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Company's Sale of Division Did Not Violate ERISA

9/13/2012

By Whitney R. Brown

The 10th U.S. Circuit Court of Appeals [affirmed](#) a district court decision dismissing claims by former Boeing Co. employees who alleged that the company interfered with employees' pension rights by selling a division to Spirit AeroSystems Inc.

Under the Employee Retirement Income Security Act (ERISA), it is illegal for an employer to take an adverse action against an employee for the purpose of preventing that employee from attaining rights under a benefit plan. In cases related to the sale of a business or reduction in force, employees must establish that the employer's desire to block employees from benefits was a determinative factor in the employees' selection for termination.

In 2005, Boeing sold its three-location Wichita Division to Spirit. Pursuant to the sale, Boeing terminated the Wichita Division workforce of over 10,600 employees. Spirit rehired 8,354 of those employees, relying on Boeing's managers to identify the most skilled and flexible employees for Spirit to hire.

Spirit rehired a lower percentage of workers over the age of 40 than had been present in the original employee pool. The average workforce age went from 48.6 to 48.2 years old.

Spirit was responsible for the pension liabilities of the employees it hired, and Boeing would retain pension responsibilities for those it did not hire.

Seven hundred older employees who were not rehired following the sale of their division brought suit, arguing that the decision to sell their division and the buyer's interest in purchasing it were motivated by the desire to operate at a low cost by ducking pension obligations by terminating older employees.

The district court granted summary judgment to Boeing and Spirit based on the plaintiffs' pattern and practice of age discrimination claims, individual and collective disparate impact age discrimination claims and ERISA claims, dismissing all of the employees' claims except their individual claims of disparate treatment age discrimination.

The employees challenged the district court's decision, but the 10th Circuit upheld the lower court's ruling, noting that, in the case of a business sale or closure, an ERISA violation requires a finding that a motivating reason for the sale or closure is to avoid pension costs.

The employees argued that while they were not individually targeted, the companies were motivated by their desire to lower the division's operating costs by reducing its pension obligations. The employees relied on a prior case where McDonnell Douglas Corp. was found to have violated ERISA when it decided to close a particular plant, because the employees there were, on average, the oldest and most senior, and when it closed that plant before approximately 20 percent of the plant employees qualified for greater benefits.

The appeals court noted that the employees' claim failed, because it was undisputed that Boeing had not examined pension costs specific to the Wichita division until after it had decided to sell the division; therefore, the companies could not have been motivated by pension costs in the sale.

Apsley v. Boeing Co., 10th Cir., No. 11-323 (Aug. 27, 2012).

Professional Pointer: In a business sale or closure, a company does not violate ERISA just because some employees' pension benefits are affected by the company's actions. The employees must show that the company's actions were motivated by the desire to decrease pension costs.

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