No. 22-417

IN THE

Supreme Court of the United States

GARY METZGAR, RICHARD MUELLER, KEVIN REAGAN, RONALD REAGAN, CHARLES PUGLIA, SHERWOOD NOBLE, DALIEL O'CALLAGHAN,

Petitioners,

v.

U.A. PLUMBERS AND STEAMFITTERS LOCAL NO. 22 PENSION FUND, *et al*.,

Respondents.

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

One of Congress' central goals in enacting ERISA was to "mak[e] sure that if a worker has been promised a defined benefit pension upon retirement – and if he has fulfilled whatever conditions to obtain a vested benefit – he actually will receive it." *Central Laborers Pension Fund v. Heinz*, 541 U.S. 739, 743 (2004). "ERISA's anti-cutback provision is crucial to this goal." *Id*. at 744 (citing ERISA Section 204(g), 29 U.S.C. 1054(g)).

Petitioners applied for early pensions under the U.A. Plumbers & Steamfitters Local 22 Pension Fund (the "Plan"), which provides early retirement benefits for participating union members who have reached a specified threshold based on their combined age and years of service. The plan also allows participants to receive these benefits while working in employment that the plan specifies is non-disqualifying. *Ibid*. Pet. App. 3a-4a. The Plan administrator and trustees approved and paid these benefits knowing that petitioners had ceased work in employment covered by the bargaining agreement and begun working in managerial positions that the agreement specified would not disqualify participants from obtaining early pensions. Pet. App. 30a. Despite the Plan's decades-long and uniform practice of granting early retirement benefits in these circumstances, the trustees changed course in 2011, reinterpreting the Plan to prohibit participants in such circumstances from receiving such benefits. Pet. App. 21a. Shortly thereafter, the trustees adopted a written amendment to the Plan to reflect this new interpretation. Pet. App. 23a. Petitioners contend that this violates ERISA Section 204(g).

Respondents do not dispute that they changed their interpretation of the Plan or that there is a circuit conflict on whether Section 204(g) permits trustees of ERISA-governed pension plans to reduce or eliminate retirement benefits through means other than a formal written amendment, including reinterpretations. They do not dispute the applicability of ERISA Section 204(g) early retirement benefits. Nor do respondents contend that the issue raised by petitioners here is unimportant. To the contrary, the brief in opposition underscores the importance of the issue raised here to plan sponsors and participants alike.

Instead, respondents recast this anti-cutback dispute as nothing more than a typical benefit dispute. Opp. 17. They point the finger at petitioners, whose pensions they approved and paid for many years, insisting that petitioners were "double dipping" and never entitled to early pensions under the Plan. *Ibid*. Having recharacterized the dispute as a mere question of plan interpretation, respondents insist that every federal court to have addressed the issue has determined that participants may not obtain early retirement benefits while continuing to work, even in non-disqualifying employment. Opp. 18-22. Finally, respondents say the circuit conflict on the issue raised in the petition is irrelevant because ERISA's anti-cutback provision only applies to "accrued" benefits and the petitioners' early retirement benefits never accrued. *Id*. at 23-27.

None of this is correct. The dispute raised by petitioners centers on ERISA's anti-cutback provision, not on the interpretive authority of plan administrators as a general matter in deciding benefit claims. The decisions respondents cite are distinguishable and none of them hold that participants may never receive

early retirement benefits while continuing to work in positions their plans designate non-disqualifying. Furthermore, when petitioners applied for early pensions, they met the age and service requirements for these pensions and their benefits had thus accrued in exactly the same manner as in *Heinz*. Indeed, this case is entirely analogous to *Heinz* except that the cutback here was accomplished through a two-step process: the trustees first reinterpreted the Plan to preclude the early pension benefits that were previously allowed and then formally amended the Plan to reflect this change. There is disagreement in the circuits as to whether such a reinterpretation constitutes an impermissible cutback under ERISA. That is the exceptionally important issue presented here.

ARGUMENT

I. THE DECISIONS CITED BY RESPONDENTS DO NOT ESTABLISH THAT RESPONDENTS DID NOT VIOLATE ERISA'S ANTI-CUTBACK RULE

Respondents assert that petitioners' position is "that an employee can continue working without separation and receive early retirement benefits." Opp. 18. This position, they say, "has been rejected by every court which has addressed the issue." *Ibid*. But the question here is whether plan participants who separate from employment in positions covered by their collective-bargaining agreements can continue to work in positions that their plan expressly denominates non-disqualifying. If the answer is no, it is hard to understand the point of plan provisions specifying what work will disqualify employees from receiving benefits and what work will not.

More fundamentally, no other federal court aside from the Second Circuit in this case has held that Section 204(g) permits a change in interpretation to cut off previously awarded early retirement benefits to participants. And none have said that early retirement benefits are categorically prohibited, regardless of plan terms, when employees are working in non-disqualifying employment.

First, respondents point to an unpublished district court decision they claim is "almost identical to the present dispute." Opp. 18 (citing *Meakin v. California Field Ironworkers Pension Trust*, No. 5:16-cv-07195-EJD, 2018 WL 4050009 (N.D. Cal. Jan. 12, 2018), *aff'd*, 774 Fed. App'x 1036 (2019)). In fact, *Meakin* is distinguishable because the plan there required early pension applicants to "*withdraw completely and refrain from any employment or activity in the building and construction industry*." *Id*. at *2 (emphasis added by the court). After the plan trustees determined that they needed to enforce this provision, they stopped paying Mr. Meakin's early retirement benefits, telling him that he did not actually meet the express requirements for the benefits because he never stopped working in the construction industry. Mr. Meakin did not assert an illegal cutback under Section 204(g), but instead sued for benefits under ERISA Section 502(a)(1)(B), 29 U.S.C. 1132(a)(1)(B). *Id*. at *3. The court reviewed the trustees' benefit determination and concluded that they did not abuse their discretion in denying continued benefits under the express terms of that very different plan. *Id.* at *8.

The other cases respondents cite are likewise distinguishable. In *Aracich v. Board of Trustees of Employee Benefit Funds of Heat & Frost Insulators Local 12*, --- F. Supp. 3d ---, 2022 WL 4357966 (S.D.N.Y. 2022), the business manager of the union

sponsoring a defined benefit pension plan in which he participated left that position to become president of the Building and Construction Trades Council of Nassau and Suffolk Counties. *Id*. at *1-*2. When the council stopped contributing to the plan and terminated its participation, Mr. Aracich applied for early pension benefits. *Id*. at *2. The trustees denied his claim. *Ibid*. Mr. Aracich sued for plan benefits, *id*. at *3, but he did not make an anti-cutback claim, presumably because he had never been granted benefits and had no claim that the trustees previously granted benefits to any other participants in such circumstances. Applying a highly deferential standard of review to the very specific facts of the case, the court concluded that the term "retire" in the plan was "ambiguous, and that the Trustees' interpretation that plaintiff did not 'retire' on [the date on which he claimed] was not arbitrary and capricious," particularly when considered in light of the applicable summary plan description. *Id*. at *4-*5.

Like the plaintiffs in *Meakin* and *Aracich*, the plaintiff in *Maltese v. National Roofing Industry*, No. 5:16CV11, 2016 WL 7191798 (N.D.W. Va. Dec. 12, 2016), did not claim that trustees of his plan illegally cut back his early retirement benefits in violation of Section 204(g). Instead, he asserted a claim for benefits and an equitable estoppel claim. *Id*. at *2-*6. More importantly, the terms of the National Roofing Industry plan were quite different than the terms of the Plan at issue in this case. Similar to the plan in *Meakin*, the plan in *Maltese* defined retirement as "complete withdrawal from further employment in work in the jurisdiction of the Plan * * * for a period of 30 days or more." *Id*. at *2. Interpreting this and other plan language, the court concluded that the trustees reasonably interpreted the plan to require that Mr.

Maltese cease all work in his industry and geographic area for 30 days before returning to work in non-covered employment in order to be entitled to an early pension. In other words, the *Maltese* court simply decided a benefit claim based on that plan's particular and distinguishable language.

In *Chavis v. Plumbers & Steamfitters Local 486 Pension Plan*, No. ELH-17-2729, 2020 WL 150379 (D. Md. Mar. 27, 2020), the court applied de novo review to interpret three interlocking plan provisions defining "Unauthorized Employment," "Hours of Service," and "Covered Employment." It determined that the plan was ambiguous as to whether the plaintiffs engaged in unauthorized employment and were entitled to early retirement benefits while working for the same employer, albeit in a different position. *Id*. at *27-*31. The court concluded that payment of early retirement benefits to the plaintiffs was prohibited. *Id*. at *32. Again, the court's conclusion turned on its lengthy analysis of that plan's particular provisions.

Finally, the cited state court decision is even farther afield. In *Meckes v. Cina*, 75 A.D. 2d 470, 471 (4th Dept. 1980), *aff'd*, 54 N.Y. 2d 894 (1981), the question was whether a plan provision for a lump sum payment of benefits to "(a)n Employee whose employment with an Employer is terminated" permitted payment of the lump sum benefit to a plan participant who continued to work for his employer in a non-union position. Not surprisingly, the court found reasonable the trustees' interpretation that it did not. *Id*. at 474.

Thus, contrary to the suggestion of respondents, the cited cases do not demonstrate that the issue presented here is a simple matter of plan interpretation on which

the federal courts are in accord. But cases like *Aracich* and *Chavis*, which cite the other recent decisions, including *Metzgar*, do demonstrate the increasing frequency with which questions about early retirement benefits for working participants are likely to arise. And they illustrate the continuing desire of trustees of collectively-bargained plans to limit the availability of early pensions that have been promised, ostensibly for fear of losing their tax-qualified status, but perhaps also in an attempt to reduce the liabilities and improve the funding status of such plans. The Second Circuit's decision in *Metzgar* gives them a roadmap for how to do so even where employees, as in *Heinz*, have retired in justifiable reliance on those promises.

II. PETITIONERS' EARLY RETIREMENT BENEFITS WERE ACCRUED BENEFITS

Respondents acknowledge, as they must, that there is a circuit split concerning whether Section 204(g) prohibits a change in interpretation of plan terms that results in the elimination or reduction of an accrued benefit. They claim, however, that this disagreement in the circuits is irrelevant because no early pension benefits had accrued to petitioners. Again, respondents are mistaken.

Unfortunately, ERISA itself defines "accrued benefit" in a circular fashion to mean "in the case of a defined benefit plan., the individual's accrued benefit determined under the plan." 29 U.S.C. 1002(23). Despite this lack of definitional clarity, this Court in *Heinz* understood "benefit accrual" to simply mean "the rate at which an employee earns benefits to put in his pension account," *id*. at 749, and concluded that the right to work under specified circumstances while receiving an early retirement benefit is an accrued benefit. *Id*. at 739-40. So too, it is clear that

"a standard retirement benefit provided exclusively upon the satisfaction of certain age and/or service requirements, is an accrued benefit." *Bellas v. CBS, Inc.* 221 F.3d 517, 524 (3d Cir. 2000) (citing cases). Thus, where participants are already receiving early retirement benefits when a plan is amended to add new or different requirements for receiving these benefits, there can be "no question that the benefits * * * are 'attributable to service before the amendment'" and have thus accrued. *Heinz v. Cent. Laborers' Pension Fund*, 303 F.3d 802, 805 (7th Cir. 2002), *aff'd*, 541 U.S. 739 (2004).

The decisions that respondents cite for their contrary proposition are all distinguishable and do not support that petitioners' early retirement benefits had not accrued even years after they began receiving them. First, as explained above, *Meakin* is distinguishable both because Mr. Meakin did not make a claim under the anti-cutback provision, but even more significantly because the plan at issue in that case always contained express language requiring that an applicant for early retirement benefits *"withdraw completely and refrain from any employment or activity in the building and construction industry." Meakin*, 2018 WL 4050009, at * 2 (emphasis added by court). As the Ninth Circuit recognized, it was this language that distinguished *Meakin* from *Heinz*, 774 F. App'x at 1039, and it is what distinguishes *Meakin* from this case.

The Seventh Circuit's decision in *Wetzler v. Illinois CPA Society*, 556 F.3d 1053, 1056 (7th Cir. 2009), involved a plan amendment made two years before the participant made a claim for a lump sum payout, not long after benefits had been awarded. In *Hunter v. Caliber Systems, Inc.*, 220 F.3d 702, 712-17 (6th Cir.

2000), the court merely interpreted the relevant language of the pre-amendment plan at the time the administrator denied plaintiffs' request for a lump sum distribution, agreeing with the administrator that this language did not allow for such a distribution. In *Herman v. Central States, Southeast & Southwest Areas Pension Fund*, 423 F.3d 684, 691-92 (7th Cir. 2005), the question was whether the plan could recoup an overpayment where both the pre-amendment and post-amendment plan expressly permitted recovery.

The two district court decisions are also distinguishable and do little to advance respondents' argument that petitioners' benefits had never accrued simply because the trustees decided, long after the benefits had been awarded, that they never should have been. In *Sims v. American Postal Workers Accident Benefit Association*, No. 12-cv-91-PB, 2013 WL 4677723, *6 (D.N.H. Aug. 30, 2013), *aff'd*, No. 13-2246 (1st Cir. Aug 6, 2014), the plan refused to annualize the participant's wages in calculating the amount of his benefit and the court concluded that this was correct based on the "clear and unambiguous" plan language, past practices by the plan notwithstanding.

Finally, the dispute in *Shopmen's Local Union No. 527 Pension v. T. Bruce Sales, Inc.*, No. 06-545, 2007 WL 649277 (W.D. Pa. Feb. 6, 2007), primarily involved a claim by a union and union member that a plan amendment requiring separation from service in order to obtain an early pension was a scrivener's error, and that application of that provision amounted to an improper cutback. The court, however, disagreed. It concluded that applying the plan as written was not a cutback and that plaintiffs did "not aver that the allegedly curtailed benefits were due Plaintiff Employee

from the Plan, or pursuant to Plan Documents." *Id*. at *4-*5. Thus, none of the cited cases establishes or supports that petitioners' early retirement benefits in this case had not accrued at the time of the trustees' reinterpretation in 2011.

By respondents' logic, an early retirement benefit could never accrue because the trustees are always free to reinterpret the plan to retroactively impose new requirements. This understanding would allow a virtually unfettered run-around of ERISA's anti-cutback provision and this Court's *Heinz* decision interpreting that provision. Pet. 26.

It is worth repeating that the salient facts of this case are closely analogous to *Heinz*. In *Heinz*, a multiemployer defined benefit plan provided for an unreduced early retirement benefit before normal retirement age for union employees in the construction industry with sufficient years of service, provided the employees did not continue or return to work in specified categories of "disqualifying employment." 541 U.S. at 741-42. Because the plan did not exclude work in a supervisory capacity at the time petitioners elected early pensions, they were able to receive these benefits despite returning to work for contributing employers as supervisors. *Ibid*. However, two years later, the plan trustees, relying on a tax provision, amended the plan to exclude all work in the construction industry, including in a supervisory capacity. *Id.* at 742 & n.1. As here, the fund asserted that the change "was necessary to curb the practice of 'double dipping,'" a contention that the Seventh Circuit rejected because the plaintiffs were already precluded pre-amendment from returning to covered work and thus accruing additional benefits. *Heinz*, 303 F.3d at n. 6. The fund argued that the amendment had not reduced

or eliminated an accrued benefit for the petitioners but had only suspended the periodic payment of that benefit. 541 U.S. at 745. The fund also argued that a provision of the Internal Revenue Code, 26 U.S.C. 203(a)(3)(B), supported its position. *Id*. at 748-49.

This Court rejected the fund's "technical" arguments in favor of a "common sense" approach. 541 U.S. at 744, 745-50. The Court concluded that "[a] participant's benefits cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit 'reduces' the benefit just as surely as a decrease in the size of the monthly benefit payment." 541 U.S. at 744 (internal quotation marks and citation omitted).

The same reasoning applies with equal force here. When petitioners first applied for and received early retirement benefits, and for many years before and after that time, the Plan had been "administered with the understanding that participants did not have to completely stop working for a covered employer" in order to receive those benefits, they only had to stop working in covered employment. Pet. App. 3a. Then in 2011, the trustees reinterpreted the Plan to condition receipt of early retirement benefits on a new requirement – that participants sever their employment with employers that contribute to the Plan and have no intent of returning to employment. Pet. App. 4a. As in *Heinz*, "common sense" here dictates that the critical prohibition on cutbacks in Section 204(g) be read to prohibit plan changes like this accomplished through such a reinterpretation of plan terms, just as surely as it prohibits a written amendment doing the same.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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