No. 17-908

In the Supreme Court of the United States

KELSEY-HAYES COMPANY and
TRW AUTOMOTIVE HOLDINGS CORPORATION,
Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), and JAMES WARD, MARSHALL HUNT, and RICHARD GORDON, for themselves and others similarly-situated,
Respondents.

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

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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We address *CNH Industrial N.V. v. Reese*, 583 U.S. __ (2018), decided February 20, 2018. We write to distinguish *Kelsey-Hayes* from *Reese*.

At essence, *Reese* reversed the Sixth Circuit based on CBA durational clauses. In *Reese*, the Sixth Circuit "did not point to any explicit terms, implied terms, or industry practice" supporting lifetime retiree healthcare or superseding the durational clauses. Slip. Op. at 6.

In *Kelsey-Hayes*, in contrast, there are no duration clauses.

Here, the 2001 Closing CBA—the last CBA at the Kelsey-Hayes plant—ended the 1998 CBA (and its durational clauses). The Closing CBA "released" Kelsey-Hayes "forever" from most collectively-bargained "liabilities," but explicitly excepted "pension," the retiree "medical plan," "retiree medical," and "retiree health care."

The Closing CBA (App. 74a-82a) has no expiration clause. Retiree healthcare promises—excepted from "release"—are not subject to any end date.

This key distinction is discussed—before *Reese*—in our opposition in Argument IIA and, anticipating *Reese*, in note 6.

In *Kelsey-Hayes*, too, there is substantial "record evidence" in the CBAs and Kelsey-Hayes admissions.

There are CBA terms held in 1997 to promise lifetime retiree healthcare—as discussed in 1998 bargaining when Kelsey-Hayes agreed to retain those same terms. See our opposition, Argument IIB.

There is "affirmative evidentiary support" for lifetime retiree healthcare—consistent with *Tackett*-prescribed "federal labor policy," ordinary contract principles, and "federal common law" ambiguity principles. See our opposition, including Argument IIC and the cases cited in and text associated with notes 3-5.

There is another key distinction. Kelsey-Hayes and UAW chose a labor arbitrator to issue a "final and binding and enforceable" interpretation of the 2001 Closing CBA and the 1998 CBA. The arbitrator held—applying labor arbitral principles—that the CBAs "vested" healthcare for the retirees' "lifetimes." See our opposition, including Argument IID and App. 83a-98a.

<u>In sum</u>, *Kelsey-Hayes* is based on fact-specific CBA terms, "federal labor policy," ordinary contract principles, and "federal common law." No abrogated *Yard-Man* inferences were needed.

We ask the Court to find there are no "compelling" legal issues warranting this Court's review of *Kelsey-Hayes*. Kelsey-Hayes *promised* lifetime retiree healthcare.

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