spouse and dependents. JX22, at 3.

At the bargaining table, Steve Shelton asked Edward "Buzz" Fink, a Honeywell employee and member of the UAW bargaining committee, to explain the union's proposal. Fink explained that, after the retiree died, most spouses could not afford to pay the entire premium in order to continue healthcare coverage, so they were forced to drop the coverage. He said:

> [T]hat's not fair. We believe that the company should pay the 100 percent cost for that spouse because that retiree had his healthcare until the day he died and provided that healthcare for that family his whole life. The time he worked and the time he retired. They [the family members] should enjoy that healthcare until they die.

Trial Tr. at 157.

Likewise, Sharon Meadows testified that, at the bargaining table, Fink explained that the union wanted "the company to pay the benefits for the surviving spouses for their lifetimes just like they paid the retirees' benefit for their lifetimes. And he explained . . . that it was critically important to the retirees that their spouses had the same thing that the retirees

had." *Id*. at 137.[6] No one suggested that the union was seeking something for the surviving spouses that the retirees, themselves, did not already have. *Id.* at 137-38.

In the Court's view, Meadows, Shelton and Fink were all very credible witnesses, and the Court gives their testimony on this topic a great deal of weight.

C. 2000-2003 CBA Retiree Healthcare Provision

The UAW was largely successful in its efforts to obtain company contributions for the cost of healthcare coverage for family members. With respect to retiree healthcare benefits, Article XXXIV(1)(D) of the 2000-2003 CBA provides that, "[e]ffective with all employees retiring on or after September 1, 2000, the Company will contribute 50% of the cost of the dependent portion of retiree health care." JX 15, at GR000795. Although certain caps were imposed on Honeywell's contributions for *family* coverage, Honeywell agreed to "continue to pay for the full cost of medical for the retiree." *Id.* at GR000795-96.[7]

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[6] Fink's statement, as repeated by Meadows, is not offered for the truth of the matter asserted, but as evidence that the statement was made. Accordingly, it is not hearsay.

[7] Relying on *Gallo,* Honeywell argues that this language cannot be construed as implying an intent to vest. In *Gallo,* the Sixth Circuit held that "[t]here would be no need to 'continue' such benefits if prior CBAs had created vested rights to such benefits." 813 F.3d at 270. In contrast to the CBA at issue in *Gallo,* however, certain other provisions of Honeywell's CBA, *e.g.,* the surviving spouse provision, render the contract language ambiguous. This opens the door for the Court to consider extrinsic evidence of the parties'

Article XXXIV(2)(E) then provides that "[u]pon the death of a retiree, the Company will continue coverage for the spouse and dependent children for their lifetime provided 1) the retiree elected a joint & survivor form of benefit payment under the pension plan, and 2) the surviving spouse pays 50% of the cost of family coverage." *Id.* at GR000796.

D. Discussion

Honeywell intends to honor its commitment to provide lifetime healthcare benefits to surviving spouses and dependents. However, Honeywell denies that it agreed to provide lifetime healthcare benefits to the *retirees themselves.*

It is undisputed that there is no language in the CBA specifically imposing any such obligation on Honeywell. Meadows, Fink and Shelton all testified, however, that they believe that Honeywell's promise to provide lifetime retiree healthcare benefits is clearly implicit in the retiree healthcare provisions of the 2000-2003 CBA. Trial Tr. 110, 165-168; Shelton Dep. at 118-20.

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intent concerning lifetime retiree healthcare benefits, including Plaintiffs' understanding of the language chosen by the parties.

Plaintiffs maintain that Honeywell's promise to "continue to pay the full cost of medical for the retiree" reflected the existing practice, and embodied the parties' understanding that Honeywell would continue to do what it had always done, *i.e.,* provide healthcare coverage for the lifetime of its retirees. The Court finds that this interpretation is a reasonable one. After all, absent a previous commitment to do so, Honeywell could not *continue* to pay for the full cost of medical for the retiree.

Honeywell, however, argues that the Court cannot infer any such commitment from the language of the CBA, and insists that the Court limit Honeywell's obligations to the precise terms of the agreement. According to Honeywell, the absence of specific language providing for lifetime healthcare benefits for retirees is crucial, particularly in light of the UAW's stated goal of wanting to make certain that all benefits were clearly set forth. However, a "clear statement" that the company agrees to provide lifetime retiree healthcare benefits is not necessarily required. Courts may draw "implications and inferences" from other language in the CBA. *See Gallo,* 813 F.3d at 274.

Moreover, because the Court has already found that the contract language is ambiguous, it may look to extrinsic evidence to determine what the parties intended when they drafted the language in question.[8] Given the evidence presented at the hearing, the Court finds that the CBA embodies the parties' understanding that Honeywell would provide lifetime healthcare coverage for its retirees.

It is undisputed that the UAW did not submit any proposal asking Honeywell to provide healthcare benefits for the lifetime of the retirees. The big question is "why not?" If we believe Honeywell, it is because the UAW knew that any such request would be

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[8] Citing the rule of *contra proferentum,* both parties have urged the Court to resolve any ambiguity against the party that drafted this language. However, given that *both* parties played a part in drafting this provision, application of this rule is unworkable. Some of this language is derived from the chart created by Sharon Meadows; however, she testified that Honeywell is responsible for the final, modified language contained in the CBA. Trial Tr. at 110.

rejected. If we believe Plaintiffs, it is because that particular benefit was *already* vested. For the reasons set forth below, the Court concludes that Plaintiffs have the more persuasive argument.

Honeywell argues that the UAW made a conscious decision not to request lifetime retiree healthcare benefits because the union knew that any such proposal would be rejected outright. In support, Honeywell cites to Steve Shelton's deposition testimony. Shelton testified that, as a union negotiator, he had been instructed to avoid asking for "lifetime" benefits, because if the company rejected the request, this would create a bad bargaining record that could be used against the union "down the road somewhere." Shelton Dep. at 133, 164-165. Honeywell surmises that the UAW "made the calculated decision to remain silent on the duration of retiree healthcare benefits, gambling that, if a dispute ever arose in the future, a Court would construe contractual silence in their favor." Doc. #52, PageID#2828.[9]

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[9] In 2000, in reliance on *UAW v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983) and its progeny, courts within the Sixth Circuit regularly inferred that, absent extrinsic evidence to the contrary, retiree healthcare benefits were vested for life.

In *Gallo,* the Sixth Circuit rejected the plaintiffs' argument that the CBAs incorporated "background understandings that favor lifetime vesting of retiree healthcare benefits. 813 F.3d at 272. Plaintiffs argued that, at the time the parties negotiated the CBA, *Yard-Man* was still good law and the parties would have assumed that these inferences were applicable. The Court noted that the same could have been said in *Tackett,* yet "nothing in *Tackett* (or the concurrence) hints at the idea that *Yard-Man* would linger, vest as it were, as a precedent that would bind future interpretations of such agreements." Notably, the court in *Gallo*

Plaintiffs, however, maintain that the UAW submitted no proposal for lifetime healthcare benefits for the retirees, because, as Mike Rihm had verified, this benefit was *already vested.* Accordingly, there was no need to "tiptoe" around the issue of lifetime benefits to avoid creating a negative bargaining history. The union felt free to ask Honeywell to extend similar "lifetime" benefits to the retirees' surviving spouses and dependents.

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found that the language in the CBA unambiguously required the conclusion that no vesting had occurred. *Id.* at 274.

Given this finding, there would have been no need for the *Gallo* court to consider the non-relevant evidence of the law as it existed at the time of contracting; therefore, the above-referenced dicta in *Gallo* is not applicable here. Where, as here, the Court has found the language to be ambiguous and is looking to extrinsic evidence to resolve the ambiguity, it seems only logical that the law as it existed at the time of contracting is relevant in determining the parties' intent with respect to vesting. As Sharon Meadows testified, "lifetime" was not "a magic word in my mind at that time." Trial Tr. at 100. Accordingly, the Court takes issue with Honeywell's characterization of the UAW's "calculated decision to remain silent on the duration of retiree healthcare benefits." As previously discussed, Meadows, Fink and Shelton all believed that the CBA clearly expressed the parties' intent that Honeywell would provide lifetime healthcare benefits not only to the surviving spouses and dependents, but also to the retirees themselves. *Id.* at 110, 165-168; Shelton Dep. at 118-20.

Moreover, the fact that *Yard-Man* was still good law when the parties negotiated the 2000-2003 CBA may help explain why union negotiators, at least within the Sixth Circuit, were told never to explicitly ask for "lifetime" benefits. If such a request were rejected in negotiations, there would be a paper trail. In short, if a court later found the relevant contract language to be ambiguous, and looked to extrinsic evidence to resolve the ambiguity, any inference that retiree healthcare benefits were vested for life would be obliterated.

Plaintiffs contend that the parties' understanding that Honeywell already provided lifetime retiree healthcare benefits is manifest both in the chart that Meadows created, and in statements made by Buzz Fink at the bargaining table.

The chart that Meadows created, which memorializes existing practices at the Greenville plant, does not explicitly state that Honeywell provides healthcare benefits for the lifetime of the retiree. Nevertheless, Plaintiffs argue that this is implicit in the following statements: (1) "Company agrees to pay the premium cost of single coverage for any retiree. To have family coverage for spouse and/or dependents, retiree must pay the difference in cost between single and family"; and (2) *"Upon the death of a retiree,* Company continues coverage for the spouse and dependents for the life of the spouse. . ." JX22, at 3 (emphasis added).

Prior to bargaining, Meadows emailed this chart to certain Honeywell officials, asking them to indicate their agreement or disagreement with each of the proposals. JX21. The same chart was also passed across the bargaining table. Trial Tr. at 73. Shelton testified that all of the Honeywell negotiators saw it. Shelton Dep. at 134. McKeage, however, testified that he does not remember seeing it. McKeage Dep. at 46. At no time did anyone from Honeywell voice any objection to Meadows' characterization of existing benefits. Trial Tr. at 73-74. Steve Shelton testified that, because this was such an important subject, Honeywell surely would have objected if it disagreed. Shelton Dep. at 133-134. Given that Meadows' chart does not unambiguously state that Honeywell already provided

lifetime retiree healthcare benefits, the Court gives little weight to Honeywell's failure to object to the statements contained therein.

Nevertheless, the same cannot be said with respect to Honeywell's failure to object to statements that Buzz Fink made at the bargaining table while explaining the UAW's proposal. Fink specifically stated that the Greenville retirees already had lifetime healthcare benefits, and he asked that the same benefits be provided at no cost for the lifetimes of the surviving spouses and dependent children. Trial Tr. at 137-38, 157. Meadows and Fink both testified that none of the Honeywell negotiators voiced any objection to Fink's statement. *Id.* at 140, 157.

McKeage testified that he does not recall Fink making this statement, and does not remember anyone else from the UAW saying that they understood retirees to have lifetime healthcare benefits. McKeage Dep. at 45, 145. McKeage insisted that, if anyone had suggested that retiree healthcare benefits were vested for life, he would have clarified that "it was not really my authority to agree to any lifetime benefits with regard to retiree healthcare." *Id.* at 145. He further testified that, if the UAW had requested lifetime retiree healthcare benefits, "[t]he answer would have been no." *Id.* at 148-49.[10] McKeage testified that it was

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[10] Ed Bocik testified that any such agreement would have been contrary to company policy. Trial Tr. at 227. Nevertheless, other than attending an initial "meet and greet," Bocik was not present for negotiations for the 2000 CBA. *Id.* at 239. He admitted that he did know how the retiree healthcare benefit language came about or what the parties intended. *Id.* at 241-42.

not his intent or his understanding that Honeywell would provide lifetime healthcare benefits to the retirees. McKeage Dep. at 165-168.

Nevertheless, McKeage apparently had no qualms about agreeing to lifetime healthcare benefits for *surviving spouses and dependents,* although he and Bocik both testified that this provision was unique to Greenville. Trial Tr. at 246; McKeage Dep. at 113. Bocik could not explain why Honeywell agreed to this provision, given that it was inconsistent with corporate policy. Trial Tr. at 245-46, 249.

Despite Honeywell's claims that this CBA provision is a complete aberration, Honeywell approved it with little hesitation. In fact, McKeage testified that he does not even recall *discussing* the "lifetime" nature of healthcare benefits for the surviving spouses and dependents. He remembers the discussion being focused solely on the percentage of Honeywell's contribution. McKeage Dep. at 99-100, 117, 122.

The fact that Honeywell so willingly agreed to provide lifetime healthcare benefits to surviving spouses and dependents at the Greenville facility detracts from the credibility of its claim that it never would have agreed to provide lifetime healthcare benefits for the retirees themselves.[11] In the Court's

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[11] Honeywell urges the Court not to read too much into Honeywell's agreement to provide lifetime healthcare benefits to surviving spouses and dependents, given that this was a significantly smaller population than the population of retirees, and Honeywell agreed to pay only 50% of the cost. Honeywell, however, presented no evidence that the population of surviving spouses and

view, McKeage's failure to object to Fink's statement that the retirees already had lifetime healthcare benefits, and Honeywell's ready agreement to provide lifetime healthcare benefits to surviving spouses and dependents are quite telling.

The Court continues to believe that it is inconceivable that the UAW would bother to seek lifetime paid healthcare benefits for surviving spouses and dependents if the retirees themselves did not already have the same. In her concurring opinion in *Tackett,* Justice Ginsburg noted that a "survivor benefits" clause instructing that, if a retiree dies, her surviving spouse will continue to receive benefits, may be relevant to the question of whether retirees have a vested right to healthcare benefits. *Tackett,* 135 S. Ct. at 938 (Ginsburg, J., concurring). Moreover, the Sixth Circuit has noted that it is unreasonable to expect surviving spouses' benefits to exceed those of the retirees themselves. *Winnett v. Caterpillar Inc.,* 510 F. App'x 417, 420-21 (6th Cir. 2013).

In *UAW v. Loral Corporation,* 873 F. Supp. 57, 64 (N.D. Ohio 1994), *aff'd,* 107 F.3d 11, 1997 WL 49077 (6th Cir. 1997), the court found that it "defies common sense" to believe that the parties would agree to provide lifetime healthcare benefits for surviving spouses and dependents, but not extend the same protection to the retirees themselves.[12] *See also Bidlack*

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dependents is significantly smaller than the population of retirees, and the Court declines to make that assumption.

[12] As this Court noted in its November 15, 2016, Decision and Entry, even though *Loral* was decided long before *Tackett,* this

v. Wheelabrator Corp., 993 F.2d 603, 608 (7th Cir. 1993) (holding that a CBA promising to "pick up the full tab" for retirees' health insurance once they reach age 65, and promising that, upon the death of the retiree, the surviving spouse will continue to receive healthcare benefits, "could be thought a promise to retired employees that they and their spouses will be covered for the rest of their lives."); *Jansen v. Greyhound Corp.,* 692 F. Supp. 1029, 1036 (N.D. Iowa 1987) (finding it "inconceivable that the Defendants [] would maintain that they can reduce or terminate benefits for retirees at will when the contract specifies that a retiree's spouse shall have lifetime medical benefits.").[13]

Moreover, in light of Steve Shelton's testimony that he was cautioned never to ask for "lifetime" healthcare benefits in negotiations, it also defies common sense that the UAW would have been so bold as to specifically request "lifetime" healthcare benefits for surviving spouses if the retirees themselves did not already have them. The inference that logically follows is that, because the UAW was secure in its understanding that retiree healthcare benefits were

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does not necessarily preclude reliance on the basic "common sense" argument articulated therein. Doc. #29, PageID#956.

[13] Honeywell cites to *Bouboulis v. Transport Workers Union of America,* 442 F.3d 55, 61-62 (2d Cir. 2006), in which the court held that a letter stating that upon the death of a retiree, insurance coverage would continue for the lifetime of the surviving spouse, did not necessarily constitute a promise of lifetime benefits for the retirees themselves. As Plaintiffs point out, however, *Bouboulis* is factually distinguishable in that it involved a unilaterally-drafted summary plan description rather than a bilateral CBA.

already vested, it felt secure in asking Honeywell to extend the same protections to family members.

In the Court's view, evidence of the bargaining history of negotiations for the 2000-2003 CBA, standing alone, is more than sufficient to render judgment in favor of Plaintiffs. Nevertheless, subsequent events also support a finding that Honeywell agreed to provide lifetime retiree healthcare benefits.

E. 2003 and 2008 Negotiations

The same basic provisions that were negotiated in 2000, governing healthcare coverage for retirees and their family members, remained in place in all subsequent CBAs; in 2003, however, Honeywell did agree to increase its contribution for family coverage from 50% to 60%. JX 16, GR000863-864.

It is undisputed that there were no discussions during the 2003 or 2008 negotiations about the duration of retiree healthcare benefits. Steve Shelton testified that there would have been no reason to discuss it because the issue was already fully resolved. Shelton Dep. at 98. For the reasons set forth above, the Court finds Shelton's explanation to be credible.

According to Edward Thompson, neither were there any further discussions about the lifetime nature of the healthcare benefits that Honeywell had agreed to provide to surviving spouses and dependents. Thompson Dep. at 37-38, 130-31.[14] Thompson was

[14] All citations to Thompson's deposition refer to his January 10, 2017, deposition. Although the parties also designated portions of

Honeywell's Human Resources Director and chief spokesperson for the 2003 negotiations at the Greenville plant. In 2008, he supported the Greenville negotiations in his capacity as Labor and Employee Relations Director. *Id.* at 77, 82.

Plaintiffs argue that two other modifications in the 2003-2008 and 2008-2011 CBAs support a finding that retiree healthcare benefits were vested for life: (1) a provision for healthcare benefits for "deferred vested" retirees; and (2) a provision concerning caps on company healthcare benefit contributions. The Court agrees, but only in part.

In 2003, the union proposed a "30 and out" plan, whereby employees who had worked for thirty years could retire with full pension benefits. Trial Tr. at 280. Honeywell rejected this proposal, but agreed that "[e]mployees ages 50-55 with 30 years of service, who leave the company prior to becoming pension eligible, will be eligible for retiree health care benefits when they commence their pension benefits (age 55 or later)." JX16, GR000863.

This "deferred vested" provision was unique to the Greenville plant. Thompson Dep. at 56. Honeywell maintains that, although retirees would be *eligible* for healthcare benefits when they began collecting their pensions, the actual availability of healthcare benefits depended on the extent to which retiree medical benefits were still being offered at that point in time. Trial Tr. at 311.

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a different deposition taken in 2012, this testimony was not presented at trial.

Plaintiffs, however, argue that because health care benefits for these "deferred vested" retirees could commence long after the CBA expired, this demonstrates the parties' intent that Honeywell would provide lifetime retiree healthcare benefits. According to Plaintiffs, it defies logic to suggest that healthcare benefits for regular retirees were subject to the general durational clause of the CBA, but healthcare benefits for "deferred vested" retirees could spring to life years after the CBA expired.

Although this argument fits nicely into Plaintiffs' theory of the case, the Court cannot consider it. In *Gallo,* the Sixth Circuit held that a provision tying *eligibility* for healthcare benefits to *eligibility* to pension benefits was insufficient to imply a promise to provide lifetime healthcare benefits. 813 F.3d at 272. Instead, there must be language tying the "*duration* of pensions to the *duration* of health benefits." *Id.* (emphasis added). No such language exists here. The mere fact that eligibility for retiree healthcare benefits is deferred until the retiree becomes eligible to collect a pension does not render this case meaningfully distinguishable from *Gallo.* Therefore, the Court must reject Plaintiffs' argument that the "deferred vested" provision implies an intent to vest.

The Court may, however, consider the import of the parties' agreement to cap Honeywell's contributions for retiree healthcare benefits. In 2003, the parties agreed as follows:

> The company will cap its health care contribution for those retiring on or after 01/01/2004 at its actual 2008 cost (or the actual cost for any year between 2003 and 2008 if

> greater). This cap will not take effect until 2009. In addition there will be no cap for retirees prior to 01/01/2004. The cap for those retiring on or after 01/01/2004 will be a mandatory subject of bargaining for all future negotiations.

JX 16, at GR000863. Then, in 2008, the parties agreed to cap contributions at the actual 2011 cost, and extended the effective date of the cap to 2012. JX 17, at GR000994.

Eric Warren was Honeywell's Director of Benefits, Labor and Retirement Plans from 2002 to 2009. In 2009, he became Honeywell's Director of Human Resources. Warren supported the 2003, 2008 and 2011 negotiations for the Greenville plant, drafting benefit proposals and analyzing the cost. Trial Tr. at 257-58. He explained that, because pension and retiree medical costs were so large, Honeywell spent a great deal of time deciding what proposals would be presented and determining the parameters of an acceptable economic outcome. *Id.* at 259-60.

According to Warren, the cap provision allowed Honeywell to take an immediate accounting gain, because projected expenses would be lower. It also gave the union the opportunity to re-negotiate the extent of the caps before they went into effect, making it more likely that the union would ratify the CBA. *Id.* at 268, 275, 278.

Plaintiffs maintain that the fact that the caps on healthcare contributions applied only to *future* retirees, and were not scheduled to go into effect until *after* the CBA expired, is evidence of the parties' understanding

that retirees had vested lifetime healthcare benefits. The Court agrees.

It is undisputed that, in 2003, Honeywell initially proposed caps that would negatively affect *current* retirees, those who had retired on or after June 1, 2000. *Id.* at 268, 300. Shelton, however, told Honeywell negotiators that it would be illegal to apply the caps retroactively. Shelton Dep. at 221; JX24, at 9. Likewise, Eric Warren remembered Sharon Meadows saying something about how the proposal would be against the law. Trial Tr. at 300-01. Plaintiffs maintain that, because the current retirees had a vested right to healthcare benefits, caps could be applied only to *future* retirees. *See Moore v Menasha Corp.,* 690 F.3d 444, 450 (6th Cir. 2012) (holding that vested healthcare benefits are "forever unalterable").

Honeywell subsequently agreed to the union's counterproposal, applying the caps only to employees retiring on or after January 1, 2004. Trial Tr. at 268, 296-97, 304, 321. In fact, Warren conceded that Honeywell agreed that all changes made in 2003 and 2008 to retiree healthcare benefits, *e.g.,* increases in prescription drug prices, would apply only *prospectively.* Trial Tr. at 297, 304, 321.

Nevertheless, Warren and Thompson denied that Honeywell's agreement to modify the proposal indicates that it agreed with the UAW's position that, because the rights were vested, caps could apply only to future retirees. They both testified that they believed that Honeywell had authority to apply the caps retroactively, but simply chose not to do so. Thompson Dep. at 26; Trial Tr. at 271.

Honeywell's proffered explanation for why it agreed to the UAW's counterproposal is somewhat muddy. Ed Thompson testified that Eric Warren advised him that Honeywell agreed to apply the caps prospectively because it "would be too complicated" to fold in the current retirees, given that their retiree healthcare benefits had been negotiated by a different union. Thompson Dep. at 25-28. Nevertheless, Thompson could not recall why Warren believed that to be so. *Id.* at 29.

Tellingly, when asked at trial why Honeywell agreed to the UAW's counterproposal to apply the caps only to *future* retirees, Warren made no mention of the fact that the healthcare benefits for current retirees had been negotiated by a different union. Nor did he offer any alternative explanation for why Honeywell agreed to apply the caps only prospectively. Warren skirted the issue, stating only that the UAW's counterproposal "met our total financial bargaining parameters as approved by the company." He explained that, because of the ratio of retirees to active employees at the Greenville plant, the change in the effective date of the caps did not materially impact Honeywell's financial outcome. Trial Tr. at 273-75. *See also* Thompson Dep. at 25, 30.

In the Court's view, Honeywell's inability to offer a reasoned explanation for why it agreed to apply the caps only to future retirees lends support to Plaintiffs' argument that Honeywell knew that retiree healthcare benefits were vested and could not unilaterally be modified.

The fact that Honeywell also agreed that the caps on company contributions for healthcare benefits for

future retirees would not take effect until after the CBA expired lends further credence to Plaintiffs' claim that these were lifetime benefits.

Warren testified that, in his view, the fact that the caps took effect after the CBAs expired does not imply an agreement to provide lifetime benefits. Trial Tr. at 276-77, 289. Citing *Tackett v. M&G Polymers, USA, LLC,* 561 F.3d 478, 482 n.1 (6th Cir. 2009), Honeywell argues that postponing the effective dates of these caps beyond the expiration of the CBA was a common industry practice in no way intended to imply that the company agreed to pay lifetime retiree healthcare benefits. However, even the Sixth Circuit noted that "[t]he import of this perpetual postponement and the applicability of these cap letters to the current parties are fact issues that must be resolved by the district court. . ." *Id.*

In *Cole v. ArvinMeritor, Inc.,* 516 F. Supp. 2d 850 (E.D. Mich. 2005), the court held as follows:

> These cost-controlling caps are future oriented, and govern retiree health costs for decades after expiration of the agreements in which they appear. The only reasonable conclusion is that the agreements intend that both pension and retiree health benefits are to continue for the lifetimes of retirees, eligible dependents, and surviving spouses.

Id. at 870. Despite the fact that *Cole* was decided when *Yard-Man* was still good law, the logic behind this statement remains very persuasive.

Notably, when asked whether Honeywell's actuaries calculated the future cost of retiree healthcare benefits

based on an understanding that those benefits would be provided for the lifetime of each retiree, Warren could not answer the question. Trial Tr. at 305-06. He explained only that Honeywell agreed to extend the effective date of the caps because, again, it "met our full financial parameters." *Id.* at 289.

For the reasons explained above, the Court finds that the cap provision provides further evidence of the parties' understanding that retirees had lifetime healthcare benefits. Even stronger evidence of that understanding, however, arises out of the parties' negotiations for the 2011-2014 CBA.

F. 2011 Negotiations

Early in 2011, Honeywell announced plans to sell the Greenville plant to the Rank Group. That sale was not going to be completed until July 29, 2011. Nevertheless, the 2008-2011 CBA was set to expire in May of 2011. Employees were given the choice of negotiating a new CBA with Honeywell or with Rank. They chose to negotiate with Honeywell. Trial Tr. at 160-61.

Rick Hancock, Honeywell's Human Resources Manager for the Consumer Product Group at the Greenville plant, was Honeywell's lead negotiator in 2011. Hancock Dep. at 12-13, 26, 61; Trial Tr. at 227. Becky Silcott was his personnel administrator. Hancock Dep. at 12. After the property was sold, Hancock joined the Rank Group as the Human Resources Director. *Id.* at 13-14.

Hancock testified that, based on his conversations with Silcott and with Buzz Fink, he understood that Greenville's retirees had vested healthcare benefits,

and that they would continue to receive those benefits until they died. *Id.* at 45-46, 48, 52. He further testified that his belief was consistent with the CBA provisions that promised that Honeywell would pay the full cost of retiree healthcare, and then *"upon the death of a retiree,* the Company will continue coverage for the spouse and dependent children for their lifetime . . . " *Id.* at 46-47, 66 (emphasis added).

Honeywell argues that Hancock's understanding that Greenville retirees had lifetime healthcare benefits was flawed. He had no first-hand knowledge of the parties' intent because he did not participate in previous negotiations at the Greenville plant. *Id.* at 83. Moreover, he never communicated his understanding of the lifetime nature of retiree healthcare benefits to Warren or Bocik. *Id.* at 82-83. The Court notes, however, that Hancock's understanding is entirely consistent with that of Mike Rihm and all members of the UAW bargaining team who had participated in the negotiations for the 2000-2003 CBA, eleven years earlier.[15] More importantly, Hancock's understanding that retiree healthcare benefits were vested provides the backdrop for what occurred during negotiations for the 2011-2014 CBA.

In 2011, there were approximately 175 UAW-represented employees at the Greenville plant. *Id.* at 20. Honeywell had a two-tier wage system. All of the

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[15] The Court notes that Rick Hancock and Mike Rihm both worked as human resource managers at the local Greenville plant. The fact that, although they never met each other, Hancock Dep. at 18, they both understood retiree healthcare benefits to be vested, lends credibility to Plaintiffs' claims.

Greenville employees were tier-one employees, which meant that they were paid at a higher rate. *Id.* at 23-24. One of the goals during the 2011 negotiations was to reduce labor costs by replacing the number of tier-one employees with tier-two employees. This was to be accomplished, in part, by encouraging tier-one employees to retire. *Id.* at 30, 62-63.

To save costs, Honeywell also planned to eliminate subsidized healthcare benefits for all employees who retired after June 1, 2011. *Id.* at 26-27, 32-33, 73; Trial Tr. at 159. When Hancock communicated this to Fink, then president and chairperson of the local, and the UAW's lead negotiator, Fink vehemently objected. He told Hancock, "there's no way I'm going back to this membership and telling them they're going to lose their healthcare two weeks after this contract is signed." Trial Tr. at 158-159, 177. Fink explained to Hancock that it was not right for Honeywell to take this lifetime benefit away from future retirees. Hancock acknowledged that it was a lifetime benefit, but told Fink that "it cost the company a lot of money." *Id.* at 161-62.

Ultimately, the parties negotiated a one-year window of opportunity. *Id.* at 159-160. All employees who retired on or after June 1, 2012, would have to pay 100% of the cost of healthcare coverage. JX18, at GR001058. However, if they retired before that date, they would be able to keep their company-paid lifetime retiree healthcare benefits. Hancock Dep. at 36, 47-48, 50. Said benefits would be provided either by Honeywell or by the Rank Group, depending on whether the employee retired before or after the date of the sale. Trial Tr. at 295. Approximately 70-80 of the

175 employees took advantage of this window of opportunity, and retired before June 1, 2012. Hancock Dep. at 27-29. Continued access to lifetime healthcare coverage was the only incentive that they were given to retire before that date, during the "window of opportunity." *Id.* at 32, 36, 47, 62-65, 67, 69.

The parties' understanding that the retirees had *lifetime* healthcare benefits formed the premise behind the creation of this window of opportunity. It is inconceivable that nearly half of the union employees at the Greenville plant would agree to voluntarily retire based solely on a promise that they would continue to receive healthcare benefits only until May 22, 2014, when the CBA expired. Accordingly, evidence of what transpired during and after the 2011 negotiations provides additional support for a finding that the parties intended that Honeywell would provide lifetime retiree healthcare benefits.

G. Post-2014 Course of Conduct

Despite Honeywell's insistence that any obligation to provide retiree healthcare benefits expired on May 22, 2014, when the final CBA expired, it is undisputed that Honeywell continued to provide such benefits for more than two years after that date. Only after the Supreme Court issued its 2015 decision in *Tackett* did Honeywell reassess its position concerning its obligation to continue providing retiree healthcare benefits. *See Kelly v. Honeywell Int'l, Inc.,* No. 3:16-cv-543, 2017 WL 522163, at *6 (D. Conn. Feb. 8, 2017) (noting that corporate counsel spent several months re-evaluating CBAs after the *Tackett* decision was issued.). On December 28, 2015, Honeywell sent a letter to all retirees of the Greenville plant, notifying

them of Honeywell's intent to terminate all retiree healthcare coverage as of December 31, 2016. JX48.

Honeywell's course of conduct in continuing to provide coverage after the CBA expired provides strong support for the Court's finding that Honeywell agreed to provide lifetime retiree healthcare benefits. *See Brooklyn Life Ins. Co. v. Dutcher,* 95 U.S. 269, 273 (1877) ("The practical interpretation of an agreement by a party to it is always a consideration of great weight. . . There is no surer way to find out what parties meant, than to see what they have done."); *Alabama v. North Carolina,* 560 U.S. 330, 346 (2010) (noting that the parties' "course of performance" is "highly significant" evidence of their contractual intentions).

Moreover, numerous courts have held that when a for-profit company continues to pay for healthcare benefits after it is no longer contractually obligated to do so, this suggests that the parties intended the benefits to be vested. *See e.g., Weimer v. Kurz-Kasch Inc.,* 773 F.2d 669, 676 n.6 (6th Cir. 1985); *UAW v. Skinner Engine Co.,* 188 F.3d 130, 144 (3d Cir. 1999); *Bower v. Bunker Hill Co.,* 725 F.2d 1221, 1225 (9th Cir. 1984); *USWA v. Connors Steel Co.,* 855 F.2d 1499, 1502 (11th Cir. 1988).

Notably, neither Ed Bocik nor Eric Warren had any explanation for why Honeywell continued to provide retiree healthcare benefits after May 22, 2014. Trial Tr. at 236, 238, 295-96. The most likely explanation is because Honeywell believed that it was required to do so.

Honeywell argues that it should not be punished for failing to immediately terminate benefits when the CBA expired. Just because it had a right to do so, does not mean that failure to exercise that right constitutes a waiver. Honeywell notes that, in *Gallo,* the Sixth Circuit stated:

> [A] company does not act inconsistently when (1) it continues paying healthcare benefits to retirees and (2) reserves the right to alter or eliminate those benefits in the future. That a company to its credit hopes to subsidize healthcare benefits for its retirees for as long as possible does not mean it has promised to do so, and above all such action does not mean that it has no right to alter those benefits in the future. . .

Gallo, 813 F.3d at 274. However, because the CBAs at issue in this case contain no reservation-of-rights clause, *Gallo* is factually distinguishable. Moreover, because the court in *Gallo* found that the contract language was unambiguous, it had no occasion to consider extrinsic evidence such as the company's course of conduct.

Honeywell also relies on *Watkins v. Honeywell International, Inc.,* No. 3:16-cv-1925, 2016 WL 7325161, at * 6 n.8 (N.D. Ohio Dec. 16, 2016). However, *Watkins* actually supports Plaintiffs' position. There, as here, the plaintiffs argued that Honeywell's conduct in continuing to provide benefits after the CBA expired manifested its intent to provide lifetime benefits. The *Watkins* court noted, however, that because it did not find the CBA to be ambiguous, it could not consider any extrinsic evidence, including Honeywell's course of

conduct. *Id.* Here, however, because this Court *has* found the CBA to be ambiguous, it may consider extrinsic evidence, including Honeywell's course of conduct, to resolve the ambiguity. In the Court's view, Honeywell's conduct in continuing to provide healthcare benefits after it was, allegedly, no longer contractually obligated to do so is an objective manifestation of the parties' earlier intent to vest lifetime retiree healthcare benefits.

II. Findings of Fact

The Court's findings of fact are as stated in the previous section of this Opinion and Order.

III. Conclusions of Law

Plaintiffs have proven, by a preponderance of the evidence, that Honeywell agreed to provide lifetime healthcare benefits to its retirees at the Greenville, Ohio, plant. Honeywell's plan to terminate those benefits as of February 28, 2017, therefore breaches the terms of the relevant collective bargaining agreements. Accordingly, pursuant to Section 301 of the LMRA, 29 U.S.C. § 185, and ERISA, 29 U.S.C. § 1132, Plaintiffs are entitled to the relief requested.

IV. Conclusion

For the reasons set forth above, Honeywell is permanently enjoined from terminating healthcare benefits for putative class members who retired from the Greenville, Ohio, plant before June 1, 2012, and for their eligible spouses and dependents. No changes to

those benefits shall be made without further order of this Court.[16]

Judgment shall be entered in favor of Plaintiffs and against Defendant Honeywell.

The captioned case is hereby ordered terminated upon the docket records of the United States District Court for the Southern District of Ohio, Western Division, at Dayton. Nevertheless, the Court retains jurisdiction over any post-judgment matters and issues of implementation and enforcement of the Court's judgment and permanent injunction.

Date: February 28, 2017

/s/Walter H. Rice
WALTER H. RICE
UNITED STATES DISTRICT JUDGE

[16] Although Plaintiffs' Complaint also seeks damages, the Court notes that Plaintiffs have submitted no evidence concerning damages; all relief requested at the evidentiary hearing was prospective. The Complaint also asks for costs and attorney fees. Plaintiffs may file a post-judgment motion for such relief, if otherwise available.

APPENDIX C

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF OHIO

Civil Action No. 3:16-cv-302

[Filed February 28, 2017]

BARBARA FLETCHER, et al.,
Plaintiff

v.

HONEYWELL INTERNATIONAL, INC.,
Defendant

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

❒ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($_____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

❒ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)*

_____ recover costs from the plaintiff *(name)* _____.

☑ other: Judgment entered in favor of Plaintiffs and against Defendant.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☑ tried by Judge Rice _____ without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for

Date: 2/28/2017

CLERK OF COURT

s/ C. Fugate _____
Signature of Clerk or Deputy Clerk

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION

Case No. 3:16-cv-302
JUDGE WALTER H. RICE

[Filed November 15, 2016]

BARBARA FLETCHER, *et al.,*	)
	)
Plaintiffs,	)
	)
v.	)
	)
HONEYWELL INTERNATIONAL, INC.,	)
	)
	)
Defendant.	)
	)

DECISION AND ENTRY OVERRULING MOTION OF DEFENDANT HONEYWELL INTERNATIONAL, INC., TO DISMISS COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED (DOC. #15); OVERRULING WITHOUT PREJUDICE RETIREES' MOTION FOR (1) SUMMARY JUDGMENT AND PERMANENT INJUNCTION OR, IN THE ALTERNATIVE, (2) PRELIMINARY INJUNCTION PREVENTING HONEYWELL

FROM ENDING HEALTHCARE AFTER 2016; OUTLINING FURTHER PROCEEDINGS

Plaintiffs Barbara Fletcher, Timothy Philpot, Marcia Fink and Lucinda Smith each retired from Defendant Honeywell International, Inc.'s, Greenville, Ohio, plant, where they were members of a collective bargaining unit. After receiving notice that, as of December 31, 2016, Honeywell intends to terminate the retiree medical and prescription drug coverage currently being provided to them and their covered dependents, Plaintiffs filed suit on behalf of themselves and approximately 500 other similarly-situated retirees.

Their Complaint asserts three causes of action. Count I alleges that Honeywell's termination of healthcare coverage breaches the terms of a series of collective bargaining agreements ("CBAs"), thereby violating Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185. Count II seeks relief under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132. Count III alleges that Honeywell's refusal to arbitrate the dispute breaches the CBAs and violates the LMRA. Plaintiffs seek declaratory and injunctive relief, as well as damages.

This matter is currently before the Court on Defendant's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted, Doc. #15. On September 14, 2016, the Court issued a Decision and Entry overruling Plaintiffs' Motion to Compel Arbitration, and dismissed Count III of the Complaint with prejudice. Doc. #19. Accordingly, only Counts I

and II remain at issue. The Court held oral argument on October 26, 2016, after the Motion to Dismiss was fully briefed.

Also pending is Retirees' Motion for (1) Summary Judgment and Permanent Injunction or, in the Alternative, (2) Preliminary Injunction Preventing Honeywell from Ending Healthcare After 2016. Doc. #27. This motion was recently filed and is not yet fully briefed.

I. Background and Procedural History

This matter concerns retiree healthcare benefits at Honeywell's Greenville, Ohio, plant. A series of collective bargaining agreements ("CBAs") provided Honeywell retirees and their dependents with healthcare and prescription drug coverage (hereinafter "retiree healthcare benefits").[1] Even though Honeywell sold the Greenville plant in 2011, and the latest CBA expired on May 22, 2014, Honeywell continued to provide retiree healthcare benefits. However, on December 28, 2015, Honeywell notified the retirees and their spouses in writing that "Honeywell intends to terminate the retiree medical and prescription drug coverage currently provided to you and your covered dependents as of December 31, 2016." Doc. #15-2, PageID#393.

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[1] According to the Complaint, Honeywell and its predecessors have been parties to CBAs covering the Greenville plant since approximately 1960. The most recent CBAs covered the periods from 1994-1997, 1997-2000, 2000-2003, 2003-2008, 2008-2011, and 2011-2014. Doc. #1, PageID#4.

On June 17, 2016, a law firm representing the Plaintiffs in this case sent Honeywell a "grievance" letter and a request to arbitrate the dispute. Doc. #14-4, PageID#130. Honeywell refused. Doc. #14-5, PageID##132-33. Thereafter, Plaintiffs filed suit, on behalf of themselves and other similarly-situated retirees. They maintain that they were promised lifetime healthcare benefits, and that Honeywell's plan to terminate this coverage, and its refusal to arbitrate this dispute violates the terms of the CBAs and the LMRA. They seek declaratory and injunctive relief under the LMRA and ERISA, as well as compensatory damages. Doc. #1.

On August 16, 2016, Plaintiffs also filed a Motion to Compel Arbitration, Doc. #14. Two weeks later, Honeywell filed a Motion to Dismiss, Doc. #15. On September 14, 2016, the Court overruled the Motion to Compel Arbitration, and dismissed Count III of the Complaint with prejudice. Doc. #19. The Court now turns its attention to Honeywell's Motion to Dismiss Counts I and II. Honeywell argues that Counts I and II are subject to dismissal under Federal Rule of Civil Procedure 12(b)(6), because they are based on the faulty premise that Honeywell made a promise to provide lifetime retiree healthcare benefits.

II. Rule 12(b)(6) Standard

Federal Rule of Civil Procedure 12(b)(6) allows a party to move for dismissal of a complaint on the basis that it "fail[s] to state a claim upon which relief can be granted." The moving party bears the burden of showing that the opposing party has failed to adequately state a claim for relief. *DirecTV, Inc. v. Treesh,* 487 F.3d 471, 476 (6th Cir. 2007) (citing *Carver*

v. Bunch, 946 F.2d 451, 454-55 (6th Cir. 1991)). The purpose of a motion to dismiss under Rule 12(b)(6) "is to allow a defendant to test whether, as a matter of law, the plaintiff is entitled to legal relief even if everything alleged in the complaint is true." *Mayer v. Mylod,* 988 F.2d 635, 638 (6th Cir. 1993). In ruling on a 12(b)(6) motion, a court must "construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff." *Handy-Clay v. City of Memphis,* 695 F.3d 531, 538 (6th Cir. 2012) (quoting *Treesh,* 487 F.3d at 476).

Nevertheless, to survive a motion to dismiss under Rule 12(b)(6), the complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 570 (2007). Unless the facts alleged show that the plaintiff's claim crosses "the line from conceivable to plausible, [the] complaint must be dismissed." *Id.* Although this standard does not require "detailed factual allegations," it does require more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Id.* at 555. "Rule 8 . . . does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal,* 556 U.S. 662, 678-79 (2009). Legal conclusions "must be supported by factual allegations" that give rise to an inference that the defendant is, in fact, liable for the misconduct alleged. *Id.* at 679.

III. Discussion

Plaintiffs allege that "Honeywell is obligated under the governing CBAs to provide the plaintiffs, their spouses and other eligible dependents and surviving

spouses, and others similarly-situated, with lifetime retiree healthcare." Doc. #1, PageID#7. Count I of the Complaint alleges that Honeywell's plan to terminate those benefits will breach the CBAs and violate the LMRA. *See* 29 U.S.C. § 185(a) (granting jurisdiction to district courts to resolve disputes between employers and labor unions about CBAs).

Count II seeks declaratory and injunctive relief under ERISA. That statute allows a plan participant or beneficiary in an "employee welfare benefit plan" to file suit "to recover benefits due him under the terms of his plan, to enforce his rights under terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). It also allows a participant, beneficiary, or fiduciary to file suit to enjoin acts or practices that violate the terms of the plan. 29 U.S.C. § 1132(a)(3). Plaintiffs seek to enforce their rights under the terms of the plan, and ask for an order requiring Honeywell to continue providing retiree healthcare benefits.

A. Relevant Law

The viability of both of Plaintiffs' remaining claims hinges on whether the governing CBAs provide Honeywell retirees and their covered dependents with a vested right to healthcare and prescription drug benefits.[2] As the Sixth Circuit has explained, "[r]etiree

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[2] Honeywell correctly notes that Plaintiffs' ERISA claim is derivative of the LMRA claim. Unless Plaintiffs can show that their right to healthcare benefits has vested, and that Honeywell's proposed conduct will therefore breach the terms of the CBAs, both claims will fail. *See VanPamel v. TRW Vehicle Safety Sys., Inc.,* 723 F.3d 664, 669 (6th Cir. 2013) ("if Plaintiffs' contractual claim fails

medical benefits are welfare benefits, which do not vest automatically under either ERISA or labor contract principles." *Winnett v. Caterpillar, Inc.,* 553 F.3d 1000, 1008 (6th Cir. 2009). The parties may, however, agree that welfare benefits will survive the expiration of the CBA. If a welfare benefit has vested, the employer cannot unilaterally modify it or terminate it. However, if the benefit has not vested, the employer can modify or terminate it after the CBA expires. *Id.*

The law concerning the vesting of retiree healthcare benefits has changed significantly within the past several years, and it is now more difficult for retirees to prove that they have a vested right to healthcare benefits. The Sixth Circuit had previously held that when an employer promises to provide retiree healthcare benefits, it can be inferred that, absent an express provision limiting the duration of those benefits (or extrinsic evidence to that effect), the parties intend such coverage to continue for the lifetime of the retiree, just like pension benefits. The general durational clause of the CBA did not apply. *Int'l Union, United Auto., Aerospace, and Agr. Implement Workers of Am. (UAW) v. Yard-Man, Inc.,* 716 F.2d 1476 (6th Cir. 1983).

Last year, in *M&G Polymers USA, LLC v. Tackett,* 135 S. Ct. 926 (2015), the Supreme Court unanimously abrogated *Yard-Man* and its progeny. The three-year contract in *Tackett* stated that retirees "will receive a full Company contribution towards the cost of [health care] benefits." *Id.* at 931. With respect to the duration

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because the CBA does not create a vested right to healthcare benefits, their ERISA claims must fail as well.").

of the company's obligation, the contract stated that, "[e]ffective January 1, 1998, *and for the duration of this Agreement thereafter,* the Employer will provide the following program of [healthcare benefits] for eligible employees and their dependents." *Id.* (emphasis added). The district court concluded that the contract did not create a vested right to retiree healthcare benefits, but the Sixth Circuit reversed, based on the inferences set forth in *Yard-Man* and its progeny.

In vacating the Sixth Circuit's opinion, the Supreme Court noted that CBAs are to be interpreted "according to ordinary principles of contract law," and "the parties' intentions control." *Id.* at 933. The Court found that the inferences applied by the Sixth Circuit in *Yard-Man* violated "ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements." *Id.* at 935.

The Supreme Court held that the Sixth Circuit's approach, in refusing to apply general durational clauses to retiree healthcare benefit provisions, was problematic, given that it ignored the following ordinary contract principles: (1) "the written agreement is presumed to encompass the whole agreement of the parties"; (2) courts must "avoid constructions of contracts that would render promises illusory"; (3) "courts should not construe ambiguous writings to create lifetime promises"; and (4) "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement." *Id.* at 936-37 (quotations omitted).

The Supreme Court acknowledged that parties can explicitly agree that certain benefits will continue even after the CBA has expired, but "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 937. Nevertheless, as Justice Ginsburg noted in her concurring opinion, this does not necessarily mean that the parties' intent to vest must be explicitly stated in "clear and express" language. *Id.* at 938 (Ginsburg, J., concurring). "[C]onstraints upon the employer after the expiration date of a collective-bargaining agreement . . . 'may arise as well from . . . implied terms of the expired agreement.'" *Id.* (quoting *Litton Fin. Printing Div., Litton Bus. Sys., Inc. v. NLRB,* 501 U.S. 190, 203, 207 (1991)). In other words, "silence" as to the duration of retiree healthcare benefits may be overcome either explicitly or implicitly.

The Supreme Court vacated the Sixth Circuit's opinion and remanded the case with instructions to apply ordinary principles of contract law to the language of the CBA to determine whether the parties had agreed to vest healthcare benefits for life. *Tackett,* 135 S. Ct. at 937. In turn, the Sixth Circuit remanded the case to the district court, where it remains pending. *See Tackett v. M&G Polymers USA, LLC,* 811 F.3d 204 (6th Cir. 2016) ("*Tackett III*"). In its remand order, the Sixth Circuit found that reliance on Justice Ginsburg's concurring opinion in *Tackett* was appropriate "because it identifies other principles of contract law." *Id.* at 209 n.2. The Court reiterated that no "clear and express" vesting language is needed, and that intent to vest may be implied from other provisions in the CBA. *Id.* at 209.

Earlier this year, the Sixth Circuit revisited the issue of retiree healthcare benefits in *Gallo v. Moen, Inc.,* 813 F.3d 265 (6th Cir. 2016), *reh'g en banc denied* (March 16, 2016), *cert. denied,* 2016 WL 4399093 (U.S.

Oct. 31, 2016). Relying on *Yard-Man,* the district court had concluded that Moen retirees had a vested right to healthcare benefits. Shortly after the district court issued its decision, however, the Supreme Court decided *Tackett.* On appeal in *Gallo,* the Sixth Circuit reversed and remanded the case for the district court to enter judgment in the employer's favor. 813 F.3d at 274.

The *Gallo* court found that the contracts at issue did not indicate intent to vest lifetime retiree healthcare benefits. Although no "clear and express" statement was required, and although the court could "draw implications and inferences from the language of the contract," the court found that, as applied to the contracts in question, ordinary principles of contract law required the conclusion that no vesting had occurred. *Id.* at 274.

In so holding, the court stated that, just as we do not expect to find "elephants in mouseholes," we "should not expect to find lifetime commitments in time-limited agreements." *Id.* at 269. Because the retiree healthcare benefit provision did not expressly provide for lifetime benefits, and did not include a specific end date, the general 3-year durational clause applied, and Moen's obligation to provide retiree healthcare benefits ended when the 3-year CBA expired. *Id.*

The CBA at issue promised that *"continued* hospitalization, surgical and medical coverage will be provided without cost" to retirees. The Sixth Circuit pointed out that this provision would not be necessary if prior agreements had, in fact, vested the right to such benefits. *Id.* at 270 (emphasis added). The court

also found that, standing alone, the use of future tense language, *i.e.*, "will be" provided, was insufficient evidence of intent to vest. *Id.* at 271.

The CBA at issue explicitly guaranteed lifetime *pension* benefits, but not lifetime *healthcare* benefits. The court stated that, "we must assume that the explicit guarantee of lifetime benefits in some provisions and not others means something." *Id.* at 270. The court rejected plaintiffs' argument that intent to vest could be found in the fact that eligibility for retiree healthcare benefits was tied to eligibility for pensions. *Id.* at 272. Because the court concluded that the unambiguous language of the CBA offered "no evidence of any intent to fix these benefits permanently into the future," it refused to consider any extrinsic evidence. *Id.* at 273-74.[3]

B. Analysis

It is undisputed that Honeywell contractually agreed to provide retiree healthcare benefits. At issue is the temporal scope of that commitment. Plaintiffs contend that the series of CBAs at issue created a vested right to lifetime healthcare benefits. Honeywell

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[3] Judge Stranch filed a dissenting opinion in *Gallo.* In her view, the majority swung the pendulum too far in the other direction "by placing a thumb on the employer's scale." *Id.* at 275 (Stranch, J., dissenting). She found that the language in the CBA was ambiguous, and that extrinsic evidence -- including the fact that the employer had continued to provide retiree healthcare benefits after the CBA had expired, and the fact that many employees had decided to retire, accepting a reduction in their pension benefits in exchange for continued healthcare benefits--resolved the ambiguity in favor of the retirees. *Id.* at 280-81.

disagrees. It argues that *Tackett* and *Gallo* are dispositive and warrant dismissal of Plaintiffs' claims.

To determine what the parties intended, the Court follows the analytical road map laid out in *Tackett* and *Gallo.* First, the Court examines "the entire agreement in light of relevant industry-specific 'customs, practices, usages, and terminology .'" *Tackett,* 135 S. Ct. at 937-38 (Ginsburg, J., concurring). If the intent of the parties is unambiguously expressed within the four corners of the CBA, the Court need look no further. However, if the CBA is ambiguous, extrinsic evidence may be considered to resolve the ambiguity. *Id.* at 938. *See also Gallo,* 813 F.3d at 273-74.

1. Relevant CBA Terms

Article 33, Section D, of the 2011-2014 CBA sets forth the relevant contract provisions with respect to retiree healthcare benefits. These read, in relevant part, as follows:

> 1. Employees ages 50-55 with 30 years of service, who leave the company prior to becoming pension eligible, will be eligible for retiree health care benefits when they commence their pension benefits (age 55 or later). . .
>
> 2. Healthcare Contributions for Dependents and Surviving Spouses of retirees on or after June 1, 2000: Effective 01/01/2004 the company will increase its health care contribution to 60% of the cost of retiree medical.

3. Company Cap on Healthcare for Retirees, Dependents and Surviving Spouses: The company will pay 100% of the cost of retiree medical for all current retirees and those who retire prior to 01/01/2004. The company will cap its health care contribution for those retiring on or after 01/01/2004 at its actual 2011 cost (or the actual cost for any year between 2008 and 2011 if greater). This cap will not take effect until 2012. In addition there will be no cap for retirees prior to 01/01/2004. The cap for those retiring on or after 1/1/04 will be a mandatory subject of bargaining for all future negotiations.
   The limit (FAS cap) on the Company's health care contributions for dependents and surviving spouses under the 6/1/00-5/31/03 contract will be removed. The company will cap its health care contribution for new dependents and surviving spouses on or after 01/01/2004 at its actual 2011 cost (or the actual cost for any year between 2008 and 2011 if greater). This cap will not take effect until 2012. The cap for those dependents and surviving spouses of retirees who retire on or after 1/1/04 will be a mandatory subject of bargaining for all future negotiations.

4. Administration of Cap on Healthcare Contributions for Retirees, Dependents, and Surviving Spouses: The company will limit it[]s subsidy for medical coverage for

> retirees, dependents, and surviving spouses to the actual amount of the company subsidy in 2011 (or the actual subsidy for any year between 2008 and 2011 if greater). All medical cost increases above the limit will be charged to retirees, dependents and surviving spouses in the form of contributions. . . .
>
> 5. Upon the death of a retiree, the Company will continue coverage for the spouse and dependent children for their lifetime provided 1) the retiree elected a joint & survivor form of benefit payment under the pension plan, and 2) the surviving spouse pays 40% of the cost of family coverage. The cost is subject to the caps as explained in 2.D. above.

Doc. #23-2, PageID##537-39.

The CBA also provides that "[e]mployees hired after May 22, 2011 will not be eligible for Company provided Retiree Medical benefits." *Id.* at PageID#541. Employees who retire after June 1, 2012, and their dependents, will have to pay the entire cost of retiree medical and dental coverage. *Id.* at PageID#544. Article 39 of the 2011-2014 CBA contains a general durational clause, stating that the agreement will remain in effect until May 22, 2014. Doc. #15-1, PageID#367.

2. Absence of Express Language Promising Lifetime Retiree Healthcare Benefits Is Not Dispositive

Honeywell relies heavily on the statement, in *Tackett,* that parties can explicitly agree that certain obligations will continue after the CBA expires, "[b]ut 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." 135 S. Ct. at 937.

The CBAs at issue do not expressly state that Honeywell will provide lifetime retiree healthcare benefits. Nevertheless, as counsel for Honeywell conceded at oral argument, a clear and express statement is not required. *See Tackett III,* 811 F.3d at 209 (noting that the Supreme Court "declined to adopt an 'explicit language' requirement in favor of companies").

As noted in *Tackett III,* although the CBA at issue in that case did not contain express language vesting lifetime retiree healthcare benefits, the Supreme Court did not direct that judgment be entered in favor of the employer. Instead, it remanded the case so that the court could apply ordinary contract principles to determine the parties' intent. *Id.* at 209 n.3. The Sixth Circuit explained as follows:

> [W]hile the Supreme Court's decision prevents us from presuming that "absent durational language referring to retiree benefits themselves, a general durational clause *says nothing* about the vesting of retiree benefits," we also cannot presume that the *absence* of such

> specific language, by itself, evidences an intent *not* to vest benefits or that a general durational clause says *everything* about the intent to vest.

Id. at 209 (emphasis in original). *See also Gallo,* 813 F.3d at 274 (holding that *Tackett* does not create a "clear-statement rule," and that, in accordance with ordinary principles of contract law, courts may "draw implications and inferences from the language of the contact."); *Tackett,* 135 S. Ct. at 938 (Ginsburg, J., concurring) (noting that an employer's obligation to provide benefits after the expiration of a CBA may impliedly arise from other provisions in the CBA).

Because neither the *absence* of an express promise of lifetime healthcare benefits, nor the *presence* of a general durational clause is dispositive, the Court must examine the other provisions of the contract, using "traditional canons of contract interpretation," to determine whether the parties intended to vest retiree healthcare benefits for life. *Gallo,* 813 F.3d at 273. If the parties' intent is unambiguously expressed in those other provisions, that expression controls. If, however, the language is ambiguous, the Court may look to extrinsic evidence to determine what the parties intended. *Id.* at 273-74.

3. The CBA is Ambiguous Concerning the Parties' Intent to Vest Lifetime Retiree Healthcare Benefits

A contract term is ambiguous where its meaning "cannot be determined from the four corners of the agreement or where contract language is susceptible to two or more reasonable interpretations." *Potti v.*

Duramed Pharm., Inc., 938 F.2d 641, 647 (6th Cir. 1991).

Honeywell maintains that the CBA is unambiguous, and cannot reasonably be construed to vest lifetime retiree healthcare benefits. Relying heavily on the Sixth Circuit's opinion in *Gallo,* Honeywell argues that, because the CBA is silent as to the duration of retiree healthcare benefits, and *Yardman*-type inferences are no longer permissible, the general durational clause controls. Accordingly, Honeywell maintains that its contractual duty to provide such benefits expired on May 22, 2014, when the last CBA expired.

Plaintiffs, however, argue that the requisite intent to vest lifetime retiree healthcare benefits may be found in numerous provisions in the CBA. They maintain that the CBA unambiguously confers such lifetime benefits. In the alternative, they argue that, at the very least, the CBA is ambiguous, precluding dismissal on 12(b)(6) grounds. For the reasons set forth below, the Court concludes that the parties' intent, concerning the vesting of lifetime retiree healthcare benefits, is not unambiguously expressed in that document.

The Court rejects Honeywell's argument that *Gallo* mandates dismissal of Plaintiffs' claims. Although there are many similarities between the CBA language in *Gallo* and the language at issue here, there are also critical differences. The *Gallo* majority stated that, "[n]o court to our knowledge has found, or would find, a promise of unalterable healthcare benefits based on CBA language *of this sort* in a time-limited agreement." 813 F.3d at 271 (emphasis added). Application of ordinary principles of contract law to the contract

language at issue offered "no evidence of any intent to fix these benefits permanently into the future." *Id.* at 273. The court therefore concluded that "[a]s applied to *this set of contracts,* those principles require the conclusion that no vesting occurred." *Id.* at 274 (emphasis in original).

Given the differing contract language in Honeywell's CBA, the same conclusion is not necessarily required here. As in *Gallo,* Honeywell's CBA expressly vests pension benefits, but does not expressly vest retiree healthcare benefits. And, like the CBA in *Gallo,* Honeywell's CBA has a general three-year durational clause, with no other durational time limit attached to the retiree healthcare benefit provision.[4] There are, however, many factual differences between the CBAs, some crucial.

First, and most importantly, in contrast to Article 33, Section D.5 of Honeywell's CBA, the CBA at issue in *Gallo* does not expressly promise lifetime healthcare benefits to retirees' surviving spouses and dependents. *See* 813 F.3d at 269 ("nothing in this or any of the other CBAs says that Moen committed to provide unalterable

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[4] Plaintiffs note that Article 33, Section C, of the CBA, Doc. #23-2, PageID##536-37, sets express durational limits on healthcare coverage for employees on sick leave, workers' compensation, or unpaid personal leave, and for surviving spouses upon the death of their employee-spouses. Other promises concerning strikes and lockouts (Article 28.1), and union dues (Article 42.1) are specifically limited to "the life of this agreement." Plaintiffs argue that, because there are no similar durational limits on retiree healthcare benefits, this difference in language must be given effect. This argument, however, was rejected in *Gallo. See* 813 F. 3d at 271-72.

healthcare benefits to retirees and their spouses for life."). Plaintiffs maintain that, implicit in the language *"[u]pon the death of a retiree,* the company will continue coverage for the spouse and dependent children . . ," Doc. #23-2, PageID#539 (emphasis added), is the agreement that coverage for the retiree ends at death.

In the Court's view, this language is not dispositive. Nevertheless, the express vesting of lifetime healthcare benefits for surviving spouses and dependents raises a very strong inference that the parties also intended to vest lifetime healthcare benefits in the retirees themselves.

Honeywell argues that the presence of this surviving spouse provision requires exactly the opposite conclusion, and dictates dismissal of Plaintiffs' claims. In *Gallo,* where pension benefits were explicitly vested, but retiree healthcare benefits were not, the court held that "[t]he difference in language demands a difference in meaning. . . .we must assume that the explicit guarantee of lifetime benefits in some provisions and not others means something." 813 F.3d at 270. Applying the same reasoning, Honeywell argues that, because lifetime healthcare benefits for surviving spouses and dependents are explicitly vested, but retiree healthcare benefits are not, we must conclude that the parties did not intend that Honeywell's obligation to the retirees would extend beyond the life of the CBA.

The Court disagrees. *Tackett* instructs us that we cannot assume that explicit vesting of pension benefits equates to implied vesting of retiree healthcare benefits. This, however, is different -- the parties explicitly agreed to provide lifetime healthcare benefits

to surviving spouses and dependents upon the retirees' death.

In *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW v. Loral Corporation,* 873 F. Supp. 57, 64 (N.D. Ohio 1994), *aff'd,* 107 F.3d 11, 1997 WL 49077 (6th Cir. 1997), the court noted that it "defies common sense" to believe that the parties would agree to provide lifetime healthcare benefits for surviving spouses and dependents, but not extend the same protection to the retirees themselves. *See also Bidlack v. Wheelabrator Corp.,* 993 F.2d 603, 608 (7th Cir. 1993) (holding that a CBA promising to "pick up the full tab" for retirees' health insurance once they reach age 65, and promising that, upon the death of the retiree, the surviving spouse will continue to receive healthcare benefits, "could be thought a promise to retired employees that they and their spouses will be covered for the rest of their lives.").

Honeywell notes that these cases were decided long before *Tackett* and *Gallo,* when *Yard-Man* was still good law. This does not necessarily mean that the basic "common sense" argument articulated therein cannot still be considered. In fact, in her concurring opinion in *Tackett,* Justice Ginsburg specifically stated that a "survivor benefits" clause may be relevant to the question of whether the retirees have a vested right to lifetime healthcare benefits. 135 S. Ct. at 938 (Ginsburg, J., concurring).

The Court rejects Honeywell's argument that the derivative nature of the surviving spouses' healthcare benefits in *Loral* makes that case factually distinguishable. In *Loral,* the surviving spouse was

entitled to continue to receive a portion of the *retiree's* benefits. 1997 WL 49077, at * 3. Here, however, there is no similar language; the surviving spouses' benefits are not conditioned on the benefits that the retiree was receiving at the time of his or her death. Regardless of the nature of the benefits, the fact remains that it would be highly unusual for the parties to agree to extend lifetime healthcare benefits to surviving spouses and dependents, but allow the company to terminate healthcare benefits for the retirees themselves as soon as the CBA expires. *See Winnett v. Caterpillar, Inc.,* 510 F. App'x 417, 420-21 (6th Cir. 2013) (noting that it would be unreasonable to expect a surviving spouse's benefits to exceed those of the retirees).

Honeywell correctly notes that nothing *prevents* the parties from contractually providing greater benefits to spouses and dependent children than they do to retirees. As a plausible explanation for doing so, Honeywell suggests that "[e]mployees have every incentive to negotiate special benefits for surviving spouses and dependents, who they might perceive as more vulnerable to fluctuation in healthcare costs." Doc. #24, PageID#644. At oral argument, counsel for Honeywell admitted, however, that this proffered explanation was extrinsic evidence that could not properly be considered on a 12(b)(6) motion. Notably, Honeywell's counsel also conceded that he could not point to any other cases in which similar language had been interpreted to provide lifetime healthcare benefits to surviving spouses and dependents, but not to the retirees themselves.

The explicit vesting of lifetime healthcare benefits for surviving spouses and dependents is certainly not

dispositive but, in the Court's view, it is sufficient to create an ambiguity concerning the parties' intent to vest lifetime retiree healthcare benefits.

There are additional reasons why *Gallo* does not dictate the outcome of the pending motion. The CBA at issue in that case contained a reservation-of-rights clause, giving Moen "the right to amend, cancel or reinsure the policies . . . so long as [specified] benefits are maintained for the life of this Agreement." 813 F. 3d at 270 (emphasis added). The court concluded that this clause was "incompatible with construing the agreement to create vested and unalterable benefits." *Id.* Because Honeywell's CBA contains no similar reservation-of-rights clause, there is no similar problem here.

In addition, the CBAs in *Gallo* stated that "continued hospitalization, surgical and medical coverage will be provided without cost to past pensioners and their dependents. . . " *Id.* at 269. The court noted that "[t]here would be no need to 'continue' such benefits if prior CBAs had created vested rights to such benefits." *Id*. at 270. In contrast, Article 33, Section 0.3 of Honeywell's CBA simply states, "[t]he company *will pay* 100% of the cost of retiree medical for all current retirees and those who retire prior to 01/01/2004." Doc. #23-2, PageID##537-38 (emphasis added). Because there is no mention of "continued" coverage, Honeywell's CBA does not suffer from the same impediment that gave the court pause in *Gallo.*

Honeywell maintains that Section D.3 is relevant only to the *amount* of the company's contribution, not its *duration.* According to Honeywell, because this provision is silent concerning the duration of the

company's obligation, the general durational clause applies, and retiree healthcare benefits are guaranteed only until the CBA expires. This argument again overlooks the fact that the intent to vest may also be implicit.

Citing *Gallo,* Honeywell contends that the use of future tense language, *i.e.,* "[t]he company *will pay,"* is insufficient to create a vested right to benefits that continues beyond that date. In *Gallo,* however, the Sixth Circuit stated, "[i]f *Tackett* tells us anything . . . it is that the use of the future tense *without more*– without words committing to retain the benefit for life – does not guarantee lifetime benefits." 813 F.3d at 271 (emphasis added). Standing alone, the use of future tense language is not dispositive; however, this does not mean that it is *irrelevant* to the question of the parties' intent. The question is whether the use of future tense language, combined with *other provisions* in the CBA, evidences an implied intent to vest lifetime retiree healthcare benefits.

Plaintiffs cite to several other provisions in the CBA in support of their claim that the parties intended Honeywell retirees to receive lifetime healthcare benefits. Although these other provisions may have less probative value than the surviving spouse provision, they are consistent with Plaintiffs' claim and provide additional support for the Court's conclusion that the CBA is ambiguous concerning intent to vest.

For example, Article 33, Section D.1 of Honeywell's CBA states that deferred vested retirees (employees ages 50-55 with 30 years of service, who leave the company prior to becoming pension eligible) "will be eligible for retiree health care benefits when they

commence their pension benefits." Doc. #23-2, PageID#537. The CBA at issue in *Gallo* did not contain any similar provision concerning healthcare benefits for *deferred vested* retirees.

To the extent that Plaintiffs may be arguing that language tying eligibility for healthcare benefits to eligibility for pension benefits is evidence of intent to vest, Honeywell correctly notes that this argument was rejected by the court in *Gallo.* Tying language is relevant only if the benefits are *durationally* linked. *See* 813 F.3d at 272 (citing *Tackett,* 135 S. Ct. at 938 (Ginsburg, J., concurring)).

This, however, is not the argument that Plaintiffs make. They argue that intent to vest can be implied from the fact that eligibility for healthcare benefits could arise as many as fifteen years *after* the CBA expires.[5] This gives rise to an inference, albeit a weak one, that the parties understood that Honeywell would provide lifetime retiree healthcare benefits.

In a similar vein, Plaintiffs note that the company "caps" on contributions for healthcare costs, as set forth in the 2003-2008 CBA (Doc. #23-3, PageID##566-67), and the 2008-2011 CBA (Doc #23-4, PageID##578-79), did not take effect until after each of those CBAs had

[5] Full pension benefits are not available until age 65. Therefore, if a 50-year-old employee retired in 2011, he or she would not be eligible until 2026.

expired.[6] The CBA at issue in *Gallo* contained no similar caps.

Citing *Cole v. ArvinMeritor, Inc.,* 516 F. Supp. 2d 850 (E.D. Mich. 2005), Plaintiffs argue that the deferred caps show an intent to provide lifetime benefits. The court in that case held that "[t]hese cost-controlling caps are future oriented, and govern retiree health costs for decades after expiration of the agreements in which they appear. The only reasonable conclusion is that the agreements intend that both pension and retiree health benefits are to continue for the lifetimes of retirees, eligible dependents, and surviving spouses." *Id.* at 870.

Plaintiffs further argue that the fact that these caps did not apply to individuals who retired prior to 2004 shows that Honeywell understood that healthcare benefits were vested and could not be modified. Honeywell notes, however, that the levels and start dates of the relevant caps *were* modified over the course of the last three CBAs, leading to the opposite inference.

At oral argument, Honeywell's counsel explained that it is a common practice for parties to set contribution caps that become effective only after the CBA expires, and that this is done solely for accounting purposes. Counsel also conceded, however, that this explanation constitutes extrinsic evidence that cannot be considered on a 12(b)(6) motion. At this stage of the

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[6] Honeywell notes that the 2011-2014 CBA kept the 2012 caps in place, allowing them to become effective during the life of the agreement. Doc. #23-2, PageID##538-39. At that point, however, sale of the Greenville plant was imminent.

litigation, the Court can look only at the written terms of the contract. In the Court's view, the fact that the contribution caps became effective only after the CBAs expired could support an inference of an implied intent to vest lifetime retiree healthcare benefits.

Finally, Plaintiffs note that Honeywell discontinued *all* contributions for healthcare coverage for employees who retired after June 1, 2012. Citing *Bender v. Newell Window Furnishings, Inc.,* 681 F.3d 253, 263 (6th Cir. 2012), Plaintiffs argue that a negotiated end to healthcare benefits for future retirees, combined with the simultaneous continuation of benefits for those retiring prior to that date, suggests that the parties understood that those previous retirees would be provided with lifetime healthcare benefits. Honeywell points out, however, that the termination provision at issue says nothing about the *duration* of benefits owed to previous retirees.

The inferences that Plaintiffs ask the Court to draw are not without their flaws. As Honeywell points out, because several of the cases cited by Plaintiffs relied on *Yard-Man,* their continuing precedential value is questionable. Nevertheless, for the reasons stated above, this is a much different case than *Tackett* or *Gallo.* Having examined the entire agreement, and applied ordinary contract principles, the Court finds that the CBA is ambiguous concerning the parties' intent to vest lifetime retiree healthcare benefits. Both parties have offered reasonable interpretations of the relevant terms. The Court must, therefore, resort to extrinsic evidence to resolve the ambiguity.

In its Motion to Dismiss, Honeywell argues that "under no circumstances can extrinsic evidence be used

to infer the presence of a lifetime promise not included in the text of the contract: 'courts should not construe ambiguous writings to create lifetime promises.'" Doc. #15, PageID#280 (quoting *Tackett,* 135 S. Ct. at 936). This is simply incorrect. In the language quoted by Honeywell, the Supreme Court was simply explaining why the Sixth Circuit's *Yard-Man* presumption was problematic. It did not hold that extrinsic evidence can never be considered to resolve ambiguities concerning the parties' intent. In fact, as Justice Ginsburg noted, this is an ordinary principle of contract law. 135 S. Ct. at 938 (Ginsburg, J., concurring). *See also Tackett III,* 811 F.3d at 208-09; *Gallo,* 813 F.3d at 273-74 (discussing proper use of extrinsic evidence).

Both parties have already presented some extrinsic evidence for the Court's consideration. Plaintiffs cite to Honeywell's course of conduct in continuing to provide retiree healthcare benefits even after the last CBA expired on May 22, 2014, and to testimony from an unrelated arbitration hearing that appears to indicate that eligible Honeywell employees at the Greenville plant were given a window of opportunity to retire prior to June of 2012 in order to "save" their lifetime retiree healthcare benefits.[7] They also argue that, pursuant to "industry custom," deferred vested retirees are more likely to be excluded from healthcare benefits than regular retirees. Likewise, Honeywell has argued that it is a common industry practice to institute contribution caps that take effect after the expiration of the CBA. Honeywell has also speculated as to reasons why the parties may have agreed to provide

[7] Honeywell has objected to the admissibility of this testimony on several grounds.

lifetime healthcare benefits to surviving spouses and dependents but not to the retirees themselves.

Nevertheless, as the parties know, in ruling on a motion to dismiss under Rule 12(b)(6), the Court is not permitted to consider matters outside the pleadings unless it converts the motion into a motion for summary judgment, and gives the parties a reasonable opportunity to present additional materials. *See* Fed. R. Civ. P. 12(d). Although the Court was initially inclined to convert the motion to dismiss into a motion for summary judgment, subsequent events have caused the Court to rethink this path.

Late last week, Plaintiffs filed a Motion for (1) Summary Judgment and Permanent Injunction or, in the Alternative, (2) Preliminary Injunction Preventing Honeywell from Ending Healthcare After 2016. Doc. #27. Because time is of the essence, and because of the possibility that this case may not be able to be resolved on summary judgment, the Court has decided that it is preferable to get to the merits of the claims and issue a final decision as quickly as possible.

Accordingly, as discussed with counsel during a conference call held on November 15, 2016, the Court OVERRULES Motion of Defendant Honeywell International, Inc., to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted. Doc. #15. The Court also OVERRULES WITHOUT PREJUDICE Retirees' Motion for (1) Summary Judgment and Permanent Injunction or, in the Alternative, (2) Preliminary Injunction Preventing Honeywell from Ending Healthcare After 2016. Doc. #27.

A follow up conference call will be held on November 21, 2016, at 5:00 p.m. Prior to that date, counsel shall confer about what discovery is needed and how much time it will take. The Court will then set a date for an evidentiary hearing, which will be followed by post-hearing briefs. Defendant has agreed to extend healthcare coverage to qualified retirees and their dependents through February 28, 2017, by which date the Court will have issued a final decision in this matter.[8]

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[8] Plaintiffs make the alternative argument that the motion to dismiss should be denied because Honeywell has failed to provide sufficient written notice of its intent to terminate the CBA. *See* Doc. #23, PageID#505 n.5. Article 39 of the CBA provides that the agreement "shall be renewed automatically for a period of (1) year unless either party gives written notice of a desire to modify, amend or terminate same, at least sixty (60) days prior to the yearly effective date of this agreement," *i.e.,* 60 days prior to May 22nd. Doc. #23-2, PageID#546. Plaintiffs contend that, because no notice was given, the 2011-2014 CBA remains in effect, and that Honeywell cannot properly terminate it until May of 2017 at the earliest.

Although the Court need not reach this alternative argument at this juncture, it is inclined to reject it. Notably, the CBA does not specify what constitutes sufficient "written notice," or to whom such notice must be provided. The December 28, 2015, letter to Honeywell retirees and spouses, informing them that their healthcare benefits would be terminated at the end of 2016, appears to be a "written notice of a desire to modify" the terms of the CBA, and it was provided at least 60 days prior to May 22, 2016. It is not clear, however, whether the union was given a copy of this letter. If Plaintiffs wish to further pursue this argument at the evidentiary hearing or in post-hearing briefs, they may do so.

IV. Conclusion

For the reasons stated above, the Court concludes that the CBA at issue is ambiguous concerning the parties' intent to vest lifetime retiree healthcare benefits. Extrinsic evidence is necessary to resolve the ambiguities, but cannot be considered on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). Accordingly, the Court OVERRULES Defendant Honeywell's Motion to Dismiss Complaint for Failure to State a Claim Upon Which Relief Can Be Granted, Doc. #15.

The Court also OVERRULES WITHOUT PREJUDICE Retirees' Motion for (1) Summary Judgment and Permanent Injunction or, in the Alternative, (2) Preliminary Injunction Preventing Honeywell from Ending Healthcare After 2016. Doc. #27.

A follow-up conference call will be held on November 21 , 2016, at 5:00 p.m., during which dates will be set for the discovery deadline, and the evidentiary hearing.

Date: November 15, 2016

/s/Walter H. Rice
WALTER H. RICE
UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 17-3277

[Filed July 12, 2018]

BARBARA FLETCHER; TIMOTHY PHILPOT; MARCIA FINK; LUCINDA SMITH,	)
Plaintiffs-Appellees,	)
v.	)
HONEYWELL INTERNATIONAL, INC.,	)
Defendant-Appellant.	)

O R D E R

BEFORE: CLAY, GIBBONS, and BUSH, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Case No. 17-3277

[Filed August 8, 2018]

BARBARA FLETCHER; TIMOTHY PHILPOT; MARCIA FINK; LUCINDA SMITH	)
Plaintiffs - Appellees	)
v.	)
HONEYWELL INTERNATIONAL, INC.	)
Defendant - Appellant	)

ORDER

BEFORE: CLAY, GIBBONS, BUSH, Circuit Judges.

Upon consideration of motion to stay mandate,

It is **ORDERED** that the mandate be stayed to allow the appellees time to file a petition for a writ of certiorari, and thereafter until the Supreme Court disposes of the case, but shall promptly issue if the petition is not filed within ninety days from the date of final judgment by this court.

It is further ORDERED that the appellees shall file a status report every sixty (60) days, the first on being due October 9, 2018.

ENTERED BY ORDER OF THE COURT
Deborah S. Hunt, Clerk

/s/Deborah S. Hunt

Issued: August 08, 2018