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Labor Law - Collective Bargaining- Compulsory Retirement as Discharge "Without Cause" Under Collective Bargaining Agreement

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LABOR LAW—COLLECTIVE BARGAINING—COMPULSORY RETIREMENT AS DISCHARGE "WITHOUT CAUSE" UNDER COLLECTIVE BARGAINING AGREEMENT—Plaintiff-employee was informed by the defendant, his employer, that his employment would be terminated because he had attained the age of sixty-five and it was the policy of the defendant to retire such employees. There was evidence indicating that this policy had been in practice uniformly for several years, but it was not incorporated in the collective bargaining agreement between defendant and plaintiff's union. Plaintiff sued for damages for violation of his rights under the collective agreement. *Held*, judgment for plaintiff. The legal and practical effect of compulsory retirement is the same as a discharge, and plaintiff's employment was therefore forcibly terminated without any cause expressed or contemplated by the labor agreement and in violation of his rights. *Nichols v. National Tube Co.*, (D.C. Ohio 1954) 122 F. Supp. 726.

While there is some judicial authority for the position that termination of employment pursuant to a compulsory retirement plan is a discharge within the meaning of a "no discharge without cause" provision in a collective bargaining contract,[1] arbitrators have universally held that it is not.[2] Common usage in the labor field indicates that the term "discharge" refers to involuntary termination of employment for disciplinary reasons or because of unsuitability for the job,[3] while termination pursuant to an established retirement plan carries no such connotation. It would appear, therefore, that the "no discharge without cause" provision is inserted in the contract only to limit the employer's power to discipline, and that the compulsory retirement plan lies outside the terms of the agreement. The position of this court, however, is that plaintiff's compulsory retirement is a termination of employment covered by the collective agreement and, further, that such termination is "without [just] cause."[4] It is doubtful

[1] Intl. Assn. of Machinists v. Electric Vacuum Cleaner Division, General Electric Corp., (Ohio 1949) 17 CCH Lab. Cas. ¶65,350; United Protective Workers of America v. Ford Motor Co., (7th Cir. 1952) 194 F. (2d) 997.

[2] Swift & Co., 9 Lab. Arb. Rep. 560 (1946); Barrett-Cravens Co., 12 Lab. Arb. Rep. 522 (1949).

[3] See American Republics Corp., 18 Lab. Arb. Rep. 248 at 253 (1952), where the arbitrator points out that "lay-off" is generally understood to refer to a cessation of employment because of lack of work, but that "discharge (or suspension) inevitably casts a shadow on the worker's character or reputation, for generally workers are discharged only for grave dereliction of duty or serious misconduct."

[4] Principal case at 732.

whether the authority relied on by the court[5] supports that conclusion since in those cases there was no showing of any retirement program, established prior to the execution of the collective agreement, which might have constituted an understood term or condition of employment. Those cases, then, hold only that termination because of age is a discharge "without just cause."[6] This leaves open the question raised in the principal case.[7] Since the case turns upon the meaning to be attached to the general phrase "without just cause," the circumstances of the execution of the collective agreement should be significant as evidence of the intentions of the parties.[8] If, then, the evidence reveals that there was an established compulsory retirement plan in existence at the time the collective agreement was entered into and that the plan had been applied without objection from the union, the natural inference, absent evidence to the contrary, would seem to be that the union acquiesced in this program and considered it a non-disciplinary "just cause" for the termination of employment.

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[5] See the cases cited in note 1 supra. In Inland Steel Co. v. NLRB, (7th Cir. 1948) 170 F. (2d) 247, also relied upon by the court in the principal case, the court was concerned with the employer's argument that there is no duty to bargain concerning compulsory retirement plans. The case did not, therefore, present the problem of construing a collective agreement.

[6] "We do not have here a case of retirement. Instead, we have discharge because of age." Intl. Assn. of Machinists v. Electric Vacuum Cleaner Division, General Electric Corp., note 1 supra, at p. 76,322. Similarly, in the Ford Motor Co. case, note 1 supra, at 1003, it was said, "The District Court apparently dismissed the action on the theory that Ford retired Orloski pursuant to an established retirement plan or policy. The pleadings, however, reveal no such plans."

[7] The court in the principal case seems to concede the existence of an established retirement program. Principal case at 731.

[8] See Swift & Co., note 2 supra. Cf. Timkin Roller Bearing Co. v. NLRB, (6th Cir. 1947) 161 F. (2d) 949, 12 CCH Lab. Cas. ¶63,793 (1947), for this approach to construing the collective agreement. In the latter case it is suggested that the union's acquiescence in subcontracting by the employer over a long period of time antedating the execution of the first collective agreement indicated that the parties had intended that the power to do this subcontracting be included in the general language of the management functions clause. No good reason appears why such an approach should not be utilized in particularizing the meaning of the words "just cause."