

# Pension Group Urges Justices To Take Up Benefits Case

By **Kellie Mejdrich**

Law360 (November 30, 2022, 6:45 PM EST) -- A pension advocacy group urged the U.S. Supreme Court to take up a case alleging that a union pension fund unlawfully required employees to stop working before they could receive retirement benefits, warning that the Second Circuit's decision nixing the suit could upend the administration of federal benefits law.

In an amicus brief docketed **Tuesday**, the Pension Rights Center said participants in a plumbers and steamfitters union pension fund who sued over a 2011 retirement plan policy change shouldn't have been forced to choose between giving up retirement benefits or continuing to work. The center called it a nightmare scenario Congress sought to avoid when it wrote the Employee Retirement Income Security Act, including through the law's inclusion of an anti-cutback rule, which prohibits plan amendments that would reduce participants' accrued benefits.

"The sequence of events that occurred in this case, and the devastating impact on the petitioners' financial security in retirement, are the sorts of retirement nightmares to which Congress intended ERISA to be the antidote," the group said. "The center files this brief to urge the court to restore the basic promise of ERISA: that a participant can rely on the terms of their plan and the benefits promised by the plan."

Court documents show how the U.A. Plumbers and Steamfitters Local 22 Pension Fund reinterpreted the plan terms after discovering in 2011 that its early retirement benefit policy accidentally violated IRS rules by letting employees over 55 receive retirement benefits while they were still working and receiving a paycheck. A group of seven workers who were affected by the 2011 plan change — Gary Metzgar, Richard Mueller, Kevin Reagan, Ronald Reagan, Charles Puglia, Sherwood Noble and Daniel O'Callaghan — later sued in January 2013, alleging that the pension fund, its plan administrator and its board of trustees violated ERISA by amending the plan.

U.S. District Judge John L. Sinatra Jr. granted summary judgment in favor of the pension fund in October 2020, finding the fund's change to the retirement benefit policy was based on a reasonable interpretation of the ERISA-governed retirement plan. A three-judge panel of the Second Circuit **upheld** Judge Sinatra's ruling in March 2022, and the workers filed a petition for certiorari with the Supreme Court in October.

A key finding in the district court's summary judgment decision, which was later upheld by the Second Circuit, was that the plan policy change wasn't subject to ERISA's anti-cutback rule because it wasn't considered an amendment to the plan, but rather a reinterpretation of existing terms. Additionally, because the union fund's trust agreement gave trustees full discretion to interpret the plan, the district court could only overturn benefit eligibility determinations if they were arbitrary or capricious, and the court found instead that the fund acted reasonably.

The Pension Rights Center said in its amicus brief that the difficulties faced by the employees who lost retirement benefits following the plan change were compounded by the fact that after the lawsuit was filed, "the plan for the first time demanded that petitioners not only choose between forgoing retirement benefits or continuing to work, but also repay the early retirement benefits that the plan had already paid to them."

And in 2016, the group said in its brief, trustees amended the plan to apply 12% interest to any benefit "overpayments" and related costs incurred through recovery, such as attorney fees.

"In some cases, the trustees demanded repayment of more than one million dollars," the group said.

The group urged the high court to resolve what it said was a circuit split on whether reinterpretations of plan terms were subject to ERISA's anti-cutback rule, given that the Third and Sixth circuits have ruled that such changes could violate the rule while other appellate courts have ruled otherwise.

The workers said in their October petition, which the pension group cited in its amicus brief, that "on the other side of the split are the Second, District of Columbia, and Ninth Circuits," which read ERISA's anti-cutback rule "more strictly."

The group said that even if the high court doesn't find a violation of the anti-cutback rule, certiorari should be granted because the denial was arbitrary and capricious.

"If the arbitrary and capricious standard of review requires anything other than rubber-stamping trustee decisions, it should require that rules, once adopted, can be changed only prospectively and only by plan amendment," the group said.

As for other options that the fund could have taken, the group said that one example was proposing a correction to the IRS that included a plan amendment to eliminate future benefits.

"Instead, however, the trustees proposed a remedy that eliminated the benefits for participants unless they immediately resigned from their non-disqualifying employment," the group said.

More broadly, the group warned that the Second Circuit's decision, if not overturned, "threatens the retirement security of virtually every participant in a defined benefit plan: a fiduciary's change of mind or heart can undermine the best laid plans of participants and their families."

"The decision below, if allowed to stand, may open up a new era of instability in benefit eligibility and calculation that will challenge participants, plan administrators, agencies and the courts," the group said.

Norman Stein, a retired law professor at Drexel University and a legal and policy consultant for the Pension Rights Center, said in an interview Wednesday that at a very elemental level, "the case basically is asking whether people can rely on what they've been promised."

Stein said the Second Circuit's holding leaves "a big loophole that you could change the terms of the plan through a reinterpretation" and not run afoul of ERISA's anti-cutback rule.

"That kind of reversal of expectation is what Congress thought it was ending in 1974 when it passed ERISA," Stein said.

Elizabeth Hopkins, counsel for the workers, praised the group's brief in a statement provided to Law360 on Wednesday.

"We are grateful that the Pension Rights Center has filed an amicus curiae brief supporting the petition for certiorari," Hopkins said. "As the amicus brief correctly points out, if the Second Circuit's decision stands and is followed by similar decisions from other courts allowing plan sponsors and trustees to reduce or eliminate pension benefits through a reinterpretation of plan terms, the retirement security of all plan participants is at risk."

Counsel for the union fund didn't immediately respond to a request for comment Wednesday.

The workers are represented by Elizabeth Hopkins of Kantor & Kantor LLP.

The union is represented by Jules L. Smith of Blitman & King LLP.

The Pension Rights Center is represented in-house by Norman Stein and by Jeffrey Greg Lewis of Keller Rohrback LLP.

The case is Metzgar et al. v. U.A. Plumbers and Steamfitters Local 22 Pension Fund et al., case

number 22-417, in the Supreme Court of the United States.

--Editing by Abbie Sarfo.