No. _____

In The
Supreme Court of the United States

TRANSERVICE LOGISTICS, INC., et al.,

Petitioners,

v.

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND, 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

DANIEL R. SALEMI
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, IL 60606

MICHAEL E. KENNEALLY
Counsel of Record
AMANDA L. SALZ
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 739-3000
michael.kenneally@morganlewis.com

Counsel for Petitioners

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Collective bargaining agreements often have provisions known as "evergreen" clauses, which automatically extend the agreement for a fixed period if no party gives timely written notice that it wants the agreement to end. The question presented is:

Whether a notice of termination for a collective bargaining agreement must contain a clear statement of an intent to terminate the agreement, as the Sixth and Seventh Circuits hold, or must contain specific wording only when the agreement requires it, as the First and Third Circuits and National Labor Relations Board hold.

PARTIES TO THE PROCEEDING

Petitioners Transervice Logistics, Inc. and Zenith Logistics, Inc. were defendants in the district court and appellees in the court of appeals.

Respondents Central States, Southeast and Southwest Areas Pension Fund and Charles A. Whobrey, as Trustee, were plaintiffs in the district court and appellants in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Transervice Logistics, Inc. is a wholly owned subsidiary of parent companies Transervice Acquisition Corp., Transervice Holdings, Inc., and Transervice Logistics LLC. No publicly held company owns 10% or more of the stock of Transervice Logistics, Inc.

Zenith Logistics, Inc. has no parent company and no publicly held company owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (N.D. Ill.):

Central States, Se. & Sw. Areas Pension Fund v. *Transervice Logistics, Inc.*, No. 20-cv-4610 (Nov. 17, 2020)

Central States, Se. & Sw. Areas Pension Fund v. *Zenith Logistics, Inc.*, No. 20-cv-4611 (Nov. 17, 2020)

RELATED PROCEEDINGS—Continued

United States Court of Appeals (7th Cir.):

Central States, Se. & Sw. Areas Pension Fund v. *Transervice Logistics, Inc.*, No. 20-3437 (Dec. 22, 2022)

Central States, Se. & Sw. Areas Pension Fund v. *Zenith Logistics, Inc.*, No. 20-3438 (Dec. 22, 2022)

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
CORPORATE DISCLOSURE STATEMENT	ii
RELATED PROCEEDINGS	ii
TABLE OF CONTENTS	iv
TABLE OF AUTHORITIES	vi
INTRODUCTION	1
OPINIONS BELOW	4
JURISDICTION	5
STATUTORY PROVISIONS INVOLVED	5
STATEMENT	5
A. Factual Background	5
B. Procedural History	8
REASONS FOR GRANTING THE PETITION	11
A. The Sixth And Seventh Circuits' Strict Clear-Statement Rule Conflicts With The Contract-Based Approach Of Other Circuits And The NLRB	12
B. The Sixth And Seventh Circuits' Policy-Driven Approach Contradicts This Court's Precedent	23
C. The Currently Diverging Standards Are Unworkable And Require Immediate Review	28
CONCLUSION	32

TABLE OF CONTENTS—Continued

Page

APPENDIX

APPENDIX A—Court of Appeals Opinion filed December 22, 2022 ..... 1a

APPENDIX B—District Court Memorandum Opinion and Order filed November 17, 2020 ..... 28a

APPENDIX C—Statutes

29 U.S.C. 158(a)(5), (b)(3), (d) 38a
29 U.S.C. 1132(g)(2) 41a
29 U.S.C. 1144(d) 42a
29 U.S.C. 1145 ..... 43a

TABLE OF AUTHORITIES

Page

CASES

Bakery, Confectionery, Tobacco Workers & Grain Millers Int'l Union, 372 N.L.R.B. No. 17, 2022 WL 17820772 (Dec. 6, 2022) 2, 15, 19, 21, 28

Bridgestone/Firestone, Inc., 331 N.L.R.B. 205 (2000) 20

C&S Indus., Inc., 158 N.L.R.B. 454 (1966) 29

Cent. States, Se. & Sw. Areas Pension Fund v. *Crandell Bros. Trucking Co.*, No. 20-cv-5284, 2023 WL 1818559 (N.D. Ill. Feb. 8, 2023) 30

Cent. States, Se. & Sw. Areas Pension Fund v. *Gerber Truck Serv., Inc.*, 870 F.2d 1148 (7th Cir. 1989) 13, 25

Cent. States, Se. & Sw. Areas Pension Fund v. *IVM, Inc.*, No. 17-cv-1770, 2020 WL 777266 (N.D. Ill. Feb. 18, 2020) 30

Cent. States, Se. & Sw. Areas Pension Fund v. *Rail Terminal Servs. LLC*, No. 18-cv-2372, 2019 WL 2326002 (N.D. Ill. May 31, 2019) 30

Cent. States, Se. & Sw. Areas Pension Fund v. *Standard Elec. Co.*, 87 F. Supp. 3d 810 (N.D. Ill. 2015) 30

Cent. States, Se. & Sw. Areas Pension Fund v. *Wingra Redi-Mix, Inc.*, No. 12-cv-4084, 2016 WL 1555579 (N.D. Ill. Apr. 18, 2016) 30

Champaign Cnty. Contractors Ass'n, 210 N.L.R.B. 467 (1974) 15, 21, 29

TABLE OF AUTHORITIES—Continued

Page

CNH Indus. N.V. v. *Reese*, 138 S. Ct. 761 (2018) 3, 23, 24, 25, 27

Crowley's Milk Co., 79 N.L.R.B. 602 (1948) 21, 22

Deluxe Metal Furniture Co., 121 N.L.R.B. 995 (1958) 28

First Nat'l Maint. Corp. v. *NLRB*, 452 U.S. 666 (1981) 23

Granite Constr. Co., 330 N.L.R.B. 205 (1999).....29

Great Bear Logging Co., 59 N.L.R.B. 701 (1944) 20

Haas Elec., Inc. v. *NLRB*, 299 F.3d 23 (1st Cir. 2002) 14, 31

Int'l Ass'n of Machinists & Aerospace Workers of Am., Loc. Lodge S-76, No. 4-CB-10259, 2009 WL 2902722 (N.L.R.B. Div. of Judges Sept. 9, 2009) 16

Kaufman & Broad Home Sys., Inc. v. *Int'l Bhd. of Firemen & Oilers*, 607 F.2d 1104 (5th Cir. 1979) 24

La. Bricklayers & Trowel Trades Pension Fund & Welfare Fund v. *Alfred Miller Gen. Masonry Contracting Co.*, 157 F.3d 404 (5th Cir. 1998) 17

Laborers Health & Welfare Tr. Fund v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539 (1988) 8

Laborers Pension Tr. Fund v. *Interior Exterior Specialists Constr. Grp., Inc.*, 394 F. App'x 285 (6th Cir. 2010).....22

TABLE OF AUTHORITIES—Continued

Page

Leonard Wholesale Meats, 136 N.L.R.B. 1000 (1962) 29

Litton Fin. Printing Div., Litton Bus. Sys., Inc. v. *NLRB*, 501 U.S. 190 (1991) 23, 26-28

Loc. No. 6-0682, Paper, Allied-Indus. Chem. & Energy Workers Int'l Union, 339 N.L.R.B. 291 (2003) 15

M&G Polymers USA, LLC v. *Tackett*, 574 U.S. 427 (2015) 3, 4, 23-25, 27

Moore v. *Rohm & Haas Co.*, 446 F.3d 643 (6th Cir. 2006) 31

N.J. Esso Emps. Ass'n, 275 N.L.R.B. 216 (1985) 19, 26

New England Carpenters Cent. Collection Agency v. *Labonte Drywall Co.*, 795 F.3d 271 (1st Cir. 2015) 2, 14, 16-19, 21

NLRB v. *Crowley's Milk Co.*, 208 F.2d 444 (3d Cir. 1953) 20

NLRB v. *Lion Oil Co.*, 352 U.S. 282 (1957) 26

NLRB v. *SW Gen., Inc.*, 580 U.S. 288 (2017) 25

Nolde Bros. v. *Bakery Workers*, 430 U.S. 243 (1977) 26, 27

Oakland Press Co., 229 N.L.R.B. 476 (1977), *enforced in relevant part*, 606 F.2d 689 (6th Cir. 1979) 15

Operating Eng'rs Loc. 139 Health Benefit Fund v. *Gustafson Constr. Corp.*, 258 F.3d 645 (7th Cir. 2001) 26

TABLE OF AUTHORITIES—Continued

Page

Orrand v. *Scassa Asphalt, Inc.*, 794 F.3d 556 (6th Cir. 2015) 3, 10, 13, 25

Paterson Parchment Paper Co. v. *Int'l Bhd. of Paper Makers*, 191 F.2d 252 (3d Cir. 1951) 2, 14, 15, 28, 29

Plumbers & Pipefitters Loc. Union No. 572 Health & Welfare Fund v. *A&H Mech. Contractors, Inc.*, 100 F. App'x 396 (6th Cir. 2004) 13

S. Tex. Chapter, Associated Gen. Contractors, 190 N.L.R.B. 383 (1971) 19, 20, 29

Smith v. *Evening News Ass'n*, 371 U.S. 195 (1962) 4, 31

Teamsters v. *Lucas Flour Co.*, 369 U.S. 95 (1962) 29, 31

Textile Workers v. *Lincoln Mills of Ala.*, 353 U.S. 448 (1957) 4

STATUTES

28 U.S.C. 1254 5

Employee Retirement Income Security Act 1, 3, 4, 8-10, 13, 14, 22, 25, 28, 30
29 U.S.C. 1132 ..... 8, 30
29 U.S.C. 1144 25
29 U.S.C. 1145 ..... 3, 8, 25

Labor Management Relations Act 28, 31
29 U.S.C. 185 31

National Labor Relations Act..... 7, 26, 28, 30
29 U.S.C. 158 ..... 7, 26, 29
29 U.S.C. 160 30

TABLE OF AUTHORITIES—Continued

Page

RULES

29 C.F.R. 1402.1 7

OTHER AUTHORITIES

Black's Law Dictionary (11th ed. 2019) 27

Garner's Dictionary of Legal Usage (3d ed. 2011).....27

Nat'l Lab. & Emp. Comm. of the Nat'l Lawyers Guild, *Employee and Union Member Guide to Labor Law* (Nov. 2022) 20

Webster's New International Dictionary of the English Language (2d ed. 1953) 27

Williston on Contracts (Richard A. Lord ed., 4th ed. 2012) 24

INTRODUCTION

When a collective bargaining agreement has an "evergreen" clause, its term extends for a specified time if no party gives notice that it wants to prevent the extension. The validity of such a notice, in turn, can have a host of significant consequences. It can determine whether a union may strike in support of better contract terms. It can determine whether a union or employer must entertain proposed contract changes. And, as in this case, it can determine whether an employer may stop contributing to the employee benefit fund chosen by the old agreement.

In November 2018, petitioners received letters that they understood as notices that their union was terminating the parties' existing collective bargaining agreements. The union's letters announced that the agreements were expiring at the end of January 2019 and that the union wanted to meet to negotiate new agreements. The parties then negotiated and signed new agreements to take effect as of February 2019. These new agreements withdrew petitioners from the parties' previously selected pension fund and committed petitioners to a different fund. Petitioners immediately started contributing to the new fund and notified their old fund that the old agreements, and old contribution obligations, had expired.

Rather than accept that result, the old fund and its trustee—respondents—sued petitioners under the Employee Retirement Income Security Act ("ERISA"). They contended that the union's notices had failed to

terminate the old contracts because they lacked the magic words that respondents claim are necessary. It made no difference, respondents argued, that the union and employers intended and understood that the old agreements had ended. The district court disagreed and dismissed respondents' claims. It held that the notices terminated the agreements by conveying the union's unequivocal intent to end the existing agreements and replace them with new ones.

The district court's decision tracked the standard applied by most courts and the National Labor Relations Board ("NLRB") to determine when an evergreen-clause notice is effective. For example, the First Circuit rejects respondents' view that a notice must use magic words like "terminate" even when the agreement's evergreen clause "does not require any specific terminology to be effective." *New England Carpenters Cent. Collection Agency* v. *Labonte Drywall Co.*, 795 F.3d 271, 278 (1st Cir. 2015) (citation omitted). The Third Circuit similarly treats notice of a desire to negotiate new contract terms pursuant to an evergreen clause as adequate notice of termination. *Paterson Parchment Paper Co.* v. *Int'l Bhd. of Paper Makers*, 191 F.2d 252, 253-254 (3d Cir. 1951). And the NLRB takes the same flexible approach, requiring only "that the notice convey the essential message that a party intends to modify or terminate a contract." *Bakery, Confectionery, Tobacco Workers & Grain Millers Int'l Union*, 372 N.L.R.B. No. 17, 2022 WL 17820772, at *6 (Dec. 6, 2022).

But the Seventh Circuit took a different tack and reversed the dismissal of respondents' claims. It sided with the Sixth Circuit in drawing fine distinctions based on a notice's specific wording. Here, saying that each contract was *expiring* supposedly did not mean it was *terminating*. And demanding a *new* agreement supposedly did not convey a decision to *end* the old one. On this view, a termination notice must expressly convey the sender's intent to "terminate" an agreement, and "anything short of a clear expression of such intent fails to qualify." App., *infra*, 10a; see also *Orrand* v. *Scassa Asphalt, Inc.*, 794 F.3d 556, 564 (6th Cir. 2015) ("A notice to terminate must be clear and explicit." (citation omitted)).

The difference in approach stems from the Sixth and Seventh Circuits' views on public policy and legislative history. The court below stressed that Congress intended for the ERISA cause of action here, 29 U.S.C. 1145, "to protect multiemployer benefit funds." App., *infra*, 9a. The court defended its "[s]trict" clear-statement rule because it "protect[s] funds and employee pensions against strategic attempts to evade an evergreen clause." *Id.* at 17a; see also *Orrand*, 794 F.3d at 563 ("Congress chose to give the Funds 'the upper hand' in * * * collection litigation[.]" (citation omitted)).

But this Court has repeatedly explained that ERISA does not justify "a thumb on the scale" for employee benefits when courts interpret collective bargaining agreements. *M&G Polymers USA, LLC* v. *Tackett*, 574 U.S. 427, 438 (2015); see also *CNH Indus.*

N.V. v. *Reese*, 138 S. Ct. 761, 763 (2018) (per curiam). Even when dealing with ERISA benefits, the substantive federal law that governs collective bargaining agreements requires courts to follow ordinary principles of contract law. *Tackett*, 574 U.S. at 435 (citing *Textile Workers* v. *Lincoln Mills of Ala.*, 353 U.S. 448, 456-457 (1957)). Here, those principles foreclose unwritten magic-words requirements and favor the contracting parties' own practical construction of their agreement.

Whether evergreen-clause notices must use magic words is a fundamental and pervasive issue of federal labor law. Unions, employers, and third parties cannot possibly understand their rights and obligations if they cannot even know which agreement governs. But currently, determining whether a notice has successfully ended a contract depends on who is being asked. Such inconsistency thwarts "the congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Smith* v. *Evening News Ass'n*, 371 U.S. 195, 200 (1962). The Court should bring uniformity to this important issue, and this case is an ideal vehicle to do so.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-27a) is reported at 56 F.4th 516. The opinion of the district court (App., *infra*, 28a-37a) is not published in

the *Federal Supplement* but is available at 2020 WL 6747027.

JURISDICTION

The judgment of the court of appeals was entered on December 22, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this petition. App., *infra*, 38a-43a.

STATEMENT

A. Factual Background

Petitioners are Transervice Logistics, Inc. and Zenith Logistics, Inc., two trucking logistics companies. App., *infra*, 4a. Some of their employees are represented by a Teamsters affiliate, General Drivers, Warehousemen & Helpers Local Union No. 89 ("Union"), and work at a distribution center operated by The Kroger Co. in Louisville, Kentucky. See *ibid.*; C.A. App. 24, 34.

Petitioners each signed a collective bargaining agreement with the Union in 2013. App., *infra*, 4a. During the life of those contracts, petitioners agreed

to make pension contributions to respondent Central States, Southeast and Southwest Areas Pension Fund ("Fund"). *Ibid.*

The 2013 agreements had identical termination provisions. They created a six-year initial term, which automatically extended in one-year increments if no party conveyed timely notice of an intent to terminate:

> This Agreement shall be effective as of February 1, 2013 and shall expire January 31, 2019; provided, however, that if neither party gives the other party written notice sixty (60) days prior to the said expiration date of such parties [*sic*] intention to terminate this Agreement, said Agreement shall continue for another year and from year to year thereafter, subject to sixty (60) days' notice of termination prior to any succeeding termination date.

App., *infra*, 5a.

On November 6, 2018, over sixty days before the contracts' stated expiration date, the Union sent both petitioners materially identical letters. The letter to Transervice, for instance, stated in full:

> **CONTRACT EXPIRATION: 1/31/2019**
>
> Ladies & Gentlemen:
>
> Your present contract with General Drivers, Warehousemen, and Helpers, Local Union No. 89, expires as noted above.

> It is our desire to meet with you at any early date for the purpose of negotiating a new contract.
>
> We trust the forthcoming negotiations will result in an agreement that will be fair and just too [*sic*] all parties involved and that a better spirit of harmony and cooperation will be derived there from [*sic*].

App., *infra*, 5a-6a; C.A. App. 63. The only difference in Zenith's letter is that the stated expiration date was February 1, not January 31. C.A. App. 66.

Included with each letter was a copy of Form F-7. C.A. App. 65, 68. Form F-7 is a standardized form issued by the Federal Mediation and Conciliation Service, which a party must submit under the National Labor Relations Act when it wants to terminate or modify an existing collective bargaining agreement. See 29 U.S.C. 158(d)(3); 29 C.F.R. 1402.1. The form states at the top, "You are hereby notified that written notice of proposed termination or modification of the existing collective bargaining contract was served upon the other party to this contract and that no agreement has been reached." C.A. App. 65, 68.

Over the next two and a half months, the parties negotiated new collective bargaining agreements that purported to take effect on February 1, 2019—immediately upon the stated expiration of the two prior contracts. App., *infra*, 6a. These agreements no longer required petitioners to make contributions to

the Fund. See *ibid.* The agreements instead selected an alternative pension plan. *Ibid.*

The employers wrote the Fund on January 30, 2019 to say that the old contracts were expiring the next day and that the new contracts would take effect on February 1. C.A. App. 69, 77. These letters enclosed the new agreements and explained that they withdrew petitioners from the Fund as of January 31. *Ibid.* The Fund received Transervice's letter on February 1 and received Zenith's letter a few days later. *Id.* at 8, 18, 69, 77.

B. Procedural History

Once petitioners started contributing to the new pension plan, the Fund and one of its trustees filed two ERISA actions for unpaid contributions. App., *infra*, 7a. ERISA creates a statutory duty to contribute to a multiemployer plan when an employer has a contractual obligation to do so. 29 U.S.C. 1145. And it provides a private cause of action to enforce this duty, with mandatory remedies of prejudgment interest, liquidated damages, attorney's fees, and costs. 29 U.S.C. 1132(g)(2); see, *e.g.*, *Laborers Health & Welfare Tr. Fund* v. *Advanced Lightweight Concrete Co.*, 484 U.S. 539, 545-549 (1988).

The district court granted petitioners' motions to dismiss. App., *infra*, 28a-37a. It found that the Union's letters provided "unequivocal, timely notice of its intent to terminate" the prior agreements. *Id.* at 37a. The letters described the agreements' impending

expiration and expressed the Union's desire to soon meet to negotiate "new" contracts. *Id.* at 35a. This message showed a desire to end the prior contracts, the district court reasoned, because there could be no new contracts without the termination of the old ones and because there was no suggestion of an intent to "continue the current contract past its expiration date." *Ibid.* The court also stressed that the letters' "effect" was that the contracting parties did negotiate and sign new agreements within the sixty-day notice period. *Ibid.* So "[w]hile the Union did not use the word 'terminate,' the only reasonable reading of its letter is that it was conveying an intent to terminate." *Id.* at 35a-36a.

The Seventh Circuit reversed. App., *infra*, 1a-27a. In its view, courts must "strictly interpret and enforce communications relied upon to terminate collective bargaining agreements subject to evergreen clauses." *Id.* at 8a-9a. It began its analysis by discussing ERISA's goal of protecting employee benefits. *Id.* at 9a. Relying on its own precedent, which in turn relied on the statute's legislative history, the court reasoned that when employee benefit plans are third-party beneficiaries of collective bargaining agreements, they can sidestep many traditional contract-law and labor-law defenses. *Id.* at 9a-10a. Against that backdrop, the court held that "anything short of a clear expression" of an intent to terminate is insufficient. *Id.* at 10a.

The court of appeals then turned to the Union's two letters. It construed those letters as merely

expressing a "hope[]" for new agreements. App., *infra*, 14a. Though the letters referred to upcoming expiration dates, the court believed that expiration did not imply termination: "A collective bargaining agreement can 'expire' without 'terminating.'" *Id.* at 15a. Strictly enforcing such distinctions "promotes stability," according to the court, "by protecting funds and employee pensions against strategic attempts to evade an evergreen clause." *Id.* at 17a. While the court insisted it was "not (quite) saying that the phrase 'we intend to terminate' was required," it nonetheless held that "the intention to terminate must be unequivocal and unmistakable." *Ibid.* And, echoing the Sixth Circuit in *Orrand*, the court distinguished the Union's desire to renegotiate from a desire to terminate. *Id.* at 19a-21a.

Finally, the Seventh Circuit ignored the contracting parties' post-letter actions as impermissible extrinsic evidence. App., *infra*, 22a-25a. The court said such extrinsic evidence "could not cure the letters' silence about termination." *Id.* at 22a. Returning to the supposed legislative intent behind the ERISA contribution provisions, the court prohibited "[l]ooking to extrinsic evidence" because that would supposedly harm pension funds. *Id.* at 23a. In categorically barring extrinsic evidence, the court deliberately adopted a stricter rule than prior cases from the Seventh Circuit and other circuits. *Id.* at 23a-24a & n.5.

REASONS FOR GRANTING THE PETITION

The Seventh Circuit adopted a strict clear-statement rule for evergreen-clause notices that conflicts with the standard of other circuits and the NLRB. Under their view, special termination requirements apply only if the agreements require them. The Seventh Circuit's contrary approach, which the Sixth Circuit shares, violates this Court's precedent by departing from ordinary contract principles to favor employee benefit plans.

The result is intolerable unpredictability for the countless unions and employers who need to understand their rights and duties under collective bargaining agreements. This Court has long underscored the strong need for certainty and uniformity over the meaning of collective bargaining agreements. Such concerns have even greater force for the *duration* of an agreement, so parties at least know whether Contract A or Contract B applies at a given moment. And on top of unpredictability is the opportunity for forum shopping. Litigants in evergreen-clause disputes often have great leeway to choose where to file suit and will gravitate to the forum whose approach serves their current argument. The Court should resolve this important conflict and restore uniformity to this area of federal law.

A. The Sixth And Seventh Circuits' Strict Clear-Statement Rule Conflicts With The Contract-Based Approach Of Other Circuits And The NLRB

1. The Seventh Circuit styled its approach to evergreen-clause notices as a "strict" one. Under this approach, "[w]hen an evergreen clause provides that termination will occur upon timely notice of intention to terminate, as in this case, anything short of a *clear expression* of such intent fails to qualify as effective termination notice under the terms of the evergreen clause." App., *infra*, 10a (emphasis added). "[T]he intention to terminate must be unequivocal and unmistakable." *Id.* at 17a.

Here, the notices' failure to "mention termination" prevented them from counting as termination notices. App., *infra*, 3a. Though the notices announced that the agreements would be expiring at the end of January 2019, the Seventh Circuit distinguished *expiration* from *termination* and ruled that an "agreement can 'expire' without 'terminating.'" *Id.* at 15a-16a. The court also distinguished renegotiation from termination on the theory that a party might want to start negotiating but retain the existing agreement for another year because negotiations could drag on or fail. *Id.* at 18a-19a. If the Union wanted to terminate, it "had to make clear in November 2018 that it intended to terminate the existing agreements *regardless of the outcome of the requested negotiations*." *Id.* at 22a (emphasis in original).

The Seventh Circuit's strict approach tracks the Sixth Circuit's. In *Orrand*, which the court below discussed extensively, the Sixth Circuit enforced a similar rule that a "notice to terminate must be *clear and explicit*," and recognized its own distinction between contract *modification* and contract *termination*. 794 F.3d at 564 (citation omitted; emphasis added).

Both courts leaned heavily on their view of ERISA's purpose and legislative history. The statute's cause of action for delinquent contributions supposedly requires that litigation not be "unnecessarily cumbersome and costly" for benefit funds, or hindered by "understandings or defenses applicable to the original parties" to the agreement. App., *infra*, 10a (quoting *Cent. States, Se. & Sw. Areas Pension Fund* v. *Gerber Truck Serv., Inc.*, 870 F.2d 1148, 1149, 1153 (7th Cir. 1989) (en banc)); see also *Orrand*, 794 F.3d at 562-563; *Plumbers & Pipefitters Loc. Union No. 572 Health & Welfare Fund* v. *A&H Mech. Contractors, Inc.*, 100 F. App'x 396, 402 (6th Cir. 2004). The Sixth and Seventh Circuits put particular weight on a House floor statement by Representative Thompson, who discussed challenges facing multiemployer benefit plans. See, *e.g.*, App., *infra*, 9a; *Gerber Truck*, 870 F.2d at 1152-1153.

2. That strict, policy-driven approach contrasts sharply with the flexible, contract-based approach of other courts of appeals and the NLRB. Under the contract-based approach, notices need not include magic words like "terminate" unless the evergreen clause requires specific wording.

The First Circuit decided this issue in *Labonte Drywall*. There, fund trustees invoked ERISA's purposes to argue that an employer's letter gave insufficient notice of an intent to terminate because it "ma[de] no mention of 'termination.'" 795 F.3d at 277 (citation omitted). Worse than that, the letter did not even mention the relevant agreements. *Id.* at 277-278. Yet rather than hold that ERISA's purposes require a clear statement of an intent to terminate, the First Circuit asked "whether the terms of the [relevant] agreement required [the employer] to use any particular language in its notice of termination." *Id.* at 278. And the "termination provision '[did] not require any specific terminology to be effective.'" *Ibid.* (citation omitted). "Nothing in the four corners of the [relevant] agreement require[d] a party's notice of termination to explicitly include the word[ ] 'termination.'" *Ibid.* So it was unnecessary for the notice to "use precise language." *Ibid.* (quoting *Haas Elec., Inc.* v. *NLRB*, 299 F.3d 23, 29 (1st Cir. 2002) (per curiam) (Stahl, J., concurring)).

The Third Circuit also avoids heightened requirements for ending a collective bargaining agreement. It simply asks whether "the words used are adequate for the purpose." *Paterson Parchment*, 191 F.2d at 254. In that case, a letter was sufficient—even though it "envisage[d] a continuing labor-management relationship between the parties"—because it complied with the contract's sixty-day notice requirement and sought "a new contract to be negotiated in the two months available before expiration of the old contract." *Ibid.* The

request showed "unwillingness to continue under its provisions beyond its potential expiration date." *Ibid.*

Like the First and Third Circuits, the NLRB has long rejected a strict, magic-words approach to evergreen-clause notices. Just a couple of weeks before the Seventh Circuit's decision here, the NLRB reiterated its flexible approach and found that several emails adequately prevented an agreement's renewal. See *Bakery Workers*, 2022 WL 17820772, at *6-7. "In determining the adequacy of a written notice, the Board only requires that the notice convey the essential message that a party intends to modify or terminate a contract." *Id.* at *6. Under this view, "[s]o long as the essential message was conveyed, it is not reasonable * * * to hold union officials to the standards of a Philadelphia lawyer." *Ibid.* (brackets omitted) (quoting *Champaign Cnty. Contractors Ass'n*, 210 N.L.R.B. 467, 470 (1974)). This approach sensibly recognizes that the union officials and company representatives who draft and receive evergreen-clause notices are often not attorneys and likely not conscious of nuanced distinctions that counsel might later try to invent in litigation.

Many NLRB decisions across many decades apply this flexible and practical approach. See, *e.g.*, *Loc. No. 6-0682, Paper, Allied-Indus. Chem. & Energy Workers Int'l Union*, 339 N.L.R.B. 291, 299 (2003) ("Absolute perfection is not required to give notice to terminate an agreement."). Some NLRB decisions even reject "magic words" and "strict construction" arguments explicitly. *E.g.*, *Oakland Press Co.*, 229 N.L.R.B. 476,

478 (1977) (rejecting the argument that "[s]ince [the union] did not use the appropriate magic words in the March 15 letter, it could not have terminated the contract"), *enforced in relevant part*, 606 F.2d 689 (6th Cir. 1979); *Int'l Ass'n of Machinists & Aerospace Workers of Am., Loc. Lodge S-76*, No. 4-CB-10259, 2009 WL 2902722, slip op. at 8 (N.L.R.B. Div. of Judges Sept. 9, 2009) ("[S]trict construction * * * is not relevant with regard to the form or content of the required notice, where, as here, the contract's provisions do not specify the form or content of the required notice.").

The court below did not address any NLRB decisions (even though petitioners highlighted them). Nor did it address Third Circuit precedent. But it suggested that its decision was consistent with *Labonte Drywall*. App., *infra*, 12a, 17a n.3. Not so. While the First Circuit does require "unequivocal" notice, that just means notice that does not convey unsettled or conflicting intentions. *Labonte Drywall*, 795 F.3d at 278. The letter before the First Circuit "expressed an unequivocal intent to terminate" without using the word "terminate" because it did not suggest that the employer "was equivocal in its desire to no longer work with the Union." *Ibid.* The district court applied that rule here: the Union letters were "an unequivocal expression of the intent to terminate" because they "did not refer to reopening, modifying, or renegotiating the current contract in any way and did not imply any desire to change or continue the current contract past its expiration date." App., *infra*, 35a. But the Seventh Circuit criticized the district court for this reasoning,

which supposedly "reversed the logic of an evergreen clause." *Id.* at 15a.

For the Seventh Circuit, unlike the First Circuit, unequivocal notice is not enough. The notice must use the right words—like "terminates" instead of "expires." App., *infra*, 15a-17a. The Seventh Circuit adds a clear-statement requirement on top of the no-equivocation requirement: "the intention to terminate must be unequivocal *and unmistakable*." *Id.* at 17a (emphasis added). The First Circuit, in contrast, rejects clear-statement requirements unless the evergreen clause mandates specific words. *Labonte Drywall*, 795 F.3d at 278. And it declines to follow the Sixth Circuit's heightened standards, which mirror the Seventh Circuit's strict approach here. See *id.* at 277 n.4, 282 n.8.[1]

Nor could the result of *Labonte Drywall* be reached under the Seventh Circuit's rule. The Seventh Circuit mentioned *Labonte Drywall* in a footnote "as a caution against a rigid requirement for using the word 'terminate.'" App., *infra*, 17a n.3. But the "blunt,

---

[1] The court below also suggested that Fifth Circuit precedent supports its legal test. App., *infra*, 12a. In fact, the cited Fifth Circuit case viewed the unequivocal-notice requirement the way that the First Circuit does, as prohibiting conflicting messages. See *La. Bricklayers & Trowel Trades Pension Fund & Welfare Fund* v. *Alfred Miller Gen. Masonry Contracting Co.*, 157 F.3d 404, 409 (5th Cir. 1998). Rather than convey a firm desire to end the agreement, the purported termination letter "equivocated by agreeing to abide by the terms of the [existing agreement] 'for the immediate future.'" *Ibid.* "The letter clearly presuppose[d] future action prior to the complete rejection of the [agreement]." *Ibid.*

layman's language" in the employer's letter in *Labonte Drywall* was hardly clear and unmistakable under the Seventh Circuit's standards. *Ibid.* The letter did not even mention the supposedly terminating contract, let alone use words clearly expressing an intent to bring that contract to an end. The letter stated only that the employer was "no longer bidding or doing any more union work." *Labonte Drywall*, 795 F.3d at 279. If that purely descriptive language suffices, a statement that a contract is expiring and that the letter-writer wants a new contract is more than enough.

3. As the district court's opinion proves, the outcome of this case would have been different had it not been decided under the Seventh Circuit's strict approach. The Seventh Circuit relied on four points: (1) the notices mentioned "expiration" rather than "termination"; (2) the Union's desire to negotiate a "new contract" did not convey an intent to terminate the old agreement; (3) the Union's transmission of Federal Mediation and Conciliation Service Form F-7 filings did not convey an intent to terminate; and (4) the parties' subsequent conduct was irrelevant. On all four points, the NLRB has held to the contrary, and the First and Third Circuits have collectively rejected three of the four. This stark divergence over the same facts confirms that the Seventh Circuit's heightened requirements for termination were outcome-determinative here and that this Court's review is necessary.

First, the Seventh Circuit found the Union notices insufficient because they "did not mention termination." App., *infra*, 3a. They declared that the agreements

were to expire on their stated expiration dates, and the Seventh Circuit thought that "[a] collective bargaining agreement can 'expire' without 'terminating.'" *Id.* at 15a. But the NLRB has ruled that when a contracting party "gives notice that the agreement *expires* on" a stated expiration date, this language does "constitute a clear and unequivocal notice of termination." *N.J. Esso Emps. Ass'n*, 275 N.L.R.B. 216, 218 (1985) (citation omitted; emphasis added). The NLRB has remarked that "in labor parlance and in the context of a continuing collective-bargaining relationship, the expression 'termination' normally refers to the expiration date of an existing agreement." *S. Tex. Chapter, Associated Gen. Contractors*, 190 N.L.R.B. 383, 385 (1971). And the First Circuit similarly recognizes that a letter can convey an "intent to terminate" without making "mention of termination." *Labonte Drywall*, 795 F.3d at 277 (quotation marks omitted); see also *Bakery Workers*, 2022 WL 17820772, at *6 ("While the emails did not specifically state that the Union sought to reopen the 2018 CBA, no such specificity was required.").

Second, the Seventh Circuit ruled that the Union's desire to meet at an early date "for the purpose of negotiating a new contract" did not imply an intent to terminate. App., *infra*, 5a, 18a-21a. But the NLRB has described a desire "to meet * * * to negotiate a new contract" as "language [that] in the most clear and precise terms imaginable gives notice that the Union intends to terminate the present contract." *N.J. Esso Emps. Ass'n*, 275 N.L.R.B. at 218. Under NLRB decisions, "a

notice to negotiate an entire new contract" is a "notice of desire to terminate." *S. Tex. Chapter*, 190 N.L.R.B. at 386. And the Third Circuit has upheld an NLRB ruling that a notice that a union was "ready to negotiate for [its] 1948 contract" sufficed to keep the 1947 contract from renewing. *NLRB* v. *Crowley's Milk Co.*, 208 F.2d 444, 446 (3d Cir. 1953) (citation omitted).[2]

Third, the Seventh Circuit held that the submission of Federal Mediation and Conciliation Service Form F-7 filings conveyed an intent to negotiate, but not an intent to terminate. App., *infra*, 21a. Here, too, the NLRB has held the opposite: "delivery of [a] copy of form F-7 [is] sufficient notice of the Union's intent to end the existing agreement * * * where, as here, the contract provisions governing notice of termination are

---

[2] The Seventh Circuit reached its contrary view by expanding Sixth and Eleventh Circuit decisions that differentiated between potentially confusing notices to "modify" and notices to terminate. App., *infra*, 19a-21a. But the notices here did not seek to "modify" the parties' existing agreements; they sought to replace those agreements with "new" ones. In any event, the rigid distinction between modifications and terminations also conflicts with longstanding NLRB precedent. See, *e.g.*, *Great Bear Logging Co.*, 59 N.L.R.B. 701, 703 (1944) ("[A] request for modifications substantial enough to require extended negotiations between the parties * * * shows an election to terminate."); *Bridgestone/Firestone, Inc.*, 331 N.L.R.B. 205, 207-208 (2000) (reaffirming the NLRB's long-held refusal to draw strict distinctions between notices of modification and termination); 1 Nat'l Lab. & Emp. Comm. of the Nat'l Lawyers Guild, *Employee and Union Member Guide to Labor Law* § 3:10 n.22 (Nov. 2022) (noting the inconsistency between the NLRB's flexible rule and the Sixth Circuit's "hypertechnical" rule that "a notice of intent to 'modify' the agreement did not terminate it").

general in nature and no specific format for notice is stated." *Champaign Cnty. Contractors*, 210 N.L.R.B. at 470; see also *Bakery Workers*, 2022 WL 17820772, at *6 (reaffirming this ruling).

Fourth, the Seventh Circuit refused to interpret any ambiguities in the Union's notices using the uncontradicted extrinsic evidence. After the notices, the contracting parties negotiated new agreements to take effect at the start of February 2019, rather than a year later, showing that they understood their earlier agreements to have ended, as the letters stated, at the end of January 2019. App., *infra*, 6a, 22a. Again, the NLRB takes the opposite approach to extrinsic evidence and evaluates purported termination notices alongside the parties' contemporaneous conduct. See, *e.g.*, *Crowley's Milk Co.*, 79 N.L.R.B. 602, 603 (1948) ("We find that the [union's] letter of January 22, 1948, and its subsequent negotiations with the Employer were sufficient to forestall the automatic renewal of the 1947 contract."); *Champaign Cnty. Contractors*, 210 N.L.R.B. at 470 ("All the subsequent conduct of the Union * * * was consistent with the belief that proper notice had been given."); *Bakery Workers*, 2022 WL 17820772, at *7 ("The parties' subsequent conduct further supports the finding that May's emails constituted notice of intent to negotiate a successor agreement.").

Like the NLRB, the First and Third Circuits also consider post-notice conduct to see whether it supports a party's contention that the notice expressed an intent to terminate. See *Labonte Drywall*, 795 F.3d at 279 ("The parties' conduct after Dany Labonte sent the

April 3, 2007 letter confirms that they understood that the letter had terminated the collective bargaining relationship between Labonte Drywall and the Union."); *Crowley's Milk*, 208 F.2d at 446 (considering a union's letter "and its subsequent negotiations with the Employer" in finding that an agreement did not renew (citation omitted)). The Fifth Circuit also consults extrinsic evidence of this sort to conclude that a contract has not renewed. *Kaufman & Broad Home Sys., Inc.* v. *Int'l Bhd. of Firemen & Oilers*, 607 F.2d 1104, 1112 (5th Cir. 1979) ("It is a standard rule of contract interpretation that great weight should be accorded to the interpretation placed on ambiguous language by the parties themselves as revealed through their statements and actions. * * * In light of the largely uncontradicted evidence that the Company believed the contract to have expired, the district court erred in not finding that the extrinsic evidence supported the Union's position.").[3]

In short, on both the general legal test and these specific facts, the Seventh Circuit's ruling contradicts decisions from other courts and the NLRB, the federal

[3] Reinforcing the extremeness of its position, the Seventh Circuit rejected its prior openness to such extrinsic evidence and downplayed the Sixth and Eighth Circuits' prior consideration of extrinsic evidence. App., *infra*, 24a & n.5; see, *e.g.*, *Laborers Pension Tr. Fund* v. *Interior Exterior Specialists Constr. Grp., Inc.*, 394 F. App'x 285, 292 (6th Cir. 2010) (per curiam) ("[W]hen a termination defense is at issue in an ERISA collection action, there is no categorical bar to the consideration of the parties' conduct following a timely attempt to terminate—at least where there is no genuine dispute of material fact regarding the parties' actions.").

agency with specialized expertise in labor-management relations. The Court should grant certiorari to resolve this conflict. See, *e.g.*, *Litton Fin. Printing Div., Litton Bus. Sys., Inc.* v. *NLRB*, 501 U.S. 190, 197-198 & n.1 (1991) (exercising review because the court of appeals ruling conflicted with the NLRB's approach and reflected a wider split of authority); *First Nat'l Maint. Corp.* v. *NLRB*, 452 U.S. 666, 674 (1981) (exercising review "[b]ecause of the importance of the issue and the continuing disagreement between and among the Board and the Courts of Appeals").

B. The Sixth And Seventh Circuits' Policy-Driven Approach Contradicts This Court's Precedent

The Court should also grant certiorari because the Sixth and Seventh Circuits' strict magic-words rule is deeply wrong and incompatible with this Court's precedent.

To start, the Court has repeatedly instructed lower courts to construe collective bargaining agreements under "ordinary principles of contract law," rather than with "a thumb on the scale in favor of vested retiree benefits." *Tackett*, 574 U.S. at 435, 438. "[A]s with any other contract, the parties' intentions control." *Id.* at 435 (citation omitted); see also *CNH Indus.*, 138 S. Ct. at 763.

The ruling below never mentioned that bedrock rule. Instead, it openly discarded ordinary contract principles in favor of extended pension contribution

obligations based on a perceived need to protect pension funds. One example is the basic principle that "[a] court will not rewrite the contract of the parties," "insert" new provisions, or "engraft" a "limitation or restriction" of its own making. 11 *Williston on Contracts* §§ 31:5, 31:6, at 459-460, 472, 492-494 (Richard A. Lord ed., 4th ed. 2012) (Williston); see also *Tackett*, 574 U.S. at 440 ("[T]he written agreement is presumed to encompass the whole agreement of the parties."). The Seventh Circuit's approach violates this rule by requiring special language for termination notice even when the contracts' termination provisions do not.

Another departure from ordinary contract principles is the Seventh Circuit's express rejection of "extrinsic evidence." App., *infra*, 23a. But it is well settled that "when a contract is ambiguous, courts can consult extrinsic evidence to determine the parties' intentions." *CNH Indus.*, 138 S. Ct. at 765. Particularly probative is the parties' practical interpretation of their contract, "how they actually acted." Williston § 32:14, at 805. This "standard rule of contract interpretation" favors deferring to the contracting parties' own understanding that a union notice ended their contract. *Kaufman & Broad*, 607 F.2d at 1112.

Yet the Seventh Circuit chose its stricter approach to "protect[] funds and employee pensions against strategic attempts to evade an evergreen clause." App., *infra*, 17a. Even though the Fund here had contemporaneous notice of the contracting parties' belief about the end of their old contract, the Seventh Circuit speculated that an employee benefit fund may need to

"make decisions based on the conduct of the parties to the contract without being involved in or even privy to extrinsic evidence such as the course of negotiations." *Id.* at 12a.

This worry aligned the Seventh Circuit with the Sixth Circuit, the same court that put the improper "thumb on the scale" in favor of benefits in *Tackett* and *CNH Industrial*. Both circuits have relied on floor statements from the enactment of 29 U.S.C. 1145 to conclude that the contracting parties' intentions and understandings are immaterial in this type of collection action. App., *infra*, 10a; *Orrand*, 794 F.3d at 562; *Gerber Truck*, 870 F.2d at 1153. Their approach openly departs from ordinary principles of contract law, on the belief that benefit plans would be "in a bind" if ordinary contract-law principles applied. *Gerber Truck*, 870 F.2d at 1151; see also App., *infra*, 10a ("[M]any of the defenses available * * * under traditional contract law do not fly under ERISA." (citation omitted)).

This departure from ordinary contract principles to help benefit funds cannot be squared with *Tackett* and *CNH Industrial* or with the text of ERISA. See 29 U.S.C. 1144(d) ("Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States * * * or any rule or regulation issued under any such law."). And "floor statements by individual legislators"—which "rank among the least illuminating forms of legislative history"—cannot overcome this Court's precedent and the statute's text. *NLRB* v. *SW Gen., Inc.*, 580 U.S. 288, 307 (2017).

The Seventh Circuit's distinction between *expiring* and *terminating* also clashes with this Court's cases. The court sought to derive this distinction from the National Labor Relations Act. App., *infra*, 16a (citing 29 U.S.C. 158(d)(1)).[4] But this Court has interpreted the statute's reference to an "expiration date" to broadly encompass both termination and modification and to simply mean "the date when the contract would come to an end by its terms or would be automatically renewed in the absence of notice to terminate." *NLRB* v. *Lion Oil Co.*, 352 U.S. 282, 290 (1957). The statute's reference to an "expiration date" in no way implies that an agreement "can 'expire' without 'terminating.'" App., *infra*, 15a. Nor has the NLRB identified such a distinction in the statute. As discussed already, it treats a reference to a contract's expiring as sufficient to convey an intent to terminate the contract. See, *e.g.*, *N.J. Esso Emps. Ass'n*, 275 N.L.R.B. at 218.

In fact, this Court has routinely used the verb "expire" to refer to the ending of a collective bargaining agreement. See, *e.g.*, *Litton*, 501 U.S. at 206 (explaining that an agreement's terms stop creating contractual duties once the contract has "expired" and that "[a]n expired collective-bargaining agreement is no longer a 'legally enforceable document'" (citation, bracket, and ellipsis omitted)); *Nolde Bros.* v. *Bakery Workers*, 430

[4] The Seventh Circuit tried to support its distinction by quoting one of its earlier cases. App., *infra*, 16a. But the quote comes from the factual background section of that opinion. See *Operating Eng'rs Loc. 139 Health Benefit Fund* v. *Gustafson Constr. Corp.*, 258 F.3d 645, 649 (7th Cir. 2001). The case did not turn on whether expiration is distinct from termination.

U.S. 243, 251 (1977) (explaining that there is "no longer any contract between the parties" once the contract has "expired"). The Court has referred to contract expiration and termination interchangeably. See, *e.g.*, *CNH Indus.*, 138 S. Ct. at 764 (explaining that an agreement "*expired* in 2004" through a clause stating "that it would *terminate* in May 2004" (emphasis added)); *Litton*, 501 U.S. at 207 (explaining that "contractual obligations will cease, in the ordinary course, upon *termination* of the bargaining agreement" unless, for example, the "agreement provides in explicit terms that certain benefits continue after the agreement's *expiration*" (emphasis added)); *Tackett*, 574 U.S. at 442 (same); *Nolde Bros.*, 430 U.S. at 252 ("[T]he parties' obligations under their arbitration clause survived contract *termination* when the dispute was over an obligation arguably created by the *expired* agreement." (emphasis added)).

That approach tracks ordinary language and standard legal usage. If a contract expires, it ends. It does not continue. See, *e.g.*, *Webster's New International Dictionary of the English Language* 897 (2d ed. 1953) (defining "expire" as "[t]o come to an end; to cease; terminate"); *Black's Law Dictionary* 725 (11th ed. 2019) (defining "expire" as "to be no longer legally effective; to become null at a time fixed beforehand"); *Garner's Dictionary of Legal Usage* 344 (3d ed. 2011) ("[*E*]*xpiration* is a subspecies of *termination*."). The linchpin of the Seventh Circuit's linguistic analysis is simply unsupported.

C. The Currently Diverging Standards Are Unworkable And Require Immediate Review

These diverging standards create intolerable uncertainty in the federal law governing collective bargaining agreements. With many circuits and the NLRB having weighed in, only this Court can resolve the confusion and provide contracting parties the guidance they need to determine whether their contracts have terminated. And this case presents an ideal vehicle to do so: the relevant facts are undisputed, and the only issues raised by the decision below are issues of law.

The termination date of a collective bargaining agreement has many important consequences under different federal statutes. Such consequences include, as here, determining when a pension contribution obligation ends under ERISA. But they also include many important rights and duties under the National Labor Relations Act and the Labor Management Relations Act. Those rights and duties can determine: when a union may permissibly engage in an economic strike for negotiating leverage, *e.g.*, *Litton*, 501 U.S. at 199; *Paterson Parchment*, 191 F.2d at 254; when an agreement requires arbitration of the parties' disputes, *e.g.*, *Litton*, 501 U.S. at 203-208; when an employer or union must entertain proposed changes in contract terms, *e.g.*, *Bakery Workers*, 2022 WL 17820772, at *8; see 29 U.S.C. 158(a)(5), (b)(3); and when a contract renewal bars efforts to oust an incumbent union through a decertification election, *e.g.*, *Deluxe Metal Furniture*

Co., 121 N.L.R.B. 995, 1002 (1958), abrogated in part on other grounds by *Leonard Wholesale Meats*, 136 N.L.R.B. 1000, 1001 (1962).

The failure to assess evergreen-clause notices under consistent rules leads to chaos. Parties and third-party beneficiaries of collective bargaining agreements cannot confidently answer the questions above if they cannot know for certain whether an agreement has expired or renewed. And right now, it depends on who is asked.

Under the Seventh Circuit's view, the notices here failed to terminate the agreements and the employers therefore would have had no obligation to entertain proposed contract changes for another year. See, *e.g.*, *C&S Indus., Inc.*, 158 N.L.R.B. 454, 457 (1966). But under the alternative, refusing to entertain those contract changes would have been an unfair labor practice. *E.g.*, *Champaign Cnty. Contractors*, 210 N.L.R.B. at 471; *S. Tex. Chapter*, 190 N.L.R.B. at 385.

Under the alternative, the Union would have had the right to engage in an economic strike if the parties had not reached agreement by the end of January. See, *e.g.*, *Paterson Parchment*, 191 F.2d at 254. But under the Seventh Circuit's view, such a strike would have violated the agreements' no-strike clause, and petitioners could have pursued damages claims against the Union or discharged the striking workers. See, *e.g.*, *Teamsters* v. *Lucas Flour Co.*, 369 U.S. 95, 104-105 (1962); *Granite Constr. Co.*, 330 N.L.R.B. 205, 208 (1999).

The inconsistency is made worse by the opportunity for forum shopping created by expansive venue provisions. ERISA, for example, allows for suit wherever the employee benefit plan is administered, wherever the breach occurs, *or* wherever the defendant resides or may be found. 29 U.S.C. 1132(e)(2). Benefit funds can therefore exert great control over where they file suit, especially once they have a favorable ruling in their home forum. Because that is where the plan is administered, they can always return to that forum to make use of the favorable precedent. That ability limits the opportunity for further percolation of these issues, particularly when Central States is such a frequent repeat player and can always return to the Seventh Circuit for future collection actions.[5]

In non-ERISA disputes, employers and unions also have significant control over where they file suit. The National Labor Relations Act allows parties to seek review of Board decisions where the unfair labor practice occurs *or* wherever the petitioner resides *or* transacts business. 29 U.S.C. 160(f). The Labor Management Relations Act permits venue in any district

---

[5] See, *e.g.*, *Cent. States, Se. & Sw. Areas Pension Fund* v. *Crandell Bros. Trucking Co.*, No. 20-cv-5284, 2023 WL 1818559 (N.D. Ill. Feb. 8, 2023); *Cent. States, Se. & Sw. Areas Pension Fund* v. *IVM, Inc.*, No. 17-cv-1770, 2020 WL 777266 (N.D. Ill. Feb. 18, 2020); *Cent. States, Se. & Sw. Areas Pension Fund* v. *Rail Terminal Servs. LLC*, No. 18-cv-2372, 2019 WL 2326002 (N.D. Ill. May 31, 2019); *Cent. States, Se. & Sw. Areas Pension Fund* v. *Wingra Redi-Mix, Inc.*, No. 12-cv-4084, 2016 WL 1555579 (N.D. Ill. Apr. 18, 2016); *Cent. States, Se. & Sw. Areas Pension Fund* v. *Standard Elec. Co.*, 87 F. Supp. 3d 810, 811 (N.D. Ill. 2015).

court that can exercise personal jurisdiction over the defendant. 29 U.S.C. 185(a); *e.g.*, *Moore* v. *Rohm & Haas Co.*, 446 F.3d 643, 645 (6th Cir. 2006).

So not only will contracts' end dates vary from one forum to the next, the entity that launches litigation will have broad latitude to pick the forum. And whenever there is a dispute over the notice's wording, there is no way to be sure whether the contract survived the notice until litigation runs its course. Such an agreement would be in an indeterminate state between renewal and termination—a Schrödinger's Contract. An agreement could even exist and not exist at the same time if, for example, it covered workplaces in both Illinois and Massachusetts and the Seventh and First Circuits drew contradictory conclusions about the disputed notice.

The nation's labor laws reflect a "congressional policy of having the administration of collective bargaining contracts accomplished under a uniform body of federal substantive law." *Evening News Ass'n*, 371 U.S. at 200. Because "[t]he ordering and adjusting of competing interests through a process of free and voluntary collective bargaining is the keystone of the federal scheme to promote industrial peace," the "need for a single body of federal law" to fix collectively bargained obligations is "particularly compelling." *Lucas Flour*, 369 U.S. at 104.

This congressionally prescribed uniformity is impossible under the current state of the law. Courts in different circuits, as well as the specialized

administrative agency on labor-management relations, have opposing positions on what it takes to provide adequate notice of an intention to terminate. Only this Court's intervention can resolve the stark disagreement over this critical issue of federal law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DANIEL R. SALEMI
MORGAN, LEWIS & BOCKIUS LLP
110 North Wacker Drive
Chicago, IL 60606

MICHAEL E. KENNEALLY
Counsel of Record
AMANDA L. SALZ
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, DC 20004
(202) 739-3000
michael.kenneally@morganlewis.com

Counsel for Petitioners

MARCH 2023