No. _____

In the Supreme Court of the United States

MICHIGAN EDUCATION ASSOCIATION FAMILY RETIRED STAFF ASSOCIATION, GLENNA PARKER, *and* CAROLEE SMITH,

Petitioners,

v.

MICHIGAN EDUCATION ASSOCIATION, MICHIGAN EDUCATION SPECIAL SERVICES ASSOCIATION, *and* MEA FINANCIAL SERVICES, INC.

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a retiree medical plan that is ambiguous on its face, within the meaning enunciated in *CNH Industrial v Reese*, 138 S. Ct. 761 (2018), may be shown by extrinsic evidence to provide for vesting of post-retirement benefits.

PARTIES TO THE PROCEEDINGS AND CORPORATE DISCLOSURE STATEMENT

Petitioners are the Michigan Education Association Family Retired Staff Association, Glenna Parker, and Carolee Smith. The Michigan Education Association Family Retired Staff Association is not a publicly owned corporation, has no parent corporation, and no publicly held company holds 10% or more of its equity interests. No publicly traded entity has a financial interest in the outcome of this appeal.

Respondents are the Michigan Education Association, the Michigan Education Special Services Association, and MEA Financial Services, Inc.

RELATED PROCEEDINGS

United States District Court (W.D. MI.):

Michigan Education Association Family Retired Staff Association, et al., v. Michigan Education Association, et al., No. 1:19-cv-1074 (Jan. 31, 2020)

Michigan Education Association Family Retired Staff Association, et al., v. Michigan Education Association, et al., No. 1:19-cv-1074 (Dec. 27, 2019)

United States Court of Appeals (6th Cir):

Michigan Education Association Family Retired Staff Association, Glenna Parker, & Carolee Smith, v. Michigan Education Association, Michigan Education Special Services Association, and MEA Financial Services, Case No. 20-1174 (Apr. 20, 2021)

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PETITION FOR A WRIT OF CERTIORARI

The Michigan Education Association Family Retired Staff Association, Glenna Parker and Carolee Smith respectfully petition for a writ of certiorari to review the judgment of the United State Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The district court's January 31, 2020 order denying petition's motion for a preliminary injunction is not reported and is reproduced in the appendix to this petition ("App.") at pages 14-32. The April 20, 2021 opinion of the court of appeals is also unreported and is reproduced in the appendix at pages 1-13. The May 25, 2021 order of the court of appeals denying panel and en banc rehearing is not published and is reproduced in the appendix at pages 33-34.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The judgment of the court of appeals was entered on April 20, 2021. A petition for rehearing was denied on May 25, 2021 (App. 33-34). This petition is timely filed per the Court's July 19, 2021 order extending the time to file a petition for a writ of certiorari to 150 days after denial of a timely petition for rehearing by the lower court, for a denial that occurred prior to July 19, 2021.

STATUTORY PROVISIONS AT ISSUE

Section 301 of the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185.

Section 502 of the Employee Retirement Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132.

STATEMENT

The court of appeals has misapplied this Court's holdings in *M&G Polymers v. Tackett,* 135 S. Ct. 926, 933 (2015) and *CNH Industrial v. Reese*, 138 S. Ct. 761, 762 (2018), in a way that portends fundamental ongoing confusion by the lower courts in addressing retiree medical benefit claims. The court of appeals has now swung from applying so-called *"Yard-Man"*[1] inferences in favor of finding vested benefits, to, in apparent overeaction to *Tackett* and *Reese*, departing even more decisively from "ordinary principles of contract interpretation" to *avoid* finding such benefits are vested.

As in in *Tackett* and *Reese*, petitioners here brought this case against their former employers for claimed vested retiree medical benefits. Unlike in *Tackett* and *Reese*, petitioners' claims here are based on collective bargaining and ERISA plan documents that state, in so many words, respectively, that: retiree medical insurance benefits "*become vested for life* on commencement of monthly retirement benefits", and benefits "*shall become vested*…in accordance with

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[1] In reference to *UAW v. Yard-Man, Inc.*, 716 F.2d 1476 (6th Cir. 1983), and its progeny.

[specified age and service requirements]." (App. 36, 55) (emph. added). The petitioners contended that these documents unambiguously provided for vesting of benefits for those participants meeting the specified age and service standards, such that the petitioners were likely to succeed on the merits of their case and were thus entitled a preliminary injunction preventing benefit reductions by the employers.

The court of appeals disagreed, but–of particular salience for this petition–went further: The court effectively rejected the possibility that, even if the relevant document could be considered *ambiguous*, on its face, the document could be interpreted as having provided for vested benefits. That is, the court of appeals misunderstood *Reese* to stand for the proposition that it is impossible for a facially ambiguous contract to be shown by extrinsic evidence to have provided for vested retiree benefits.

To the contrary, this Court in *Reese* held that certain interpretive inferences previously applied by the Sixth Circuit may not themselves *create* ambiguity that could support the use of extrinsic evidence. The Court nonetheless expressly reinforced that a contract ambiguous on its face would support the introduction of extrinsic evidence, in accordance with "ordinary principles of contract law."

Because the question presented is of major, ongoing, fundamental legal and practical importance, the petition for a writ of certiorari should be granted.

A. Background.

Respondents are employers[2] which in 1993 jointly entered into a signed labor agreement, a "Letter of Understanding," with the collective bargaining representative of their employees. The agreement, a form of so-called "side agreement" common in collective bargaining contexts, provided that retiree medical insurance benefits "become vested for life on commencement of monthly retirement benefits." App. 36. The same document also extended equivalent retiree benefits to similarly situated noncollectively bargained management employees. App. 51-53.

Plan documents adopted as part of Respondents' retiree medical plan under ERISA also stated that retiree insurance benefits became "vested" for all participants who satisfied the necessary age and service conditions, as follows:

> 19.03. Vesting/Forfeiture of Retirant Health Benefit
>
> A. Benefits Result from Bargaining Agreement
>
> A Participant whose retirement benefits are the

[2] Respondent Michigan Education Association ("MEA") is itself a labor organization, affiliated with local unions that represent public school employees and other employees in Michigan. In this case, however, MEA, along with its affiliated entities Michigan Education Special Services Association ("MESSA") and MEA Financial Services, Inc. ("MEA-FS"), appears in its capacity as an employer. Many of respondents' employees and retirees are or were members of collective bargaining units represented by one of several staff unions representing respondents' employees.

> subject of collective bargaining shall become vested in the post-retirement health benefit described in this Article in accordance with the terms of the relevant sections of pertinent collective bargaining agreements, all of which are attached to the Plan as Appendices B, C, D and E. All other Participants shall become vested in said benefit in accordance with Appendices F and G, a copy of which is attached to the Plan.

App. 55

The referenced Schedules contain several discrete bargaining agreement excerpts describing age and service thresholds, and levels of benefits for specific categories of unionized and nonunionized employees. The Plan contains no durational limits.

Respondent Michigan Education Association Family Retired Staff Association ("RSA") is a voluntary, dues-supported Michigan nonprofit corporation, whose members are all retired employees, or family members thereof, of Respondents or their predecessors. RSA has been affirmed by the District Court as having associational standing to appear in this matter on behalf of its members with respect to entitlement to retiree medical benefits. App. 17-20. Petitioners Parker and Smith are individual retirees and members of RSA who had spent many years as

employees of respondents or their predecessors.

On January 15, 2019, respondents unilaterally made a change to their ERISA-governed retiree medical plans, reducing coverage for needed medications and increasing costs for many of RSA's members. Later in the year, MEA announced to RSA and individual retirees that Respondents would be unilaterally effectuating further severe reductions in benefit levels, and elimination of some benefits, for all retirees effective January 1, 2020.

B. Procedural history.

In order to prevent respondents' threatened reductions from going into effect, and to reverse the changes already made in January 2019, Petitioners brought this action on December 20, 2019, including four counts in their complaint: (1) breach of labor agreement, under Section 301 of the LMRA, (2) violation of ERISA, (3) equitable estoppel, and (4) breach of contract.

On December 27, 2019, the district court denied petitioners' motion for a temporary restraining order, and accordingly the reductions announced by respondents went into effect on January 1, 2020. On the following January 31, after a hearing and further briefing by the parties, the district court issued an Opinion and Order denying petitioners' motion for a preliminary injunction.[3] Despite the contractual and plan language quoted above, the district court

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[3] The District Court also denied Respondents' motion to dismiss Petitioner RSA from the case as lacking associational standing. App. 17-20.

determined the petitioners were unlikely to succeed on the merits of their case.

In the case of Count I, the district court concluded that the Letter of Understanding was inherently "extrinsic evidence" and so could be ignored pursuant to this Court's holding in *Reese*. In the case of Count II, the district court concluded that the medical benefit plan should, as in the previous case of *Gallo v. Moen*, 813 F.3d 265 (6th Cir. 2016), be read to incorporate the entirety of the contemporaneous collective bargaining agreement, including the latter's duration clause. App. 28.[4]

The petitioners appealed from this denial with respect to Counts I and II of their complaint. The court of appeals rejected the district court's reasoning on both counts. As to Count I, the court of appeals recognized that the Letter of Understanding, as itself the contractual basis of petitioners' claim, could not be understood as "extrinsic." Accordingly, the court vacated the district court's order and remanded the case for a factual determination as to whether the Letter of Understanding constituted a binding contract. The court noted that "if the [Letter of Understanding] is a valid, standalone contract that vested benefits for retirees, then it would vest non-negotiable healthcare benefits to anyone who had retired by the day the parties signed it."

As to Count II, the court of appeals also agreed

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[4] The district court also concluded petitioners were unlikely to succeed with their claims in Counts 3 and 4. Petitioners did not appeal these conclusions and Counts 3 and 4 are not relevant for this petition.

with petitioners that the district court had erred in concluding that the relevant medical benefit plan should be read to incorporate the term of the parties' collective bargaining agreements, because unlike in *Gallo* the plan here did not incorporate those agreements. The court of appeals nonetheless upheld the district court's decision as to Count II, on the ground that the language used in the medical plan had not "provided 'in explicit terms' that benefits vest" (App. at 11), quoting and apparently misinterpreting *Tackett* to provide that a document ambiguous on its face could never be held to provide for vesting. The court of appeals did not consider the possibility that the plan could be viewed as–at minimum–ambiguous on the point, and therefore did not consider the possibility that extrinsic evidence would show that vesting was in fact intended by the parties.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted in order to address continued, metastasizing lower-court confusion in applying this Court's explicit instructions to apply "ordinary principles of contract law" in deciding whether retiree medical benefits vest.

In *Tackett*, this Court held that the Sixth Circuit had been departing from those principles by improperly applying pre-existing inferences (the so-called "*Yard-Man* inferences"),[5] in concluding that applicable documents provide for vested retiree medical benefits. In *Reese*, this Court further clarified

[5] See note 1, *supra*.

that the same *Yard-Man* inferences could not serve as the basis for concluding that an otherwise clear contract was ambiguous: The *Yard-Man* inferences could not, that is, be used to *supply* ambiguity that would support the introduction of extrinsic evidence.

In the present case the court of appeals has apparently read this as an instruction that an ambiguous contract–even one ambiguous on its *face*, without reference to *Yard-Man* inferences–can never be shown by extrinsic evidence to provide for vested benefits.

This takes failure to follow "ordinary principles of contract interpretation" in the opposite direction of *Yard-Man*, but at least equally as far. It has ongoing implications for the many similar cases that continue to arise.[6] The court of appeals' understanding is

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[6] At least sixteen cases involving questions of vesting of retiree medical benefits have arisen on the appellate docket—just of the Court of Appeals for the Sixth Circuit, just since this Court's decision in *Tackett*. These cases, together affecting an undetermined but certainly very large number of retirees, include (in addition to the present case): *United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers Int'l Union v. LLFlex LLC*, 852 Fed. Appx. 891 (6th Cir. 2021); *Zino v. Whirlpool Corp.*, 763 Fed. Appx. 470 (6th Cir. 2019); *Kerns v. Caterpillar Inc.*, 791 Fed. Appx. 568 (6th Cir. 2019); *Cece v. Wayne County*, 758 Fed. Appx. 418 (6th Cir. 2018); *IUE-CWA. v. General Electric Co.*, 745 Fed. Appx. 583 (6th Cir. 2018); *Fletcher v. Honeywell, Intl., Inc.*, 892 F.3d 217 (6th Cir. 2018); *Cooper v. Honeywell, Intl., Inc.*, 884 F.3d 612 (6th Cir. 2018); *Serafino v. City of Hamtramck*, 707 Fed. Appx. 345 (6th Cir. 2017); *UAW v. Honeywell, Intl., Inc.* 954 F.3d 948 (6th Cir. 2017); *Watkins v. Honeywell, Intl., Inc.*, 875 F.3d 321 (6th Cir. 2017); *UAW v. Kelsey-Hayes Co.*, 854 F.3d 862 (6th Cir. 2017); *Reese v. CNH Industrial NV*, 854 F.3d 877 (6th Cir. 2017); *Cole v. Meritor,*

directly contradicted by this Court's opinion in *Reese* itself, which stated that the Court ruled out the possibility that ambiguity as to vesting could be judicially inferred, *but only where the inference arises from certain specific sources:* from documentary silence, for example, or from a preexisting assumption about retiree benefits. This Court did not provide in *Reese*, nor hint, that an ambiguous contract could never be enforceably determined to have provided for vested retiree medical benefits by ascertainment of the drafter's probable intent; to the contrary, the Court effectively confirmed that it could, given the right plan language. Under *Reese*, what is needed to create ambiguity is language susceptible, as at least one interpretive possibility, of being *"reasonably read"* as providing for vesting. *Reese*, *supra*, at 765.

The court of appeals' conclusions take the Sixth Circuit's jurisprudence beyond the pale countenanced by this Court in *Reese*, swinging the pendulum in the other direction, but again entirely outside the bounds of "ordinary principles of contract interpretation."

Inc., 855 F.3d 695 (6th Cir. 2017); *Gallo v. Moen, Inc.*, 813 F.3d 265 (6th Cir. 2016); and *United Steel, Paper & Forestry, Rubber, Manufacturing, Energy, Allied Industrial & Service Workers Int'l Union v. Kelsey-Hayes Co.*, 795 F.3d 525 (6th Cir. 2015).

A. The court of appeals apparently misunderstood *Reese* to hold that a facially ambiguous contract cannot be shown by extrinsic evidence to provide for vesting of benefits, which is directly at odds with the decision of this Court in that case.

Count II of the appeal turns upon the following collection of plan language:[7]

> 19.03. Vesting/Forfeiture of Retirant Health Benefit
>
> A. Benefits Result from Bargaining Agreement
>
> A Participant … shall become vested in the post-retirement health benefit described in this Article in accordance with the terms of [the following attached document provisions]:
>
> For all PSA bargaining unit members who retire on September 1, 1996 through December 31, 2007, the Employer shall provide without cost to the bargaining unit member, the fringe benefits listed in [Section] 2 below, provided they satisfy the requirements listed in [Section] 1 below:

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[7] App. 55, 60-61. This is the language applicable to one subset (likely the largest) of the participants. Language for other subsets is substantially similar.

1. Eligibility requirements:

   a. The member is actively employed by the MEA full-time at the time of retirement.

   b. For bargaining unit members hired on or after September 1, 1992, the member is employed full-time for at least ten (10) consecutive years (which shall include any time spent on layoff and/or approved leave) after age 45 except the member shall be eligible if:

      (1) The member retires with thirty (30) or more years of service credit regardless of age, or

      (2) The member takes a disability retirement, or

      (3) The member retires at age 60 or older and has been employed for at least the previous five (5) consecutive years and was hired before September 20, 1996.

2. [Listing of specified health, dental, and other insurance benefits]

As apparently a matter of law, the court of appeals read the above combination of words and

headings as having the following effect, without any possibility of reference to extrinsic evidence:

> 19.03. Vesting/Forfeiture of Retirant Health Benefit
>
> A Participant … shall never become vested in the post-retirement health benefit described in this Article.

The court of appeals concluded, that is, that the language "shall become vested" had not "provided 'in explicit terms' that benefits vest" (App. at 11). In support of this view the court of appeals pointed to other language elsewhere in the plan document–the use of the word "eligibility" in the plan appendix, rather than "vesting," and the presence of a reservation-of-rights clause–that the court of appeals found inconsistent with vesting. The court of appeals declined to consider the possibility that, at the very least, this collection of provisions–including the phrase "shall become vested"–can be *reasonably interpreted* to have provided for vesting.

The court of appeals thus appears to have held that to provide for vested benefits a contract must be absolutely unambiguous on the face of the document: If a potential source of ambiguity about the subject can be found anywhere else in the plan, then no benefits vest, as a matter of law, no matter what words appear elsewhere. That, however, is a total misreading of this Court's authority. *Facial* ambiguity concerning vesting is to be treated just as ambiguity concerning anything else, under normal principles of contract interpretation.

There is no prohibition on relying upon an ambiguous document to vest retiree benefits, and nothing demonstrates that better than this Court's decision in *Reese*. There the Court ruled out the possibility that ambiguity as to vesting could be judicially inferred, *but only where the inference arises from certain specific sources:* from documentary silence, for example, or from a preexisting assumption about retiree benefits. The Court did not provide, nor hint, that an ambiguous contract could never be enforceably determined to have provided for vested retiree medical benefits by ascertainment of the drafter's probable intent; to the contrary, the Court effectively confirmed that it could, given the right plan language. Under *Reese*, what is needed to create ambiguity is language susceptible, as at least one interpretive possibility, of being *"reasonably read"* as providing for vesting. *Reese*, *supra*, at 765. The phrase "shall become vested" can reasonably be read to provide for vesting.

Note that a document may be simultaneously "explicit" and "ambiguous" (in the legal sense). Explicit terms may contradict each other (e.g. Provision One: "Benefits shall vest;" Provision Two: "Benefits shall not vest."). Here any ambiguity derives from the sort of source that *Reese* recognized as permissible. The words "shall become vested" are explicit.

This Court stated in *Tackett* that "[w]e interpret collective bargaining agreements, including those establishing ERISA plans, according to ordinary principles of contract law." *Tackett, supra*, at 933; *see also Reese*, *supra*, at 762; *Fletcher*, *supra*, at 221. The

court of appeals has in no sense applied "ordinary principles of contract law."[8] The court of appeals' refusal to entertain the possibility that an ambiguous contract might, by extrinsic evidence, be shown to have provided for vested benefits, is a direct rejection of ordinary principles of contract law. As with all contracts, an ambiguity on the face of an agreement concerning retiree medical benefits is to be resolved as a factual matter by reference to extrinsic evidence.[9]

In so ruling, the court of appeals apparently

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[8] In Petitioners' view, the only truly defensible reading of the excerpted provisions together would have been that the drafter intended the referenced age-and-service provisions to denote requirements the attainment of which would result in benefits being "vested." The word "eligibility" is not inconsistent with "vesting": This very plan used both terms together, to connote "vesting." App. 54. But in any case, at absolute minimum, intermixed uses of the terms "vesting" and "eligibility" create an ambiguity which, under ordinary principles of contract law, would have to be resolved by resort to extrinsic evidence. The same holds for the reservation of rights provision relied on by the court of appeals. If the same contract elsewhere provides that benefits "shall become vested," then the most that can be said is that a reservation of rights clause is inconsistent with that statement, giving rise to a facial ambiguity.) In fact, there is not even an inconsistency. "The caselaw evinces an emergent common-law rule to this effect: once an employee fulfills the service requirements,…the employer cannot abridge that right despite its aboriginal reservation of a power to effect unilateral amendments or to terminate the plan outright." *McGrath v. Rhode Island Retirement Bd.*, 88 F.3d 12, 18-19 (1st Cir. 1996).

[9] Note that the available evidence here is all to the effect that all relevant parties intended that retiree benefits were vested for participants meeting requisite age and service requirements. App. 72 (testimony of Robert Marshall).

concluded that the phrase "shall become vested" could not have created even a "reasonable interpretation" that benefits might have vested. This decision suggests the court of appeals still has not taken aboard this Court's instruction to apply, in the many ongoing cases involving vesting of retiree medical benefits, "ordinary principles of contract law."

The decision amounts to a holding that vesting can only be provided through the use of unambiguous language. This is wrong, as *Reese* directly states. The Sixth Circuit's current approach seems to change disputes about vesting from a question of applying "ordinary principles of contract law" to a conclusion that plan participants may never show vested benefits unless the relevant documents employ particular judicially prescribed words in a particular order." That is more or less the opposite of ordinary principles of contract law.

B. The decision below reflects continued confusion in applying the decisions of this Court.

The decision by the court of appeals appears to reflect an overreaction to this Court's correction, in *Tackett* and *Reese*, of the Sixth Circuit's prior use of the *Yard-Man* inferences.

A proper application of the principles described in *Tackett* and *Reese* is of singular importance, given the many situations in which the issue of retiree medical benefit vesting continues to arise.[10] The court of

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[10] See note 6, *supra*.

appeals' decision in this case illustrates how a misunderstanding of this Court's instructions now threatens to lead, ironically, to a systematic application of inferences—indeed, nearly an absolute rule—*against* vesting of benefits, no matter what the words of the governing documents say.

In summary, the court of appeals' radical departure from the "ordinary principles of contract law" upon which this Court has insisted requires a grant of certiorari, in order to put the governing authority for cases such as this back on its proper path.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Respectfully submitted,

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