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Sixth Circuit: Adverse Decision Against Union does not stop Retirees from Bringing Action on Same Grounds

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In the recent decision in *Amos v. PPG Indus. Inc.*, No. 10-3319 (6th Cir., November 1, 2012), an employer reduced health care benefits of employees represented by unions. The unions brought a lawsuit in district court on behalf of the employees and alleged the reduction in benefits constituted a breach of the collective bargaining agreement as the health care benefits of retirees were vested and could not be reduced.

The District Court held that the retirees' health benefits were not vested and the Third Circuit affirmed. The retirees in their individual capacity simultaneously had filed a class action lawsuit against the employer on the same grounds as the unions' lawsuit (i.e. benefits were vested and not subject to change). The employer moved for summary judgment in the retirees' lawsuit on the grounds that they were collaterally stopped from brining their case, and the District Court agreed granting summary judgment.

The Sixth Circuit reversed, holding that as the retirees were not parties to the unions' lawsuit, they were not estopped from bringing their lawsuit. The Sixth Circuit found that the six exceptions to the rule against nonparty preclusion did not apply here. Specifically, the court held that there was not a pre-existing substantive legal relationship between the parties as the retirees were not members of the union at the time of the judgment in the unions' lawsuit. The Sixth Circuit found that as the retirees had not provided their assent to be represented by the unions and no "special procedures" had been taken by the District Court in the unions' lawsuit to protect the retirees' interests in that action, there was not an understanding by the parties that the unions' lawsuit was brought in a representative capacity on behalf of the retirees and the retirees were not bound by that decision.

Based on this case, employers subject to a lawsuit brought by an employee union should seek to join or take some action to protect the interest of all potentially related plaintiffs, including employees and retirees who may have an interest in the action.

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