UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

JOSEPH Di BIASE, JOHN PRODORUTTI and DAVID BRASS as individuals, on behalf of themselves and all persons similarly situated, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,

Plaintiffs,

v.

SPX CORPORATION,

Defendant.

-and-

RON BEEGLE, DAVID BOBCOCK and CARL VAN LOON, as individuals, on behalf of themselves and all persons similarly situated, and INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW,

Plaintiffs,

v.

SPX CORPORATION,

Defendant.

Case No. 3:14-cv-656

COMPLAINT

Plaintiff Joseph Di Biase, and other Plaintiffs identified in the first caption (ñLeeds and Northrup (L&N) Settlement Class Plaintiffsò), and Plaintiff Ron Beegle, and other Plaintiffs identified in the second caption (ñMuskegon Settlement Class Plaintiffsò) on behalf of themselves and all similarly situated persons in the proposed classes described in this Complaint, and the International Union United Automobile, Aerospace and Agricultural Implement Workers Of America, UAW (ñUAWò), by their attorneys, Pinsky, Smith, Fayette & Kennedy, LLP and Local Counsel Patterson Harkavy, LLP, file this Complaint against SPX Corporation (ñDefendantò) as follows:

INTRODUCTION

1. This action is brought as a class action by the Class Plaintiffs on behalf of themselves and a similarly situated class of retirees and spouses, and surviving spouses of retirees, and eligible dependents of retirees or surviving spouses, pursuant to Rule 23(a) and 23(b)(1) and (2) of the Federal Rules of Civil Procedure.

2. In 2001, the UAW and certain class plaintiffs brought litigation in the Western District of Michigan against SPX in two separate actions for alleged breach of promises made in collective bargaining agreements between the UAW and SPX, or its predecessor. The actions were combined for settlement. The litigation involved retiree health care insurance and other benefits for retirees who retired from a Leeds and Northrup plant in the Philadelphia, Pennsylvania area acquired by SPX (L&N Settlement Class) and a plant in Muskegon, Michigan operated by SPX (Muskegon Settlement Class). Settlement Agreements were reached in each case and were approved by the court in 2004. SPX seeks to change the arrangement by which the benefits under the Settlement Agreements are to be provided. The language at issue in each

Settlement Agreement is identical. The Plaintiffs here maintain that the changes SPX has announced do not conform to the requirements of the Settlement Agreements.

3. Counts I and III are brought under Section 301 of the Labor-Management Relations Act (ñLMRAò), 29 U.S.C. §185, and seek declaratory and temporary, preliminary and permanent injunctive relief, and such monetary relief incidental to the declaratory and injunctive relief as is necessary to make the Plaintiffs whole, for breach of a certain Settlement Agreements arising out of collectively bargained agreements.

4. Counts II and IV are brought under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (ñERISAò), 29 U.S.C. §1132(a)(1)(B) and seek to recover benefits due, to clarify rights to benefits due under certain Settlement Agreements that require SPX to maintain certain employee welfare benefit plans, and for temporary, preliminary and permanent injunctive relief, and such monetary relief incidental to such declaratory and injunctive relief as is necessary to make the members of the Class whole.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Counts I and III under Section 301 of the LMRA, 29 U.S.C. §185. This Court has jurisdiction over Counts II and IV under Sections §502(a)(1)(B), 502(a)(3), 502(e)(1), and 502(f) of ERISA, 29 U.S.C. §1132(a)(1)(B), §1132(a)(3), §1132(e)(1), §1132(f), and applicable federal common law.

6. Venue in this judicial district is proper under Section 301 of LMRA, 29 U.S.C. §185, and Section 502(e)(2) and §502(f) of ERISA, 29 U.S.C. §1132(e)(2) and §1132(f).

PARTIES

7. Defendant is a Delaware corporation whose headquarters are at 13515 Ballantyne Corporate Place, Charlotte, North Carolina, which is within this judicial district.

8. Defendant or its predecessor operated facilities in Muskegon, Michigan and in the Philadelphia, Pennsylvania area, certain employees of which worked under and retired under certain collective bargaining agreements with the UAW.

9. Class Plaintiffs Di Biase, Prodorutti and Brass live in the Philadelphia, Pennsylvania area. Each retired from employment with the predecessor (Leeds & Northrup) of Defendant. During their employment with the predecessor of Defendant, each was represented in collective bargaining by the UAW and its former Local 1350. Each is a Northrup Settlement Class member and a beneficiary under the Leeds & Northrup Settlement Agreement (L&N Settlement Agreement). Class Plaintiffs De Biase and Brass were also class representatives in the prior litigation that resulted in the L&N Settlement Agreement at issue here.

10. Class Plaintiffs Beegle, Bobcock and Van Loon live in the Muskegon, Michigan area. Each retired from employment with Defendant. During their employment with Defendant each was represented in collective bargaining by the UAW and its former Local 637. Each is a Muskegon Settlement Class Class Member and a beneficiary under the Muskegon Settlement Agreement at issue here.

CLASS ACTION ALLEGATIONS

11. The Class Plaintiffs bring these class actions on behalf of themselves and other similarly situated Class Members for benefits promised by Defendant SPX in the L&N Settlement Agreement and Muskegon Settlement Agreement, which were entered into and

approved pursuant to FRCP 23(b) in *Di Biase, et al v SPX Corp, et al*, Western District of Michigan, Case No. 1:01-cv-624 (L&N Settlement Agreement) and *Pedler, et al v SPX Corp*. Western District of Michigan, Case No. 1:01-cv-623 (Muskegon Settlement Agreement) on January 12, 2004, and which are described in more detail below.

12. The exact number of Class Members represented by the L&N Settlement Class Plaintiffs identified in the first caption is not presently known, but, upon information and belief, includes more than 500 retirees, surviving spouses, and eligible dependents and is therefore so numerous that joinder of individual members In this action is impracticable.

13. The exact number of Class Members represented by the Muskegon Settlement Class Plaintiffs identified in the second caption is not presently known, but, upon information and belief, includes more than 350 retirees, surviving spouses and eligible dependents , and is therefore so numerous that joinder of individual members In this action is impracticable.

14. There are common questions of law and fact in the action that relate to and affect the rights of each member of the Classes. The declaratory relief sought is common to all members of each Class, as set forth below in Counts I through IV of this Complaint.

15. The claims of the Class Plaintiffs are typical of the claims of the Class in that the Class Plaintiffs claim that Defendant is obligated to provide all Class Members, including the Class Plaintiffs, with certain retiree health care benefits pursuant to the L&N and Muskegon Settlement Agreements. There is no conflict between any Class Plaintiff and other Class Members with respect to this action.

16. The Class Plaintiffs are the representative Plaintiff parties for the Classes, and are able to and will fairly and adequately protect the interests of the Classes.

17. The lead counsel for the Class Plaintiffs, Michael L. Fayette of Pinsky, Smith, Fayette & Kennedy, LLP, is experienced and capable in the field of labor law and ERISA and has successfully prosecuted numerous class actions of a similar nature. The firm was certified as Class Counsel in the litigation in which the Settlement Agreements at issue here were achieved. He is not currently admitted to practice before this Court but shall promptly file a motion seeking admission pro hac vice.

18. Defendant has acted on grounds generally applicable to the Classes, thereby making declaratory and temporary, preliminary and final injunctive relief appropriate with respect to the Classes as a whole.

19. This action is properly maintained as a class action in that the prosecution of separate actions by individual members would create a risk of adjudication with respect to individual members which would establish incompatible standards of conduct for the Defendant.

20. This action is properly maintained as a class action in that the prosecution of separate actions by individual Class Members would create a risk of adjudication with respect to individual Class Members which would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication, or would substantially impair or impede their ability to protect their interests.

COMMON FACT ALLEGATIONS

21. The UAW is a labor organization as defined in §2(5) of the National Labor Relations Act, 29 U.S.C. §152(5).

22. The UAW and its former Locals 637 and 1350 represented the Class Plaintiffs and other Class Members prior to their retirement in the negotiation of various collective bargaining agreements.

23. Defendant and UAW and its former Locals 637 and 1350 negotiated a series of collective bargaining agreements in which Defendant was to provide certain retiree health care insurance and other benefits for the Class Members.

24. In 2001 litigation was brought against SPX alleging violation of those collectively bargained agreements in the matters identified in Paragraph 11, above.

25. The settlements were achieved in 2003 and approved by the Court in 2004. A copy of the L&N Settlement Agreement is attached as Exhibit A. A copy of the Muskegon Settlement Agreement is attached as Exhibit B.

26. Each Settlement Agreement identified certain retiree health care plans (SPX Plans) and benefits that were to be provided to Settlement Class Members ñfor the life remainder of their lives.ò (See Section 5.2 of each Settlement Agreement) The SPX Plans were described in detail in the Exhibits attached to the Settlement Agreements. (See Exhibits D - H to the L&N Settlement Agreement (Exhibit A to this Complaint) and Exhibits D - I to the Muskegon Settlement Agreement (Exhibit B to this Complaint)).

27. Each Settlement Agreement also provided that SPX could change the plans, carriers, networks and providers, so long as the benefits provided to Class Members were ñsubstantially equivalentò to the SPX Plans**.** (See, e.g., Section 5.1(a)(1), (2) and (3); Section 5.1(a), (3)(i) and (ii); Section 5.1(a)(4); Section 5.1(a)(5); Section 5.1(b)(1), (2) and (3); Section

5.8; and Section 5.9 of Exhibit A and Section 5.1(a)(2)(i), (ii), (iii) and (v); Section 5.1(b), Section 5.6 and Section 5.7 of Exhibit B.)

28. In the Fall of 2014, SPX announced to the retirees that it was terminating the participation of Medicare Eligible Class Members (generally those 65 or older) in the SPX Plans effective January 1, 2015 and that it was imposing a, ñNew Approach to Retiree Health Care Coverageò (New Approach) on these older retirees.

29. A copy of the 21 page New Approach mailed to the older retirees in the L&N Settlement Class is attached as Exhibit C.

30. A copy of the 20 page New Approach mailed to the older retirees in the Muskegon Settlement Class is attached as Exhibit D.

31. The New Approach is a Health Reimbursement Account (HRA), into which SPX will place a specified sum of money each year. The retiree is then required to locate and purchase appropriate health insurance coverage to replace the SPX Plans specified in the Settlement Agreements, and then seek reimbursement for those expenditures from the HRA. When the HRA is exhausted, the retiree is then financially responsible for his/her medical care for the rest of the year.

32. The Summary Plan Description and Plan documents for the SPX Corporation Retiree Health Reimbursement Account is attached as Exhibit E. Under the heading Plan Termination, on page 18, ñSPX Corporation reserves the right to terminate the Plan at any time.ò

33. Among other things, in order to have any health care, the New Approach requires the Medicare eligible Settlement Class Members to be sufficiently capable (mentally and physically) to engage in the acquisition of information and decision making necessary to choose

a new plan or plans from the many hundreds available, to ñfrontò the sums necessary to pay the required premiums and to provide certain required documentation for reimbursement to SPXôs administrator of the HRA.

COUNT I
VIOLATION OF SETTLEMENT AGREEMENT ARISING FROM
COLLECTIVE BARGAINING AGREEMENTS

34. Class Plaintiff Di Biase and others identified in the first caption re-allege and incorporate by reference the above paragraphs as though fully set forth in this Count I.

35. Effective January 1, 2015, L&N Medicare-eligible Settlement Class Membersô health care and prescription drug insurance coverage through the SPX Plans or their substantial equivalent will be terminated. Instead, Class Members and dependents will receive only a yearly contribution into a health reimbursement account.

36. The changes modified and reduced the health care benefits of the L&N Class Plaintiffs and Class Members, are not substantially equivalent to the benefits promised and described in the L&N Settlement Agreement and breach the Defendantôs obligation to provide certain lifetime post-retirement health care benefits.

37. Defendantôs breach of their contractual obligations as set forth in this Count will cause the Class Plaintiffs and other Class Members monetary damages and great mental anguish and distress.

COUNT II
VIOLATION OF ERISA PLAN

38. Class Plaintiff Di Biase and others identified in the first caption re-allege and incorporate by reference the above paragraphs of this Complaint as though set forth in this Count II.

39. Defendant was at all relevant times an ñemployerò within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5).

40. Defendant was at relevant times the ñplan sponsorò and/or ñadministratorò of the Plan, within the meaning of Section 3(16)(A)-(B) of ERISA, 29 U.S.C. §1002(16)(A)-(B).

41. The post-retirement health care benefit plans provided for under the L&N Settlement Agreement is an ñemployee welfare benefit planò within the meaning of Section 3(1), of ERISA 29 U.S.C. §1002(1).

42. The L&N Class Plaintiffs and other Class Members are ñparticipantsò in the employee welfare benefit plan, within the meaning of §3(7) of ERISA, 29 U.S.C. §1002(7).

43. The terms of the employee welfare benefit plan require Defendant to provide retiree health care benefits through the SPX Plans or their substantial equivalent to the L&N Class Plaintiffs and other Class Members for the remainder of their lives.

44. Defendantôs reduction of the retiree health care benefits caused by the New Approach effective January 1, 2015 for the L&N Class plaintiffs and other Class Members violates the terms of the employee welfare benefit plan.

COUNT III
VIOLATION OF SETTLEMENT AGREEMENT ARISING FROM COLLECTIVE BARGAINING AGREEMENTS

45. Class Plaintiff Beegle and others identified in the second caption re-allege and incorporate by reference the above paragraphs as though fully set forth in this Count III.

46. Effective January 1, 2015, Muskegon Medicare-eligible Settlement Class Membersô health care and prescription drug insurance coverage through the SPX Plans or their substantial equivalent, will be terminated. Instead, Class Members and dependents will receive only a yearly contribution into a health reimbursement account.

47. The changes modified and reduced the health care benefits of the Muskegon Class Plaintiffs and Class Members, are not substantially equivalent to the benefits described in the Muskegon Settlement Agreement and breach the Defendantôs obligation to provide them with certain lifetime post-retirement health care benefits.

48. Defendantôs breach of their contractual obligations as set forth in this Count will cause the Muskegon Class Plaintiffs and other Class Members monetary damages and great mental anguish and distress.

COUNT IV
VIOLATION OF ERISA PLAN

49. Class Plaintiff Beegle and others identified in the second caption re-allege and incorporate by reference the above paragraphs of this Complaint as though set forth in this Count IV.

50. Defendant was at all relevant times an ñemployerò within the meaning of Section 3(5) of ERISA, 29 U.S.C. §1002(5).

51. Defendant was at relevant times the ñplan sponsorò and/or ñadministratorò of the Plan, within the meaning of Section 3(16)(A)-(B) of ERISA, 29 U.S.C. §1002(16)(A)-(B).

52. The post-retirement health care benefit plan provided for under the Muskegon Settlement Agreement is an ñemployee welfare benefit planò within the meaning of Section 3(1), of ERISA 29 U.S.C. §1002(1).

53. The Muskegon Class Plaintiffs and other Class Members are ñparticipantsò in the employee welfare benefit plan, within the meaning of §3(7) of ERISA, 29 U.S.C. §1002(7).

54. The terms of the employee welfare benefit plan require Defendant to provide certain retiree health care benefits through the SPX Plans or their substantial equivalent to the Muskegon Class Plaintiffs and other Class Members for the remainder of their lives.

55. Defendantôs reduction of the retiree health care benefits caused by the New Approach effective January 1, 2015 for the Muskegon Class plaintiffs and other Class Members violates the terms of the employee welfare benefit plan.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request that this Court:

A. Enter a declaratory judgment against Defendant under Section 301 of the LMRA that Defendant is obligated under the L&N and Muskegon Settlement Agreements to provide the Class Plaintiffs and other Class Members with vested lifetime retiree health care benefits as described in the SPX Plans or their substantial equivalent.

B. Enter a judgment against the Defendant under Section 502(a)(1)(B) of ERISA which clarifies the rights of Class Plaintiffs and Class Members under the terms of the L&N and

Muskegon Settlement Agreements by declaring that New Approach is not substantially equivalent to the SPX Plans specified in the Settlement Agreements and violates the provisions of the same.

C. Enter temporary, preliminary and permanent injunctive relief requiring Defendant to maintain the level of retiree health care benefits specified in the SPX Plans or their substantial equivalent as required by the terms of the applicable Settlement Agreements.

D. Order Defendant to pay sums, plus interest, to the Class Plaintiffs and other Class Members, incidental to injunctive relief as are necessary to make the Class Members whole as a result of Defendantôs violation of the Settlement Agreements.

F. Award Plaintiffs attorney fees, and costs incurred of this action.

G. Grant such further relief as may be deemed necessary and proper.

Dated: November 25, 2014

PINSKY, SMITH, FAYETTE & KENNEDY, LLP
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