IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES PRICE,	:	
	:	
Plaintiff,	:	
	:	**Case No. 2:07-CV-0933**
v.	:	
	:	**JUDGE ALGENON L. MARBLEY**
BOARD OF TRUSTEES OF THE INDIANA LABORER'S PENSION FUND, ET AL.	:	**Magistrate Judge Kemp**
	:	
Defendant.	:	

OPINION AND ORDER

I. INTRODUCTION

This matter is before the Court on Plaintiff James Price's ("Price") Motion for Judgment on the Administrative Record and Defendants Board of Trustees of the Indiana Laborer's Pension Fund (the "Board") and Indiana Laborer's Pension Fund Motion for Judgment on the Administrative Record. For the reasons set forth below, this Court **GRANTS** Plaintiff's Motion for Judgment, and **DENIES** Defendant's Motion for Judgment.

II. BACKGROUND

Price is a member of the Indiana State District Counsel of Laborer's Hod Carriers Union and for several years was employed as a laborer. As a benefit of his union membership, Price participated in a multi-employer employee benefit pension benefit plan (the "Plan") established and maintained in accordance with the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S. C. § 1001, et seq. The Plan is administered by the Board. The Board is also the entity empowered to amend the Plan.

In January 1990, Price was injured during the course or his employment and as a result, began drawing disability benefits pursuant to the Plan's provision for Total and Permanent Disability Benefits, effective July 1, 1990. Price continued to receive such benefits until 2001, at which time the Board denied Price's application because it alleged the medical evidence submitted from his most recent medical examination did not meet the Plan's definition of "permanent and total disability."[1] As an alternative, Price was informed that he could apply for Occupational Disability Benefits.[2] Price applied for Occupational Disability Benefits, was approved for such benefits, and began receiving such benefits on September 1, 2001. Price's Occupational Disability Benefits were re-approved in 2002, 2003, 2004, and 2005.

On June 1, 2001, the Board adopted the Sixth Amendment (the "Amendment") to the Plan, which took effect January 1, 2005. Under the prior version of the Plan, § 7A.5 stated:

> The Occupational Disability Benefit shall be payable only during continued Occupational Disability and until Early Retirement Age under section 2.1(n). Once a Participant reaches Early Retirement Age under section 2.1(n), his Occupational Disability Benefit payments shall cease and he shall begin receiving his Early Retirement Benefit upon approval of his application for benefits without any adjustment for Occupational Disability Benefit payments received.

According to the Amendment, § 7A.5 of the Plan would now state:

> Occupational Disability Benefits shall be payable only during a Participant's continued Occupational Disability and . . . effective for Occupational Disability Benefits commencing prior to January 1, 2005, for a period not to exceed

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[1]To qualify for Total and Permanent Disability benefits, a person must totally and permanently be prevented "from engaging in any regular occupation or employment for remuneration or profit . . ." (Plan § 2.1(bb)).

[2]To qualify for Occupational Disability benefits, a person must totally and permanently be prevented "from engaging in any further employment or gainful pursuit for remuneration or profit . . . within the construction industry." (Plan § 2.1(y-1)).

> December 31, 2006, or if earlier, the Participant's attainment of Early Retirement Age under section 2.1(n).

On January 11, 2006, Price was informed that his Occupational Disability Benefits would terminate on December 31, 2006, due to the Amendment. Pursuant to the Amendment, Price stopped receiving benefits on January 1, 2007. Price appealed the decision to terminate his Occupational Disability Benefits to the Board. The Board denied Price's appeal. On September 14, 2007, Price filed suit in this Court, alleging that the Amendment, as applied to him, violated ERISA.

III. STANDARD OF REVIEW

Whether the Board's Plan Amendment violates ERISA is a question of law. Accordingly, the Court's review of the Board's actions is de novo. *See Ramsey v. Formica Corp.*, 398 F.3d 421, 424 (6th Cir. 2005) ("Question of preemption and available relief under the Employee Retirement Income Security Act are question of law subject to de novo review"); *Waxman v. Luna*, 881 F.2d 237, 240 (6th Cir. 1989) (holding that when the trial court applies statutory law to the facts, the holding becomes a conclusion of law reversible under the de novo standard); *see also Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 653 (6th Cir. 1996) ("Questions of contract interpretation are generally considered question of law subject to de novo review").

IV. LAW AND ANALYSIS

ERISA recognizes three types of benefit plans: welfare benefit plans, pension benefit plans, and plans which are both a welfare benefit plan and a pension benefit plan. 29 U.S.C. § 1002(3). The Plan at issue is largely a pension benefit plan, but certain of the benefits under the Plan, including the Occupational Disability Benefit, are "welfare benefits." *See* 29 U.S.C. § 1002(1) (defining a "welfare plan" to include a plan that provides "benefits in the event of . . .

disability"); *see also McBarron v. S&T Indus., Inc.*, 771 F.2d 94, 98 (6th Cir. 1985) (holding that part of a pension plan that provided a disability benefit was a welfare plan, not a pension plan).

ERISA does not "create any substantive entitlement to employer-provided health benefits or any other kind of welfare benefits." *Curtiss-Wright v. Schoonejongen*, 514 U.S. 73, 78 (1995). In *Curtiss-Wright*, the company adopted an amendment to the plan stating that health care for retirees and their dependents would cease upon termination of business operations of the facility from which they retired. *Id.* at 76. The retirees brought suit, alleging that Curtiss-Wright violated ERISA by adopting an amendment that terminated their benefits *Id.* at 77. The Court held that "[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify or terminate welfare benefits." *Id.* at 78.

Though the benefits in employee welfare plans do not vest as a matter of law under ERISA, parties may themselves set out by agreement that a welfare benefit is vested. *See In re White Farm Equip. Co.*, 788 F.2d 1186, 1193 (6th Cir. 1986). In this case, there was no express agreement that the Occupational Disability Benefits vested. Courts can also find, however, that a benefit has vested, "even if the intent to vest has not been explicitly set out in the agreement." *Maurer v. Joy Tech., Inc.*, 212 F.3d 907, 915 (6th Cir. 2000), *citing see Golden v. Kelsey-Hayes Co.*, 73 F.3d 648, 655 (6th Cir. 1996). The key question is whether the parties "intended to vest benefits." *Maurer*, 212 F.3d at 914.

There has been a myriad of cases in the Sixth Circuit analyzing welfare benefits that are "retiree benefits." The Sixth Circuit has recognized that "retiree benefits are in a sense 'status' benefits which, as such, carry with them an inference . . . that the parties likely intended those benefits to continue as long as the beneficiary remains a retiree." *See, e.g., Russell v. Polyone*

Corp., 520 F.3d 548, 552 (6th Cir. 2008) (quoting *Internal Union, United Auto., Aerospace, and Agric. Implement Workers of Am. v. Yard-Man, Inc.*, 716 F.2d 1476, 1482 (6th Cir. 1983)). The *Yard-Man* Court recognized that if employees make a concession in terms of current wages in the expectation of retiree benefits, "they would want assurance that once they retire they will continue to receive such benefits regardless of the bargain reached in subsequent agreements." 716 F.2d at 1482.

In *Yard-Man*, once the Court found that retiree benefits had vested in a particular individual, those benefits could not be bargained away; the Court recognized, however, that retiree benefits for employees who had not retired may be traded in future negotiations in favor of more immediate compensation. *Id.* at 1482 n.8; *see Winnett v. Caterpillar, Inc.*, 553 F.3d 1000, 1011 (6th Cir. 2009) (retire benefits do not vest before an employee retires; benefits vest, rather, only once an employee achieves retiree status). There is an important difference between active workers and retired workers, which is that active workers are represented by a union, while retired workers usually are not. *See Winnett*, 553 F.3d at 1010.

> [F]uture retirement benefits of active workers are part and parcel of their overall compensation and hence a well-established statutory subject of bargaining . . . [Active employees] are free to decide, for example, that current income is preferable to greater certainly in their own retirement benefits or, indeed, to their retirement benefits altogether.

Id. (quoting *Allied Chem. & Alkali Workers of Am., Local Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157, 180-81 (1971)). Retirees, however, have left their bargaining unit, so they can no longer rely on their union to maintain their benefits. *Yolton v. El Paso Tennessee Pipeline Co.*, 435 F.3d 571, 581 n.6 (6th Cir. 2006). These retirees, "are not likely to

leave their benefits alterable based on the changing whims and relative bargaining power of their former union and employer." *Id.*

The Sixth Circuit has not addressed the issue of whether a disability benefit is similar to a retiree benefit, and thus whether there is an inference that such a benefit vests upon an employee becoming disabled.[3] This Court finds that a disability benefit is also, in a sense, a "status" benefit. The parties contracted for benefits upon a person's qualification for disability status. If an employee makes a concession in terms of current wages in the expectation of disability benefits if he becomes disabled, he would want an assurance that once he qualifies for disability status, he would continue to receive such benefits regardless of the bargain reached in subsequent agreements. Permanently disabled employees (i.e., those entitled to Occupational Disability Benefits) are also not active employees, and accordingly, are not usually represented by a union. As such, there is a risk that active employees would bargain away the benefits of disabled employees who are not able to represent themselves. For these reasons, this Court finds there is an inference that the parties intended the Occupational Disability Benefits to continue as long as the beneficiary remains disabled (and had not reached Early Retirement Age). Standing alone, this inference is insufficient to find an intent to create a vested benefit. *Yolton*, 435 F.3d at 579. This inference can, however, buttress evidence of intent in the language of the agreement itself. *Id.*

In determining whether the parties intended to vest benefits, "basic rules of contract interpretation apply." *Id.* at 578. The court should look first to the explicit language of the

[3]Another district court in the Sixth Circuit has held that the *Yard-Man* inference that a benefit vests applies to disability benefits. *See UAW Local 540 v. Baretz*, 159 F.Supp.2d 961, 966 (E.D. Mich. 2001).

benefit plan for clear manifestations of intent. *Id.* at 578-79. The benefit plan should also be interpreted "so as to avoid illusory promises and superfluous provisions." *Cole v. Arvinmeritor, Inc.*, 549 F.3d 1062, 1069 (6th Cir. 2008).

The Amendment purported to change the duration of Occupational Disability Benefits. At the time Price was awarded Occupational Disability Benefits, the Plan stated, in relevant part, that benefits were "payable only during continued Occupational Disability and until Early Retirement Age." (Plan § 7A.5). The Amendment states, in relevant part, that benefits are "payable only during . . . continued Occupational Disability . . . for a period not to exceed two years." (Amendment § 7A.5).

The case sub judice is analogous to *Noe v. Polyone Corp.*, 520 F.3d 548 (6th Cir. 2008). In *Noe*, the plan promised health care benefits from age 65 until the individual's death. *Id.* at 560. The *Noe* Court found that "promising to provide a benefit until a person dies undoubtedly means that the benefit lasts for the person's life." *Id.* Likewise, in this case, promising to provide a benefit "until Early Retirement Age" undoubtedly means that the benefit lasts until a person reaches that age. To modify or terminate the Occupational Disability Benefits of a disabled employee, who had already qualified for the benefit, before he reached early retirement age would render the promise in the Plan illusory. *See id.* at 562; *Wulf v. Quantum Chem. Corp.*, 26 F.3d 1368, 1378 (6th Cir. 1994); *see also Baretz*, 159 F.Supp.2d at 966 (finding that because express language of the plan provided that disability benefits shall continue until the employee's

retired date "[o]nce the disabled plaintiffs were entitled to continued disability benefits, [the company] could not modify or terminate those benefits . . .").[4]

This Court finds that the Plan promised to provide a benefit to employees who qualified for Occupational Disability Benefits until the employees reached early retirement age. The language of the Plan shows an intent to vest that benefit in disabled employees. This intent, reflected in the language of the Plan, is buttressed by the *Yard-Man* inference that certain welfare benefits which are "status" benefits are intended to vest once an employee achieves that status. Once Price became disabled, therefore, he had a vested interest in receiving Occupational Disability Benefits until he reached early retirement age. Pursuant to the Plan, "no amendment shall be made which results in reduced benefits for any Participant whose rights have already become vested . . ." (Plan § 15.1). Though the Board can amend the Plan to alter Occupational Disability Benefits for employees who have not yet qualified as disabled, the Board cannot amend the Plan to alter Price's vested benefits. The Defendants are thereby prohibited from applying the Amendment to Price.

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[4]This Court is aware of the Second Circuit's decisions in *Gibbs ex rel. Estate of Gibbs v. CIGNA Corp*., 440 F.3d 571 (2d Cir. 2006) and *Feifer v. Prudential Ins. Co. of Am.*, 306 F.2d 1202 (2d Cir. 2002). In those cases, the Second Circuit found that "absent explicit language to the contrary, a plan document providing for disability benefits promises that these benefits vest with respect to an employee no later than the time that the employee becomes disabled." *Gibbs*, 440 F.3d at 577; *Feifer*, 306 F.3d at 1212. This Court rejects the Second Circuit's holding that absent explicit language, a disability benefit vests, because that rationale is incongruous with the law of this Circuit. The Sixth Circuit has held that a plan administrator may generally modify a welfare plan at any time because welfare plan benefits do not vest. *Wulf* , 26 F.3d at 1377. The *Yard-Man* line of cases, does not support that disability benefits vest absent explicit language to the contrary; rather, those cases support that there is an inference that disability benefits vest that can buttress evidence of intent in the language of the agreement itself. *Yolton,* 435 F.3d at 579. Standing alone, however, this inference is insufficient to find an intent to create a vested benefit. *Id.*

V. CONCLUSION

For the foregoing reasons, this Court **GRANTS** Plaintiff's Motion for Judgment, and **DENIES** Defendant's Motion for Judgment. The Defendants are **ORDERED** to reinstate Plaintiff's benefits.

IT IS SO ORDERED.

s/Algenon L. Marbley
ALGENON L. MARBLEY
UNITED STATES DISTRICT COURT

Dated: March 24, 2009