No. ____

IN THE

Supreme Court of the United States

SIGNODE INDUSTRIAL GROUP LLC AND ILLINOIS TOOL WORKS, INC.,

Petitioners,

v.

HAROLD STONE ET AL.,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF *CERTIORARI*

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QUESTION PRESENTED

Whether the Seventh Circuit erred by holding, in conflict with decisions reached by at least two other federal courts of appeals and in spite of this Court's holdings in *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015) and *CNH Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018) (per curiam) that collective bargaining agreements must be interpreted according to generally applicable principles of contract law, that a collective bargaining agreement with an "express statement[] extending benefits beyond the term of agreement" irrefutably confers vested, lifetime benefits, even if the agreement separately reserves for the employer the right to terminate the agreement in its entirety.

PARTIES TO THE PROCEEDINGS BELOW AND RULE 29.6 STATEMENT

Petitioner Signode Industrial Group LLC is an indirect wholly owned subsidiary of Crown Holdings Inc.; Petitioner Illinois Tool Works, Inc. has no parent.

The petitioners are Signode Industrial Group LLC and Illinois Tool Works, Inc.

The respondents are Harold Stone, John Woestman, and United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers International Union, AFL-CIO-CLC (USW).

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PETITION FOR A WRIT OF *CERTIORARI*

Signode Industrial Group LLC and Illinois Tool Works, Inc. petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals is reported at *Stone v. Signode Industrial Group LLC*, 943 F.3d 381 (7th Cir. 2019) and is reproduced at Pet. App. 1a–19a. The memorandum opinion and order of the district court granting summary judgment for Respondents is reported at 365 F. Supp. 3d 957 (N.D. Ill. 2019) and is reproduced at Pet. App. 20a–28a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit entered its final judgment on November 20, 2019. On December 2, 2019, the Seventh Circuit extended the time to file any petition for rehearing or rehearing *en banc* to and including December 18, 2019. Signode and Illinois Tool Works filed a timely petition for rehearing or rehearing *en banc* on December 18, 2019. The Seventh Circuit denied that petition on January 3, 2020. Pet. App. 29a–30a. By Order dated March 19, 2020, this Court provided that "[i]n light of the ongoing public health concerns relating to COVID-19 …. the deadline to file any petition for a writ of certiorari due on or after [March 19, 2020] … is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or denying a timely petition for rehearing." This Court therefore has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. Factual Background

Petitioners are the successors to the business of Acme Packaging Corporation, which operated a production facility in Riverdale, Illinois. Pet. App. 2a, Pet. App. 4a. Respondents are former Acme Packaging employees who worked at the Riverdale Plant, their spouses (collectively, the "Retirees"), and the union that represented the Retirees in all labor negotiations. Pet. App. 2a–3a, Pet. App. 5a.

On January 1, 1994, Acme Packaging and the union entered into a Pensioners' and Surviving Spouses' Health Insurance Agreement (the "1994 Agreement"). Pet. App. 3a. The 1994 Agreement was one of many agreements entered into between Acme Packaging and the Union. Among the other agreements the parties agreed to in 1994 was a separate Labor Agreement, which detailed terms and conditions of employment for active employees, and a separate Insurance Agreement, which set forth medical insurance benefits for active employees. *See* Br. of Defs.-Appellants, at 5 n.2, *Stone v. Signode Indus. Grp. LLC*, No. 19-1601 (7th Cir. June 3, 2019), ECF No. 8. The 1994 Agreement thus addressed a single topic—medical benefits for retired employees and their spouses. *Id.* at 5.

Section 6 of the 1994 Agreement defined the term of the benefit that agreement conferred:

> Any Pensioner or individual receiving a Surviving Spouse's benefit who shall become covered by the Program established by this Agreement shall not have such coverage

> terminated or reduced (except as provided in this Program) so long as the individual remains retired from the Company or receives a Surviving Spouse's benefit, notwithstanding the expiration of this Agreement, except as the Company and the Union may agree otherwise.

Pet. App. 3a. The next section of the 1994 Agreement, Section 7, then provided:

> This Agreement shall become effective as of January 1, 1994 and shall remain in effect until December 31, 1999 and thereafter subject to the right of either party on 120 days written notice served on or after September 1, 1999 to terminate this Agreement.

Pet. App. 3a.

In September 1998, Acme Packaging filed for bankruptcy. While those proceedings were pending, Acme Packaging and the Union entered into a January 26, 2002 agreement (the "2002 Agreement") that modified aspects of the 1994 Agreement. Pet. App. 3a–4a. As is relevant here, the 2002 Agreement left Section 6 intact, but modified Section 7 to extend the earliest date of termination such that:

> the agreement shall remain in effect until February 29, 2004, thereafter subject to the right of either party on one hundred and twenty (120) days written notice served on or after November 1, 2003 to terminate the Pensioners' and Surviving Spouses' Health Insurance Agreement.

Pet. App. 4a (internal quotation marks omitted).

Acme Packaging emerged from bankruptcy on November 1, 2002. Pet. App. 4a. Shortly thereafter, Illinois Tool Works acquired certain of Acme Packaging's assets, including the Riverdale Plant. *Id.* Illinois Tool Works subsequently announced the closure of the Riverdale Plant, effective April 30, 2004. *Id.* In 2014, Illinois Tool Works divested itself of its industrial packaging division, resulting in the creation of an independent entity, Signode Industrial Group LLC ("Signode"). *Id.* Signode assumed responsibility for the obligations under the 2002 Agreement. *Id.*

On August 31, 2015, Signode advised the Union that it was exercising its right pursuant to Section 7 to terminate the 2002 Agreement. Pet. App. 4a–5a. In accordance with Section 7's 120 day notice provision, Signode stated that the termination would be effective January 1, 2016. *Id.*

II. Procedural History

In July 2017, Respondents filed a lawsuit in the United States District Court for the Northern District of Illinois pursuant to Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, and Section 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132. Pet. App. 5a. Respondents sought a declaratory judgment that the retiree health benefits under the 2002 Agreement were vested and that Signode lacked the authority under the 2002 Agreement to terminate them, as well as an injunction preventing Signode from terminating the benefits. *See id.* The parties filed cross-motions for

summary judgment and, on March 13, 2019, the district court granted summary judgment for the Retirees and the Union. Pet. App. 20a, Pet. App. 28a.

Although the district court acknowledged that Section 7 gave Signode the unilateral right to terminate the 2002 Agreement, it nonetheless held that the retiree health benefits were vested and not subject to termination. Pet. App. 24a–27a. According to the district court, the benefits provided in Section 6 were not subject to termination because "section 7 does not mention termination of benefits, only termination of the agreement." Pet. App. 25a.

The Seventh Circuit affirmed. Agreeing with the district court, the court held that Section 6 granted the Retirees "vested" health benefits because Section 6 stated that those rights would continue "notwithstanding the expiration of this Agreement." Pet. App. 9a–10a (emphasis omitted). In doing so, the court did not acknowledge that the very next clause of Section 6 provided that this was true "except as the Company and the Union may agree otherwise." *See* Pet. App. 3a.

The Seventh Circuit then held that the termination provision of Section 7 did not place a limit on the availability of benefits. Pet. App. 14a–15a. Like the district court, the Seventh Circuit held that Section 7 addressed only the termination of "the Agreement" and not the benefits. According to the Seventh Circuit, the 2002 Agreement "established that the promised health-care coverage and the underlying Agreement would run independently—that the duration of the coverage was not limited to the term of the Agreement." Pet. App.

11a–12a. The court held that this was so because Section 6 "made clear that the health-care benefits would survive the termination of th[e] agreement" and held that such an express promise could be limited only by an explicit reservation of a right to terminate benefits, which the general provision in Section 7 did not provide. Pet. App. 13a, Pet. App. 15a–16a.

REASONS FOR GRANTING THE PETITION

In *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926 (2015), this Court unanimously resolved a long-standing conflict between the circuits by holding that courts must apply the traditional rules of contractual interpretation when reviewing collective bargaining agreements and may not deploy special presumptions and inferences to find that collectively-bargained retiree healthcare benefits are vested and unalterable for life. The Court reiterated that straightforward directive three years later in *CNH Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018) (per curiam). In those cases, this Court categorically rejected, twice, the premise that there is a unique rule applicable only to collective bargaining agreements under which "a general durational clause *says nothing* about the vesting of retiree benefits" and that "to prevent vesting" there instead must be "a specific durational clause for retiree health care benefits." *Tackett*, 135 S. Ct. at 935–36 (internal quotation marks and citations omitted).

The decision below, which arises under the same federal statutory provisions that were at issue in *Tackett* and in *Reese*, ignores this Court's straightforward directive. In this case, the Seventh Circuit held that a contract with "express statements extending benefits

beyond the term of agreement" creates vested benefits unless the contract elsewhere "expressly allow[s] alteration or termination of benefits." Pet. App. 12a. This rule has no basis in the common law of contracts. Indeed, it is indistinguishable from the rule this Court held was improper in *Tackett* and in *Reese*. The Seventh Circuit thus has done just what this Court refused to do in *Tackett* and again in *Reese*—it has adopted a special rule for construing collective bargaining agreements that "plac[es] a thumb on the scale in favor of vested retiree benefits." *Tackett*, 135 S. Ct. at 935.

This Court's review is warranted not only because the decision below cannot be squared with *Tackett* or with *Reese*, but also because the Seventh Circuit's decision has created inconsistency within the law of collective bargaining agreements and welfare benefit plans where none should exist. As courts across the Nation have recognized, including in post-*Tackett* decisions by the Third and Sixth Circuits, this Court's directive that traditional rules of contractual interpretation be applied to lifetime benefit claims means that provisions generally limiting an agreement's duration limit the availability of benefits, even when a promise of benefits appears in isolation to provide for vested, lifetime benefits. The Seventh Circuit's decision in this case, however, is to the contrary. The Court thus should grant *certiorari* to resolve this clear and defined split of authority.

I. The Decision Below Conflicts With The Precedent Of This Court.

A. *Tackett* And *Reese* Reject All Special Rules Of Construction For Employee Benefits Contracts.

In *Tackett*, the Court held that there are no special presumptions, inferences, or rules of interpretation that apply uniquely to the construction of collective bargaining agreements. For that reason, the Court rejected the Sixth Circuit's bright-line rule that "a general durational clause *says nothing* about the vesting of retiree benefits" and that "to prevent vesting" there instead must be "a specific durational clause for retiree health care benefits." *Tackett*, 135 S. Ct. at 935–36 (internal quotation marks and citations omitted). That rule was unwarranted, this Court explained, because refusing "to apply general durational clauses to provisions governing retiree benefits .... distort[s] the text of the agreement," as this hard and fast interpretive rule is contrary to "the traditional principle that 'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Id.* at 936–37 (citation omitted).

The Court's decision in *Reese* makes clear there are no workarounds to *Tackett*. In *Reese*, notwithstanding a clause limiting the duration of the agreement as a whole, the Sixth Circuit found it ambiguous as to whether the parties intended for a collective bargaining agreement to create vested health care benefits, and thus relied on extrinsic evidence to hold that the benefits had vested. 138 S. Ct. at 765–66. This Court reversed, holding that the Sixth Circuit's finding of ambiguity amounted to a

mere repackaging of that court's prior "'refus[al] to apply general durational clauses to provisions governing retiree benefits.'" (citation omitted). Shorn of that inference, the Court held that resolution of the claim in *Reese* was "straightforward" because, *inter alia*, the labor contract "contained a general durational clause that applied to all benefits, unless the agreement specified otherwise." *Id.* at 766.

As the Court has explained, it "'is especially appropriate when enforcing an ERISA plan'" for "contractual 'provisions'" to be "enforced as written." *Tackett*, 135 S. Ct. at 933 (citations omitted). That is so because the text of collective bargaining agreements is "the linchpin" of the entire welfare benefits system. *Id.* And as a matter of black-letter contract law, "courts *should not* construe ambiguous writings to create lifetime promises." *Id.* at 936 (emphasis added); *accord Barton v. Constellium Rolled Prods.-Ravenswood, LLC*, 856 F.3d 348, 352 (4th Cir. 2017) (noting that "ordinary contract principles .... foreclose holding that the retiree health benefits have vested unless unambiguous evidence indicates that the parties intended that outcome").

B. The Decision Below Impermissibly Applies A Special Rule Of Construction.

Under *Tackett* and *Reese*, this case should have been "straightforward." *See Reese*, 138 S. Ct. at 766. Section 6 of the 2002 Agreement provides that the Retirees shall continue to have health benefits "notwithstanding the expiration of this Agreement, *except as the Company and the Union may agree otherwise*." Pet. App. 3a–4a (emphasis added). Then, in Section 7, the parties *agreed*

that this promise would remain "in effect until February 29, 2004, thereafter subject to the right of either party on one hundred and twenty (120) days written notice … to terminate" it. Pet. App. 4a. These provisions have a plain meaning: Retirees shall have health benefits until February 29, 2004, thereafter subject to each party's unilateral right to terminate them. This accords with the general principles of contract law, emphasized by this Court, "that 'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement'" and that "courts *should not* construe ambiguous writings to create lifetime promises." *E.g.*, *Tackett*, 135 S. Ct. at 936–37 (citations omitted) (emphasis added).

The Seventh Circuit cast those principles aside. First, it found that Section 6 of the 2002 Agreement promised "lifetime" benefits because it stipulates that the Retirees "shall not have such coverage terminated or reduced … notwithstanding the expiration of this Agreement," which the Seventh Circuit read as containing an "express statement[] extending benefits beyond the term of agreement." Pet. App. 9a–10a, Pet. App. 12a (emphasis omitted). At a minimum, that was an overstatement because Section 6 limits the duration of this lifetime promise by providing that health care benefits will continue after the expiration of the agreement "except as the Company and the Union may agree otherwise." Pet. App. 9a.

The Seventh Circuit compounded its overstatement by holding that a contract with "express statements extending benefits beyond the term of agreement" presumptively is intended to create vested benefits

unless the collective bargaining agreement elsewhere "expressly allow[s] alteration or termination of benefits," Pet. App. 12a—that is, unless there is "a specific durational clause for retiree health care benefits"—a requirement that this Court rejected in *Tackett*, *see* 135 S. Ct. at 936. As a result, the Seventh Circuit held that because the condition placed on the term of the Agreement in Section 7 was "general," and not "specific," it did not limit the duration of the benefits promised by Section 6.

That is wrong, and fundamentally at odds with both *Tackett* and *Reese*. Under the decision below, if language granting benefits beyond the term of an agreement is "express" or "clear," then the employer reserves the right to terminate them only if the language reserving that right is also "express" or "clear" in referring to those benefits. But under ordinary principles of contract law, as expressed in *Tackett* and in *Reese*, the only salient question is whether the parties in 2002 agreed—as Section 6 contemplates—that benefits could be terminated unilaterally, which under *Tackett* and *Reese* may be accomplished through *either* a specific or a general reservation of the right to terminate. That was the very point underlying this Court's rejection of the Sixth Circuit's prior approach of requiring "a specific durational clause for retiree health care benefits to prevent vesting." *Tackett*, 135 S. Ct. at 936.

By nonetheless holding that where a promise of lifetime benefits is explicit, a reservation of rights must be specific and not general, the Seventh Circuit has adopted a rule that does exactly what this Court disapproved in *Tackett*: it "plac[es] a thumb on the scale

in favor of vested retiree benefits" by failing to give meaning to a clause of "general" application. 135 S. Ct. at 935–36.[1] Review by this Court thus is warranted to correct this improper interpretation and application of *Tackett* and of *Reese*.

II. The Decision Below Creates A Split Of Authority Only This Court Can Resolve.

The Seventh Circuit's decision in this case not only resurrects the very rule this Court repudiated in *Tackett* and in *Reese*, it does so in a way that creates new divisions amongst the courts of appeals. Since the Court resolved in *Tackett* that it is improper to apply any type of special interpretive rules to collective bargaining agreements, both the Third and Sixth Circuits have held that under ordinary principles of contractual interpretation, a general condition placed on collective bargaining agreements as a whole that does not

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[1] The Seventh Circuit suggested that Section 6 and Section 7 could be reconciled if Section 6 is understood to vest benefits "to those already eligible for them" (i.e., anyone who retired before termination of the 2002 Agreement), and Section 7 is understood to reserve for Petitioners the ability to "force the negotiation of a new" agreement that would apply to "future retirees" (i.e., anyone who retired after termination of the 2002 Agreement). Pet. App. 14a–15a. Even if this reading were plausible with respect to how the parties intended for Section 7 to apply, although it is not, it would not make sense because it ignores that the 2002 Agreement specified that the Agreement as a whole was intended to apply to a closed and defined set of individuals. 2002 Labor Agreement at Page ID 683-84 ¶ C, *Stone v. Signode Indus. Grp. LLC*, No. 17-cv-05360 (N.D. Ill. May 8, 2018), ECF No. 36-4. Given this fact, the Seventh Circuit's extra-textual ruminations may not alter the meaning of the unambiguous terms of the 2002 Agreement.

specifically mention benefits nonetheless limits the scope of the promised benefits, even if the promise of benefits viewed in isolation purports to offer lifetime benefits. The Seventh Circuit, however, has now taken the opposite position. The petition thus should be granted to resolve the confusion on this important point of collective bargaining and employee benefits law created by the decision below.

A. Other Circuits Have Applied General Contractual Conditions To Limit Facial Promises Of Lifetime Benefits.

The Seventh Circuit's rule is that when one clause of a collective bargaining agreement includes "express statements extending benefits beyond the term of agreement," limits placed by other clauses on the agreement as a whole do not restrict the availability of the promised benefits. Pet. App. 12a–13a. Since *Tackett*, however, at least two federal courts of appeals have done just what the Seventh Circuit refused to do in this case: they applied clauses generally limiting the overall scope of an agreement to limit what would otherwise be a promise of lifetime benefits.

In the Third Circuit's post-*Tackett* decision in *Grove v. Johnson Controls, Inc.*, the court affirmed dismissal of claims for lifetime retiree medical benefits, even though the collective bargaining agreements promised that those benefits would extend "until [a retiree's] death" and terminate only "on the date of [a retiree's] death." *See* 694 F. App'x 864, 868 (3d Cir. 2017) (internal quotation marks omitted). The court explained that because neither phrase was unambiguously "durational in nature," clauses limiting the overall duration of the

agreements were best read to "set an exact expiration date" for the benefits and the "phrases about [a retiree's] death" established "that no further benefits are available if [a retiree] dies before the agreement expires." *Id.* at 868–69.[2] Furthermore, the court emphasized that even if "the phrases referring to any [retiree's] 'death' are durational in nature," contractual language reserving the right to "modify, amend, suspend, or terminate" the plans in their entirety overcame any promise of lifetime benefits. *Id.* at 869–70.

Similar is the Sixth Circuit's post-*Tackett* and post-*Reese* decision in *Kerns v. Caterpillar Inc.*, 791 F. App'x 568 (6th Cir. 2019), *petition for cert. filed*, (U.S. Apr. 13, 2020) (No. 19-1227). There, a labor contract provided that "following the death of a retired Employee, the company would continue to provide healthcare coverage for the remainder of his surviving spouse's life without cost," but elsewhere stated that "benefits in accordance with this Section will be provided for the duration of any Agreement to which this Plan is a part." *Id.* at 570 (internal quotation marks omitted). Citing both *Tackett* and *Reese*, the court held that although the "specific[]" words used in "the description of the benefit itself" granted a "lifetime" benefit, that did not "trump[]" a clause located elsewhere in the contract that placed an

[2] The durational provisions applicable to subclasses C through E in *Grove* simply stated the effective dates for each contract, but did not provide for any further reservation of rights or reference the "until death" promises. *Id.* at 868–69; *see also Grove v. Johnson Controls, Inc.*, 176 F. Supp. 3d 455, 461–64 (M.D. Pa. 2016).

overall durational limit on the contract as a whole. *Id.* at 572.

Grove and *Kerns* align with a larger body of pre-*Tackett* precedent. For example, the Eighth Circuit in *Crown Cork & Seal Co. v. International Association of Machinists & Aerospace Workers* applied general durational provisions to permit an employer to terminate a plan promising that benefits would "continue[] until your death." 501 F.3d 912, 918 (8th Cir. 2007). Likewise, the Second Circuit in *Abbruscato v. Empire Blue Cross & Blue Shield*, held that a general reservation of an employer's right to terminate "the plans" limited a promise in a plan that the benefits provided therein would "remain[] in force for the rest of [the beneficiaries'] lives, at no cost to them." 274 F.3d 90, 97–98 (2d Cir. 2001). And the Tenth Circuit in *Chiles v. Ceridian Corp.* held that a "general reservation of rights" clause "allows the employer to retroactively change the medical benefits of retired participants, even in the face of clear language promising company-paid lifetime benefits." 95 F.3d 1505, 1512 & n.2 (10th Cir. 1996), *abrogated on other grounds by Tomlinson v. El Paso Corp.*, 653 F.3d 1281 (10th Cir. 2011).

Accordingly, the Third Circuit in *Grove* and the Sixth Circuit in *Kerns*, as well as courts in a great many jurisdictions in a litany of pre-*Tackett* caselaw, applied generally applicable restrictions on the terms of collective bargaining agreements to limit the duration of promises that, when read in isolation, offer lifetime benefits. So in those circuits, a general condition on a collective bargaining agreement limits the availability of

benefits unless the agreement expressly states that such a condition does not apply to the promise of benefits.

B. The Decision Below Cannot Be Squared With The Decisions Of The Third And Sixth Circuits.

The Seventh Circuit's decision in this case is at odds with the Third Circuit's decision in *Grove* and the Sixth Circuit's decision in *Kerns*, to say nothing of the bounty of pre-*Tackett* precedent. It thus creates a split of authority only this Court can resolve.

First, the decision in this case cannot be reconciled with *Grove*. In *Grove*, the Third Circuit held that promising retiree health benefits "until death" that are subject to termination "on the date of [a retiree's] death" is limited by a general, non-specific durational clause. *See* 694 F. App'x at 868. Here, the Seventh Circuit held that a comparable promise—that retiree health benefits will not be "terminated or reduced … notwithstanding the expiration of this Agreement"—cannot be constrained by a general condition on the promises made by the Agreement as a whole, but instead can be limited only by a clause that "expressly allow[s] alteration or termination of benefits." Pet. App. 9a–10a, Pet. App. 12a (emphasis omitted). This means in the Third Circuit, an open-ended promise of indefinite duration is limited by a generally applicable limit on the contract as a whole, while in the Seventh Circuit such a promise is constrained only by contractual language that explicitly limits the availability of benefits.

Second, and for the same reason, the Seventh Circuit's decision in this case also cannot be reconciled

with the Sixth Circuit's decision in *Kerns*. In *Kerns*, much as in *Grove*, the Sixth Circuit held that a promise that "following the death of a retired Employee," the "company would continue to provide" healthcare coverage "for the remainder of his surviving spouse's life without cost" was cabined by general durational language. 791 F. App'x at 570–72. Under the Seventh Circuit's rule, that was wrong because the promise of lifetime benefits was "express" while the limit placed upon that promise was "general."

Third, the Seventh Circuit's decision cannot be squared with pre-*Tackett* decisions from the Second, Eighth, and Tenth Circuits. In each of those cases, a general reservation of the employer's right to terminate "the plan" restricted the duration of the employer's obligation to provide benefits, notwithstanding contractual language that, when viewed in isolation, suggested that benefits would continue indefinitely. *See Crown Cork & Seal*, 501 F.3d at 918; *Abbruscato*, 274 F.3d at 98–100; *Chiles*, 95 F.3d at 1512. Those results could not stand under the Seventh Circuit's rule because none of those clauses "expressly allow[s] alteration or termination of benefits." Pet. App. 12a.

Fourth, the split is all the more pronounced because the Seventh Circuit's decision in this case is at odds with that court's own precedent. For instance, the decision in this case conflicts with *United Auto Workers v. Rockford Powertrain, Inc.*, in which the court rejected a claim of lifetime benefits by correctly explaining that it "must resolve the tension between the lifetime benefits clause, and the plan termination and reservation of rights clauses, by giving meaning to all of them." 350 F.3d 698,

703 (7th Cir. 2003). Then in *Cherry v. Auburn Gear, Inc.*, the court similarly emphasized "that 'lifetime' benefits can be limited to the duration of a contract." 441 F.3d 476, 483 (7th Cir. 2006). Yet despite the emphasis Petitioners placed on these cases in their appellate brief, the Seventh Circuit scarcely acknowledged them. Its failure to examine that line of precedent is particularly unsettling given that both the Third Circuit in *Groves* and the Sixth Circuit in *Kerns* relied on this line of Seventh Circuit authority to hold that a generally applicable limit on the overall terms of a collective bargaining agreement limits the duration of otherwise boundless promises for benefits. *Grove*, 694 F. App'x at 869; *Kerns*, 791 F. App'x at 572.

In sum, the Seventh Circuit's declaration that if a collective bargaining agreement includes an "express statement[] extending benefits beyond the term of agreement," then it is *per se* established that the agreement provides for lifetime benefits unless another provision "expressly allow[s] alteration or termination of benefits" is irreconcilably in conflict with decisions reached in numerous cases spanning a large number of courts of appeals. Absent this Court's intervention, the inconsistency the Seventh Circuit has ushered into this important area of employee benefits law will only grow, undercutting the clarity that should reign under *Tackett* and *Reese*.

III. This Court Should Resolve The Question Presented Now And In This Case.

The question presented is of great importance to the federal law of benefits and collective bargaining. There is no way to know exactly how many collective

bargaining agreements contain a clause that, when viewed in isolation, purports to offer lifetime benefits, and another clause placing a general limit on the overall terms of the agreement. But such agreements are sufficiently ubiquitous that at least four cases regarding such agreements have reached the courts of appeals in the five years since *Tackett—Reese*, *Groves*, *Kerns*, and this one.

The rule adopted in this case is of great significance for all such agreements. If the Seventh Circuit's unique rule endures, then it will be applied to all claims for lifetime benefits arising under collective bargaining agreements in that circuit. Potentially, there are a great number of employers in that circuit that will face the prospect of being responsible for providing lifetime benefits, notwithstanding that they likely would not have a similar responsibility if they were located in other parts of the Nation. To the extent that rule is ultimately exported to other circuits, the number of employers subject to that heightened risk of liability will only grow.

Not only is the question presented important, this case presents a good vehicle for addressing it. The collective bargaining Agreement at issue in this case is not complicated. It includes a single clause addressing a single type of benefit that the Seventh Circuit has construed as making a lifetime promise. It also includes a single clause that Petitioners have identified as having reserved to them the unilateral right to terminate the Agreement, including the benefits offered therein. Given the textual simplicity of the 2002 Agreement, the only issue before the Court is a straightforward, purely legal one: Did the Agreement confer lifetime benefits as

a matter of law because the clause Petitioners emphasize did not expressly announce that terminating the Agreement would terminate benefits? The simplicity of the contractual relationship here differentiates this case from decisions reached in other similar cases, as cases in this area of law can frequently involve multiple interlocking contractual provisions spanning multiple agreements reached over a broad range of time. *E.g. Abbruscato*, 274 F.3d at 97–100; *Chiles*, 95 F.3d at 1510–19.

There also is no need for further percolation of the question presented. As courts have begun to implement the directive in *Tackett* and in *Reese* to apply ordinary principles of contract law to claims that a collective bargaining agreement confers vested lifetime benefits, most have found that there is little ambiguity under those decisions to resolve. By way of example, the Sixth Circuit only several weeks ago had little difficulty finding that under *Tackett* and *Reese* there was little basis to even argue that there were vested lifetime benefits under the collective bargaining agreements at issue in *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America v. Honeywell International, Inc.*, 954 F.3d 948, 955–58 (6th Cir. 2020). As a result, further percolation would only permit more courts to join the Seventh Circuit in undermining the clarity of *Tackett* and *Reese*.[3]

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[3] The plaintiffs in *Kerns*—one of the post-*Tackett* decisions that is irreconcilably at odds with the Seventh Circuit's decision in this case—seem to be among those seeking to create ambiguity where none should exist, as they have petitioned this Court for further review by making arguments that largely track the Seventh

Finally, the conflict created by the Seventh Circuit's decision in this case with decisions reached by other courts cannot be explained away by highlighting subtle textual distinctions between the collective bargaining agreements at issue in each of those cases. The Seventh Circuit has established a bright-line rule categorically applicable to all collective bargaining agreements in which certain types of promises are vested for life absent a highly explicit limit that expressly references those promises. That sweeping principle in no way turns on precise contractual language. Rather, just as in *Tackett* and in *Reese*, the decision below has established a generally applicable interpretive rule.

In sum, this case presents a question of federal law over which there is a conflict between the decision below and the precedent of this Court, as well as with decisions reached by other federal courts of appeals, and it does so in a straightforward factual posture common to cases of this sort. Petitioners respectfully submit that under these circumstances, *certiorari* is warranted.

Circuit's decision in this case and that are essentially the inverse of the ones Petitioners advance in this Petition. *See* Petition for Writ of Certiorari, *Kerns* (2020) (No. 19-1227).

CONCLUSION

The petition for a writ of *certiorari* should be granted.

May 28, 2020

Respectfully submitted,

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APPENDIX

Appendix A

In the United States Court of Appeals For the Seventh Circuit

No. 19-1601

HAROLD STONE, *et al.*,

Plaintiffs-Appellees,

v.

SIGNODE INDUSTRIAL GROUP LLC and ILLINOIS TOOL WORKS INC.,

Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 1:17-cv-05360 — **Thomas M. Durkin**, *Judge*.

ARGUED SEPTEMBER 19, 2019 — DECIDED NOVEMBER 20, 2019

Before SYKES, HAMILTON, and BRENNAN, *Circuit Judges*.

HAMILTON, *Circuit Judge*. Defendant Signode Industrial Group LLC assumed an obligation to pay

health-care benefits to a group of retired steelworkers and their families. Signode then exercised its right to terminate the underlying benefits agreement. When it terminated the agreement, Signode also stopped providing the promised benefits to the retired steelworkers and their families, despite contractual language providing that benefits would not be "terminated ... notwithstanding the expiration" of the underlying agreement. This appeal presents a single question of contract interpretation: whether the agreement in question provided for vested benefits that would survive the agreement's termination. We hold that the contract provided for vested lifetime benefits and affirm the district court's permanent injunction ordering Signode to reinstate the retirees' benefits.

I. *Factual and Procedural Background*

The key language relevant to this dispute comes from a 1994 agreement and its 2002 successor. First, we describe the two agreements and their contexts, focusing on the disputed "Continuation of Coverage" and "Term of this Agreement" provisions. We then describe the events that followed the execution of the 2002 agreement and led to this lawsuit.

A. *The Riverdale Plant and the Pensioners' Agreements*

Plaintiffs Harold Stone and John Woestman worked for decades at the Acme Packaging Corporation plant in Riverdale, Illinois. While they worked at the Riverdale plant, they were represented by the union-plaintiff—United Steel, Paper and Forestry, Rubber,

Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC.

On January 1, 1994, Acme and the union entered into a "Pensioners' and Surviving Spouses' Health Insurance Agreement." The 1994 Pensioners' Agreement provided health insurance benefits to retirees with at least fifteen years of continuous service and to their families. The Agreement's "Continuation of Coverage" provision said:

> Any Pensioner or individual receiving a Surviving Spouse's benefit who shall become covered by the Program established by this Agreement shall not have such coverage terminated or reduced (except as provided in this Program) so long as the individual remains retired from the Company or receives a Surviving Spouse's benefit, notwithstanding the expiration of this Agreement, except as the Company and the Union may agree otherwise.

The next provision was titled "Term of this Agreement." It read: "This Agreement shall become effective as of January 1, 1994 and shall remain in effect until December 31, 1999 and thereafter subject to the right of either party on 120 days written notice served on or after September 1, 1999 to terminate this Agreement."

The 1994 Pensioners' Agreement remained in effect until 2002, when Acme Packaging was going through bankruptcy. Acme negotiated a settlement agreement with the union to ease some of its financial obligations. As a part of the settlement, Acme and the union replaced the 1994 Pensioners' Agreement with a nearly identical

successor called the 2002 Pensioners' Agreement. It left the Coverage Provision intact and modified the Term Provision only to move the earliest termination date back to February 29, 2004, providing that the agreement "shall remain in effect until February 29, 2004, thereafter subject to the right of either party on one hundred and twenty (120) days written notice served on or after November 1, 2003 to terminate the 'Pensioners' and Surviving Spouses' Health Insurance Agreement.'" The 2002 Pensioners' Agreement and the larger settlement of which it was a part were approved by the bankruptcy court in February 2002, and Acme Packaging emerged from bankruptcy in November 2002.

In October 2003, defendant-appellant Illinois Tool Works (ITW) acquired the Riverdale plant from Acme and assumed its obligations under the 2002 Pensioners' Agreement. In April 2004, ITW decided to close the plant permanently and entered into an agreement with the union establishing the terms of the closure. Operations ceased completely in August 2004. For over a decade after the plant closed, ITW continued to administer the health insurance program pursuant to the 2002 Agreement, providing health-care coverage for Stone, Woestman, other Riverdale retirees, and their families.

B. *This Lawsuit*

In 2014, ITW created a new entity, Signode Industrial Group LLC, and transferred its obligations under the 2002 Pensioners' Agreement to Signode. It then sold Signode to The Carlyle Group L.P. Signode continued to provide benefits under the Agreement until

August 2015, when it notified the union that "effective January 1, 2016, the [health-care program] and the Agreement will terminate and participants will no longer be eligible for benefits thereunder." It notified the beneficiaries the next day. The union protested Signode's unilateral termination of benefits, citing the "notwithstanding expiration" language of the 2002 Agreement. Signode went ahead and discontinued the pensioners' health-care plan. It has not provided Riverdale retirees or their families with benefits since the end of 2015.

Plaintiffs Stone and Woestman filed this suit on behalf of a proposed class of similarly situated Riverdale retirees, their dependents, and surviving spouses entitled to health-care benefits under the 2002 Agreement. They alleged that ITW and Signode had breached the 2002 Agreement in violation of both § 301 of the Labor-Management Relations Act, 29 U.S.C. § 185, and § 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1132(a)(1)(B). The union sued for breach of the 2002 Agreement under § 301 of the LMRA.

Both sides moved for summary judgment. The district court granted plaintiffs' motion and denied defendants' motion, holding that the 2002 Agreement did not give Signode the right to terminate the benefits. The district court entered a permanent injunction ordering Signode to reinstate health-care benefits under the 2002 Agreement. The district court has not yet acted on the issue of class certification or entered a final judgment, but we have jurisdiction over the defendants' appeal of the injunction under 28 U.S.C. § 1292(a). A

motions panel of this court stayed the injunction pending appeal. After full briefing and argument on September 19, 2019, this panel vacated the stays.[1]

II. *Analysis*

The only question before us is whether the health-care benefits provided by the 2002 Pensioners' Agreement survived the termination of that agreement. We review a district court's grant of a permanent injunction for abuse of discretion. *Minnesota Mining & Manufacturing Co. v. Pribyl*, 259 F.3d 587, 597 (7th Cir. 2001). However, legal conclusions underlying the grant of a permanent injunction, including issues of contract interpretation, are reviewed *de novo*. *Id.*; *Soarus L.L.C. v. Bolson Materials International Corp.*, 905 F.3d 1009, 1011 (7th Cir. 2018).[2]

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[1] On November 1, 2019, the district court ordered defendants to restore the health-care benefits no later than January 1, 2020.

[2] Because the permanent injunction was based on a legal conclusion in the grant of summary judgment and this appeal challenges that conclusion, we must decide that legal issue in this appeal. See *Stone v. Signode Industrial Group, LLC*, 365 F. Supp. 3d 957 (N.D. Ill. 2019) (granting summary judgment to plaintiffs). In other words, we have jurisdiction under 28 U.S.C. § 1292(a) to review the relevant legal reasoning of the grant of summary judgment insofar as it is necessary to review the permanent injunction even though we do not have jurisdiction over the grant of summary judgment itself. Cf. *Cross Medical Products, Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1301 (Fed. Cir. 2005) (asserting jurisdiction over the grant of summary judgment itself under similar circumstances); *LaVine v. Blaine School Dist.*, 257 F.3d 981, 987 (9th Cir. 2001) (same).

A. *Principles of Interpretation*

ERISA does not require that retiree health-care benefits be vested. Vesting of health-care benefits is determined according to ordinary principles of contract law. *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 933 (2015); see also *Barnett v. Ameren Corp.*, 436 F.3d 830, 832 (7th Cir. 2006), quoting *Pabst Brewing Co. v. Corrao*, 161 F.3d 434, 439 (7th Cir. 1998) ("[I]f [benefits] vest at all, they do so under the terms of a particular contract."). *Tackett* and its successor, *CNH Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018), endorsed the application of ordinary principles of contract law in such cases, and they rejected the "*Yard-Man*" presumptions in favor of vesting that the Sixth Circuit established in *International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America v. Yard–Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), and developed in subsequent cases. In particular, the Supreme Court in *Tackett* and *Reese* rejected the presumption of lifetime vesting where "a contract is silent as to the duration of retiree benefits." *Tackett*, 135 S. Ct. at 937; *Reese*, 138 S. Ct. at 763. The Supreme Court emphasized that "contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement." *Tackett*, 135 S. Ct. at 937, quoting *Litton Financial Printing Div., Litton Business Systems, Inc. v. NLRB*, 501 U.S. 190, 207 (1991). *Tackett* and *Reese* are consistent with the approach we have taken for decades. See, e.g., *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 481 (7th Cir. 2006), citing *Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 606–07 (7th Cir. 1993) (en banc), and *Pabst*, 161 F.3d at 439 ("Unless a contract provides for the vesting

of benefits, the presumption is that benefits terminate when a collective bargaining agreement ends.").

Employers, employees, and unions are free, however, to provide that health-care benefits *will* survive the underlying agreement, so that promised lifetime benefits will indeed survive for a lifetime. *Tackett* and *Reese* teach that courts may not infer vesting from silence but also indicate that courts should find vesting where the contract provides for it: "a collective-bargaining agreement [may] provid[e] in explicit terms that certain benefits continue after the agreement's expiration." *Tackett*, 135 S. Ct. at 937, quoting *Litton*, 501 U.S. at 207 (alterations in *Tackett*). The contract may also provide for vesting through implied terms: "'[C]onstraints upon the employer after the expiration date of a collective-bargaining agreement' ... may be derived from the agreement's 'explicit terms,' but they 'may arise as well from ... implied terms of the expired agreement.'" *Id.* at 938 (Ginsburg, J., concurring), quoting *Litton*, 501 U.S. at 203, 207; accord, *Reese*, 138 S. Ct. at 765 (observing that a court may look to "explicit terms, implied terms, or industry practice" for indications of vesting). And if the contract is ambiguous—due to either a patent or latent ambiguity—extrinsic evidence may be considered in determining whether the parties intended benefits to vest. *Reese*, 138 S. Ct. at 765; see also *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539, 545–46 (7th Cir. 2000) (looking to similar agreements with same employer and identical agreements within industry to find latent ambiguity on duration of health-care benefits).

B. *Interpretation of the 2002 Pensioners' Agreement*

The 2002 Pensioners' Agreement unambiguously provided retirees with vested lifetime health-care benefits. The Coverage Provision said as plainly as possible that coverage would survive expiration of the Agreement. Contrary to defendants' arguments, the Term Provision did not transform the right to terminate the Agreement itself into a loophole that nullified the plain promise that benefits would survive expiration of the Agreement. And even if the Agreement were ambiguous, industry usage and the behavior of the parties here provide enough evidence to support vesting such that resolution of any ambiguity in favor of the plaintiffs as a matter of law would still be correct.

1. *The Vesting Language for Continuation of Coverage*

The Agreement's Continuation of Coverage paragraph provided that covered individuals "*shall not have such coverage terminated or reduced* (except as provided in this Program) ... *notwithstanding the expiration of this Agreement*, except as the Company and the Union may agree otherwise." (Emphasis added.)

This language made clear that the promised health-care benefits vested, i.e., they would survive the termination of the underlying agreement. In *Tackett*, the Supreme Court endorsed this approach: vested benefits are created when an agreement "provid[es] in explicit terms that certain benefits continue after the agreement's expiration." 135 S. Ct. at 937, quoting

Litton, 501 U.S. at 207. That is precisely what the 2002 Pensioners' Agreement did.

If more support were needed, cases addressing similar language provide persuasive support for the plaintiffs' position. In *United Steelworkers of America, AFL-CIO-CLC v. Connors Steel Co.*, the Eleventh Circuit held that an identical continuation-of-coverage provision created vested benefits. 855 F.2d 1499, 1505 (11th Cir. 1988) ("shall not have such coverage terminated or reduced ... so long as the individual remains retired from the company or receives a surviving spouse's benefit, notwithstanding the expiration of this agreement"). Contrary to defendants' representations in their briefs and at oral argument, the contract in *Connors Steel* also included a termination provision like the one in the 2002 Pensioners' Agreement. *Id.* at 1502 ("Except as otherwise provided below, this Agreement shall terminate [upon] the expiration of sixty days after either party shall give written notice of termination to the other party but in any event shall not terminate earlier than September 1, 1983."). In *Keffer v. H.K. Porter Co.*, the Fourth Circuit held that materially identical continuation-of-coverage language also provided vested benefits. 872 F.2d 60, 63 (4th Cir. 1989).[3]

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[3] Defendants suggest that the persuasive force of *Connors Steel* and *H.K. Porter Co.* is tainted by reliance on the *Yard-Man* inferences later rejected by the Supreme Court in *Tackett* and *Reese*. We disagree; these cases did not depend on *Yard-Man*. *Connors Steel* held that the unambiguous language of the agreement provided benefits, explained that this interpretation was consistent with

We have described the agreements in *Connors Steel* and *H.K. Porter Co.* as "specifically provid[ing] that the employer was obligated to continue making benefit contributions after the agreement expired," albeit in the context of differentiating them from a contract that did not vest benefits. *Int'l Ass'n of Bridge, Structural & Ornamental Iron Workers, Shopmen's Div., Local No. 473 v. SR Industries Corp.*, 940 F.2d 665 (7th Cir. 1991) (table of decisions without reported opinions), 1991 WL 151901, at *4 (7th Cir. Aug. 9, 1991).

2. *The Term Provision*

To avoid the clear language providing health-care benefits that survive the expiration of the 2002 Agreement, defendants rely on the Term Provision. But the Term Provision only provides the means of expiration (contemplated in the vesting language of the Coverage Provision) by permitting either party "to terminate the 'Pensioners' and Surviving Spouses' Health Insurance Agreement.'" The Coverage Provision established that the promised health-care coverage and the underlying Agreement would run independently—that the duration of the coverage was not limited to the

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Yard-Man, and then clarified that the case for vesting was stronger than in *Yard-Man* because of the explicit vesting language identical to the language here. 855 F.2d at 1505. *H.K. Porter Co.* indicated only that the court's determination—based on "the language in the parties' agreements" and the conduct of the employer—was consistent with *Yard-Man*. 872 F.2d at 64. The Fourth Circuit later clarified that "the reference to *Yard-Man* was not necessary to [the holding in *H.K. Porter Co.*] that the specific language of the CBA showed the parties intended for benefits to continue beyond the expiration of the agreement." *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 291–92 (4th Cir. 2011).

term of the Agreement. Terminating the Agreement while leaving coverage intact was consistent with the vested benefits established by the Coverage Provision. Indeed, separating the term of coverage from the term of the Agreement clearly signaled that it was possible—actually, expected—that the Agreement could end without affecting the continued health-care coverage. That is what the Term Provision did.

Defendants argue that the term provision provided an exception to the promise that coverage would persist "notwithstanding expiration" of the 2002 Agreement and that their obligation to provide health-care benefits was extinguished upon termination of the Agreement. This interpretation of the Term Provision conflicts with the Coverage Provision and disregards ordinary principles of contract interpretation. Cf. *Barnett*, 436 F.3d at 833 ("Contractual provisions must be read in a manner that makes them consistent with each other.").

Defendants rely on cases that addressed contracts that included both "lifetime" language and reservation-of-rights clauses expressly allowing alteration or termination of benefits—but all without what we see here, express statements extending benefits beyond the term of agreement. See *Barnett*, 436 F.3d at 834 (agreement explicitly reserved employer's right to ""take such action as may be necessary to modify and to continue *for the life of the Labor Agreement*' the provisions of the health-care plan"); *Vallone v. CNA Financial Corp.*, 375 F.3d 623, 638 (7th Cir. 2004) (agreement allowed employer "to *prospectively* alter or amend its welfare benefits offered to retirees, even after retirement"); *Int'l Union of United Auto., Aerospace &*

Agric. Implement Workers of Am. v. Rockford Powertrain, Inc., 350 F.3d 698, 703 (7th Cir. 2003) (agreement "reserve[d] the right to modify, amend, suspend or terminate [benefits] at any time").

These cases teach that "lifetime" language that might appear upon first reading to vest benefits should not be interpreted to do so if another provision reserves rights that are inconsistent with vesting. This lesson, painfully applied in many cases, does not apply here because the parties to the 2002 Agreement followed the lesson and made clear that the health-care benefits would survive the termination of that agreement. The Term Provision is not at all inconsistent with vesting. The entire purpose of the "notwithstanding expiration" language is to establish that termination of the Agreement *would not* extinguish the benefits it promised.

To try to create a conflict in need of resolution, defendants also propose that the Term Provision should be read to create an implicit exception to the vesting rule of the Coverage Provision because the Term Provision would otherwise be superfluous. This argument fails on several grounds.

First, even if this reading did render the Term Provision practically superfluous, this would not be enough to compel a tortured reading of the Coverage Provision that would nullify the parties' clearly expressed choice to create vested retirement health-care benefits. The principle that contracts should be interpreted to avoid rendering language superfluous or redundant is not absolute. Rather, it is a preference to

be employed to the extent possible given the range of reasonable meanings that can be ascribed to the contractual language. See 11 R. Lord, Williston on Contracts § 32:5 (4th ed., July 2019 update) ("An interpretation which gives effect to all provisions of the contract is preferred to one which renders part of the writing superfluous, useless or inexplicable. A court will interpret a contract in a manner that gives reasonable meaning to all of its provisions, if possible."); see also *GNB Battery Techs., Inc. v. Gould, Inc.*, 65 F.3d 615, 622 (7th Cir. 1995) ("A contractual interpretation that gives reasonable meaning to all of the terms in an agreement is preferable to an interpretation which gives no effect to some terms."). Given the clarity of the vesting language and the coherence of the contractual scheme under the more natural reading of the contract, defendants' position is not persuasive.

Second, the superfluity argument at best cuts both ways. If the Term Provision were read to allow the termination of benefits provided by the Agreement, then it would render superfluous the "notwithstanding the expiration of the Agreement" language in the Coverage Provision. What would be the point of establishing that benefits survive expiration of the Agreement if the only contractual provision for terminating the Agreement also terminated the benefits?

Third, the Term Provision simply is not superfluous when read—consistent with the vesting language of the Coverage Provision—to allow only for the termination of the Agreement and not of the benefits it provides to those already eligible for them. Collective bargaining

agreements generally terminate at some point, giving the parties the opportunity to renegotiate. For retirement health-care benefits, this gives employers and employees the opportunity to change the scope of benefits for *future* retirees. As a general rule, an agreement like this one covers only those who retire while it is still in effect. If ITW had not closed the plant in 2004, it might have decided to scale back retirement benefits promised in the 2002 Pensioners' Agreement and exercised its termination right to force the negotiation of a new Pensioners' Agreement, for future retirees.

The case law in this area—and indeed our very understanding of what it means for benefits to vest—is built upon the idea that collective bargaining agreements do not last forever. That is implicit in the Supreme Court's observation that "provid[ing] in explicit terms that certain benefits continue after the agreement's expiration" vests those benefits. *Tackett*, 135 S. Ct. at 937, quoting *Litton* 501 U.S. at 207. It is also implicit in our cases. See, e.g., *Auburn Gear*, 441 F.3d at 481 ("Unless a contract provides for the vesting of benefits, the presumption is that benefits terminate when a collective bargaining agreement ends.").

The Term Provision here was nothing more than a durational limit. Instead of setting a firm end date to the 2002 Pensioners' Agreement, it used a unilateral termination right to give the parties flexibility to extend the Agreement past a soft termination date. Defendants' superfluity theory—which by its reasoning would apply to *all* durational limits on benefits agreements—would lead to the impractical conclusion that no health-care

benefits program could create vested benefits if it even contemplated the expiration of the agreement. The better reading of the 2002 Pensioners' Agreement thus favors plaintiffs.

3. *Extrinsic Evidence*

Even if the contract were ambiguous on the vesting issue, undisputed evidence of industry usage and the behavior of the parties makes clear that they understood the Agreement provided vested pension benefits. We interpret collective bargaining agreements in light of "relevant industry-specific 'customs, practices, usages, and terminology.'" *Tackett*, 135 S. Ct. at 937–38 (Ginsburg, J., concurring), quoting 11 R. Lord, Williston on Contracts § 30:4, pp. 55–58 (4th ed. 2012); accord, Reese, 138 S. Ct. at 765 ("when a contract is ambiguous, courts can consult extrinsic evidence to determine the parties' intentions"). We have applied this principle to interpret collective bargaining agreements in light of similar agreements with other employers. In *Rossetto v. Pabst Brewing Co.*, 217 F.3d 539 (7th Cir. 2000), we interpreted a collective bargaining agreement between a brewery and the union of the plaintiff machinists. That agreement did not provide expressly for vesting and was silent regarding duration. *Id.* at 544–45. Nevertheless, we held that extrinsic evidence showed there was a latent ambiguity in the contract; we reversed summary judgment and remanded for trial. *Id.* at 545–47. We also found that *another employer's* continued provision of benefits under an identical but expired contract amounted to substantial evidence supporting the plaintiff-employees' interpretation of the agreement as promising vested benefits. *Id.* at 546.

The Steelworkers' agreements in *Connors Steel* and *H.K. Porter Co.*—and the Eleventh and Fourth Circuits' holdings that those agreements vested health-care benefits—provide compelling evidence of industry-specific usage here. See *Transportation-Commc'n Employees Union v. Union Pacific R.R. Co.*, 385 U.S. 157, 161 (1966) ("In order to interpret such an agreement it is necessary to consider the scope of other related collective bargaining agreements, as well as the practice, usage and custom pertaining to all such agreements."). For years before the negotiation of the 1994 Pensioners' Agreement here, the union used similar language in its health-care benefits agreements with other employers in the steel industry. Both the Fourth and Eleventh Circuits concluded that such language created a vested right to health-care benefits. We characterized these agreements similarly in *SR Industries Corp.*, 940 F.2d 665, 1991 WL 151901, at *4.

Based on these precedents, the parties to the 2002 Pensioners' Agreement would have reasonably understood the language they chose to have the same effect it had been given by those courts. The background provided by these other agreements in the industry and their interpretation by courts support plaintiffs' interpretation, just as the provision of benefits in the parallel agreement in *Rossetto* supported the plaintiff-employees in that case.

This principle is similar to the prior-construction canon in statutory interpretation. See Antonin Scalia & Bryan Garner, *Reading Law* 322 (2012) ("If a statute uses words or phrases that have already received ... uniform construction by inferior courts ... they are to be

understood according to that construction."). While contract interpretation differs from statutory interpretation in some ways, this principle applies in both: the actions of courts have given the phrase a meaning that parties knowledgeable in the relevant areas of law are presumed to use. See *id.* at 324.

The actions of a key Acme and ITW manager also reflect an understanding that benefits would vest. "How the parties to a contract actually perform their contractual undertakings is often ... persuasive evidence of what the parties understood the contract to require." *Zielinski v. Pabst Brewing Co.*, 463 F.3d 615, 618 (7th Cir. 2006); see also, e.g., *Mercury Sys., Inc. v. Shareholder Representative Servs., LLC*, 820 F.3d 46, 52 (1st Cir. 2016) (applying Massachusetts law) ("Extrinsic evidence may include the parties' ... course of performance under the contract."). Here, Anthony Kuchta was a benefits program administrator for Acme and ITW who helped negotiate the 1994 Pensioners' Agreement, the 2002 Pensioners' Agreement, and the 2004 Closing Agreement. He testified not only that he understood the 2002 Pensioners' Agreement to create vested lifetime benefits, but also that he advised employees that if they wanted those benefits, "they must retire under the 2002 Pensioners' Agreement and should do so before the 'last day' when the plant closed and the 2002 Pensioners' Agreement expired."

In other words, a manager who played a significant role in benefits administration—and who signed the 2004 Closing Agreement with the union—assured employees that the health-care benefits would last for their lifetimes, but only if they retired *under the 2002*

Agreement. This is not inadmissible, self-serving testimony offered in an attempt to vary the meaning of an unambiguous contract. Cf. *Rossetto*, 217 F.3d at 546. The testimony came from a now-neutral non-party who participated in negotiations on the side of the employer. Defendants have not rebutted this testimony, which is all the more powerful because the contemporaneous statements it describes invited employees to rely upon them when making retirement decisions.

The permanent injunction issued by the district court is

AFFIRMED

Appendix B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

HAROLD STONE and JOHN WOESTMAN, for themselves and others similarly situated; and UNITED STEEL, PAPER & FORESTRY, RUBBER, MANUFACTURING, ENERGY, ALLIED INDUSTRIAL & SERVICE WORKERS INTERNATIONAL UNION, ALF-CIO-CLC Plaintiffs, v. SIGNODE INDUSTRIAL GROUP, LLC; and ILLINOIS TOOL WORKS INC., Defendants.	No. 17 C 5360 Judge Thomas M. Durkin

MEMORANDUM OPINION AND ORDER

Plaintiffs are a labor union and two former employees of a company that was Defendants' predecessor in interest. Plaintiffs sue to enforce healthcare benefits under a collective bargaining agreement. The parties have cross-moved for summary judgment. R. 28; R. 35. For the following reasons,

Plaintiffs' motion is granted and Defendants' motion is denied.

Legal Standard

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). The Court considers the entire evidentiary record and must view all of the evidence and draw all reasonable inferences from that evidence in the light most favorable to the nonmovant. *Horton v. Pobjecky*, 883 F.3d 941, 948 (7th Cir. 2018). To defeat summary judgment, a nonmovant must produce more than a "mere scintilla of evidence" and come forward with "specific facts showing that there is a genuine issue for trial." *Johnson v. Advocate Health and Hosps. Corp.*, 892 F.3d 887, 894, 896 (7th Cir. 2018). Ultimately, summary judgment is warranted only if a reasonable jury could not return a verdict for the nonmovant. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

Background

Plaintiffs Harold Stone and John Woestman worked for Acme Packaging Corporation at its plant in Riverdale, Illinois, before retiring after 46 and 37 years of employment, respectively. R. 38 ¶ 3. Stone and Woestman were members of the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC ("the Union"). *Id.* ¶ 4. In 1994, the Union

negotiated a collective bargaining agreement with Acme providing for healthcare benefits. After their retirement, Stone and Woestman have continued to receive healthcare benefits pursuant to that agreement. *Id.* ¶¶ 3, 5, 10-11.

Acme went into bankruptcy. As part of the bankruptcy settlement, the Union and Acme reached new collective bargaining agreements in 2001 and again in 2002, which the bankruptcy court approved. After emerging from bankruptcy in 2003, Acme was acquired by defendant Illinois Tool Works. *Id.* ¶ 25. Although Illinois Tool Works closed the Riverdale plant and the collective bargaining agreement expired in 2004, Illinois Tool Works continued to provide benefits under the agreement.

In 2014, Illinois Tool Works spun-off part of its business and transferred its obligations under the relevant collective bargaining agreement (along with other assets and liabilities), to defendant Signode Industrial Group. In 2015, Signode announced that it was terminating the collective bargaining agreement.

There is no dispute that the parties to this case are party to the collective bargaining agreement. There is also no dispute as to the relevant collective bargaining agreement provisions, which are the following:

> Any Pensioner or individual receiving a Surviving Spouse's benefit who shall become covered by the Program established by the Agreement shall not have such coverage terminated or reduced (except as provided in this

> Program) so long as the individual remains retired from the Company or receives a Surviving Spouse's benefit, notwithstanding the expiration of this Agreement, except as the Company and the Union may agree otherwise.

R. 36-5 at 4 (p. 66, § 6). And further that:

> [This agreement] shall remain in effect until February 29, 2004, thereafter subject to the right of either party on [120] days written notice served on or after November 1, 2003 to terminate the [agreement].

Id. at 5 (p. 67, § 7), 10 (p. 7, § II.C(2)).

Analysis

"Unlike pension benefits under ERISA, insurance benefits, such as the benefits at issue in this case, do not automatically vest." *Cherry v. Auburn Gear, Inc.*, 441 F.3d 476, 481 (7th Cir. 2006). "Employers nonetheless may create vested welfare benefits by contract." *Sullivan v. CUNA Mut. Ins. Soc'y*, 649 F.3d 553, 555 (7th Cir. 2011). Whether a collective bargaining agreement creates vested welfare benefits is determined "according to ordinary principles of contract law." *CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763 (2018); *see also Barnett v. Ameren Corp.*, 436 F.3d 830, 832 (7th Cir. 2006) ("[I]f they vest at all, they do so under the terms of a particular contract."). "Therefore, as harsh as it may sound, in the absence of a contractual obligation employers are 'generally free . . . for any reason at any time, to adopt, modify or terminate welfare plans.'"

Barnett, 436 F.3d at 832 (quoting *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995)). However, "[r]ights which accrued or vested under the agreement will, as a general rule, survive termination of the agreement." *Litton Fin. Printing Div. v. N.L.R.B.*, 501 U.S. 190, 207 (1991).

The Supreme Court has held that an agreement can "vest lifetime benefits for retirees" by "provid[ing] in explicit terms that certain benefits continue after the agreement's expiration." *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 937 (2015); *see also Bidlack v. Wheelabrator Corp.*, 993 F.2d 603, 607 (7th Cir. 1993) (vesting means "creating rights that will not expire when the contract expires"); *Vallone v. CNA Fin. Corp.*, 375 F.3d 623, 633 n.4 (7th Cir. 2004) ("[T]he characterization of a benefit as 'lifetime' can, absent a reservation of rights clause, indicate that the benefit is vested."). Here, the agreement provides that benefits continue "so long as the individual remains retired from the Company or receives a Surviving Spouse's benefit, notwithstanding the expiration of this Agreement." In other words, retired employees are entitled to lifetime benefits even after the agreement expires. This language is sufficient to vest the benefits provided by the agreement, absent language to the contrary, such as a reservation of rights clause.

Defendants argue that the agreement contains language limiting the lifetime benefits provided in section 6. Defendants point out that section 6 is conditioned by the phrase "except as the Company and the Union may agree otherwise." Defendants argue that this exception works to incorporate section 7 which

permits unilateral termination of the agreement. Despite section 7's provision for termination of the "agreement," Defendants repeatedly assert that section 7 provides for termination of "coverage" or "benefits." *See* R. 30 at 1 ("The agreement here says nothing about vesting. Instead it establishes 'the right of either party . . . to terminate' health-insurance *benefits*.") (emphasis added); *id.* at 7 ("The termination provision then reiterates the default setting—coverage will continue until expiration 'and thereafter'—but then specifies when *coverage* may be ended.") (emphasis added). But section 7 does not mention termination of benefits, only termination of the agreement. And the Supreme Court has held that benefits that vest during the term of an agreement, "as a general rule, survive termination of the agreement." *Litton*, 501 U.S. at 207. Defendants do not identify any other "agreement" by the parties to terminate benefits that could serve as an "exception" to the lifetime benefits provided by section 6.

Defendants contend, however, that the Seventh Circuit has held that termination provisions like section 7 serve to limit "lifetime" benefits to the term of the agreement. *See Murphy v. Keystone Steel & Wire Co.*, 61 F.3d 560, 565 (7th Cir. 1995) ("If a contract provides that benefits can be terminated, then those benefits do not vest."); *Vallone*, 375 F.3d at 633 (7th Cir. 2004) ("The problem for the plaintiffs is that 'lifetime' may be construed as 'good for life unless revoked or modified.'"). But contrary to Defendants' argument, the provisions at issue in those cases are different from the termination provision at issue here. The provisions in the Seventh Circuit cases Defendants cite expressly limited the

duration of *benefits* to the duration of the *agreement*. *See Cherry*, 441 F.3d at 479 (7th Cir. 2006) ("The Company will maintain [*benefits*] during the period of this agreement[.]"); *Barnett*, 436 F.3d at 832 ("[T]he company would 'take such action as may be necessary to modify and to continue for the life of the Labor Agreement' health-care *benefits* 'for active employees who retire on or after July 1, 1994.'"); *Vallone*, 375 F.3d at 636 ("The *coverages* described in this Guide may be amended, revoked or suspended at the Company's discretion at any time, even after your retirement. No management representative has the authority to change, alter or amend these coverages."); *Int'l Union of United Auto., Aerospace & Agric. Implement Workers of Am. v. Rockford Powertrain, Inc.*, 350 F.3d 698, 703 (7th Cir. 2003) ("The lifetime benefits clause was followed by the plan termination clause: '[i]n the event this group plan is terminated, [health insurance] *coverage* for you and your dependents will end immediately.'"); *Murphy*, 61 F.3d at 566 ("The Plan states that retiree benefits terminate 'upon the date the Plan is terminated or amended to terminate the Retiree's [or his dependent's] *coverage*.'"); *Ryan v. Chromalloy Am. Corp.*, 877 F.2d 598, 601 (7th Cir. 1989) ("The *coverage* of any covered person under the plan shall terminate on . . . the date of termination of the Plan[.]"); *see also Grove v. Johnson Controls, Inc.*, 694 Fed. App'x 864, 869 (3d Cir. 2017) ("amend or terminate the *benefits* program or any portion of it at any time").

By contrast, the agreement here provides for lifetime benefits, *see* R. 36-5 at 4 (p. 66, § 6) (employees "shall not have such coverage terminated or reduced . . .

notwithstanding the expiration of this Agreement"); and separately provides for a date the agreement expires and the ability to unilaterally terminate the agreement, *id.* at 5 (p. 67, § 7), 10 (p. 7, § II.C(2)) ("the right of either party . . . to terminate the [agreement]"). The agreement does not provide for the right to terminate the benefits. The provision of lifetime benefits without provision for their termination constitutes vested benefits.

Defendants argue further that the Supreme Court recently held that a "general duration clause" providing for termination of the agreement is incompatible with an agreement providing vested benefits. *See* R. 30 at 1 (citing *Reese*, 138 S. Ct. at 766). But the Supreme Court's holding was premised on the additional fact that the agreement in that case was otherwise "silent" as to vesting. *Id.* ("The 1998 agreement contained a general durational clause that applied to all benefits, unless the agreement specified otherwise. No provision specified that the health care benefits were subject to a different durational clause. The agreement stated that the health benefits plan 'r[an] concurrently' with the collective-bargaining agreement, tying the health care benefits to the duration of the rest of the agreement."). Contrary to Defendants' contention that the agreement in this case is similarly silent as to vesting, the Court has explained that the language in the agreement provides lifetime benefits without reference to the agreement's duration or termination. Thus, the Supreme Court's decision in *Reese* does not command a decision in Defendants' favor here.

Conclusion

For these reasons, Plaintiffs' motion for summary judgment, R. 35, is granted and Defendants' motion for summary judgment, R. 28, is denied.

ENTERED:

/s/ Thomas M. Durkin
Honorable Thomas M. Durkin
United States District Judge

Dated: March 13, 2019

Appendix C

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

January 3, 2020

Before

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

No. 19-1601

HAROLD STONE, et al., *Plaintiffs-Appellees*, *v.* SIGNODE INDUSTRIAL GROUP LLC, et al., Defendants-Appellants.	Appeal from the United States District Court for the Northern District of Illinois, Eastern Division No. 1:17-cv-05360 **Thomas M. Durkin**, *Judge*.

ORDER

On consideration of defendants' petition for rehearing or rehearing en banc, filed December 18, 2019, no judge in active service has requested a vote on the petition for rehearing en banc, and all judges on the original panel have voted to deny the petition for rehearing.[*]

Accordingly, the petition for rehearing or rehearing en banc filed by defendants is **DENIED**.

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[*] Judge Joel M. Flaum took no part in the consideration of the petition for rehearing or rehearing en banc.