1 of 1 DOCUMENT

CENTRAL LABORERS' PENSION FUND, Petitioner v. THOMAS E. HEINZ et al.

No. 02–891

SUPREME COURT OF THE UNITED STATES

541 U.S. 739; 124 S. Ct. 2230; 159 L. Ed. 2d 46; 2004 U.S. LEXIS 4028; 72 U.S.L.W. 4441; 2004–1 U.S. Tax Cas. (CCH) P50,260; 94 A.F.T.R.2d (RIA) 5071; 32 Employee Benefits Cas. (BNA) 2313; 17 Fla. L. Weekly Fed. S 347

April 19, 2004, Argued
June 7, 2004, Decided

NOTICE:

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PRIOR HISTORY: ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT. *Heinz v. Cent. Laborers' Pension Fund, 303 F.3d 802, 2002 U.S. App. LEXIS 18805 (7th Cir. Ill., 2002)*

DISPOSITION: Affirmed.

DECISION:

[***46] ERISA's "anti–cutback" provision (29 USCS § 1054(g)), prohibiting pension–plan amendment that would reduce participant's "accrued benefit," held to prohibit amendment expanding types of postretirement employment that would trigger suspension of early–retirement benefits already accrued.

SUMMARY:

Two participants in a multiemployer pension plan administered by a labor union retired from the construction industry after accruing enough credits to qualify for early retirement payments under the plan's defined–benefit "service only" pension, that paid the same monthly benefits that the participants would have received had they retired at the usual age. The plan had a rule under which monthly payments to a beneficiary of service–only pensions were suspended while the beneficiary engaged in "disqualifying employment," which, when the two participants retired, was defined by the plan to include a job as a construction worker but not as a construction supervisor.

Subsequently, after the participants had taken jobs as construction supervisors, the plan (1) expanded its "disqualifying employment" definition to include any construction–industry job, and (2) stopped the participants' monthly payments when they continued their supervisor jobs.

The participants sued the plan to recover the suspended benefits on the alleged basis that the suspensions violated the "anti–cutback" rule of § 204(g) of the Employee Retirement Income Security Act of 1974 (ERISA) (*29 USCS § 1054(g)*), which prohibited any pension–plan amendment that would reduce a participant's "accrued benefit." The United States District Court for the Central District of Illinois granted the plan judgment on the pleadings.

However, the United States Court of Appeals for the Seventh Circuit (1) reversed, and (2) held that imposing new conditions on rights to benefits already accrued violated the anti–cutback rule (*303 F.3d 802*).

[***47] On certiorari, the United States Supreme Court affirmed. In an opinion by Souter, J., expressing the unanimous view of the court, it was held that the "anti–cutback" rule of *§ 204(g)* prohibited a plan amendment expanding the types of postretirement employment that would trigger a mandatory suspension of early–retirement benefits already accrued, as:

(1) As a matter of common sense, a participant's benefits could not be understood without reference to the conditions imposed on receiving the benefits.

(2) An amendment placing materially greater restrictions on the receipt of benefit reduced the benefit just as surely as did a decrease in the size of the monthly payment.

(3) The court did not see how, in any practical sense, the change of terms in the case at hand could not be viewed as shrinking the value of the participants' pension rights

and reducing their promised benefits.

(4) With respect to the anti–cutback rule of *§ 204(g)* showing up in substantially identical form as *§ 411(d)(6) of the Internal Revenue Code* (*26 USCS § 411(d)(6)*), the Internal Revenue Service had approved the interpretation of the anti–cutback rule that the court was adopting in the case at hand.

Breyer, J., joined by Rehnquist, Ch. J., and by O'Connor and Ginsburg, JJ., concurring, expressed an assumption that the court's opinion in the instant case did not foreclose a reading of ERISA that allowed the Secretary of Labor or the Secretary of the Treasury to issue regulations explicitly allowing plan amendments to enlarge the scope of disqualifying employment with respect to benefits attributable to already–performed services.

LAWYERS' EDITION HEADNOTES:

[***LEdHN1]
PENSIONS AND RETIREMENT FUNDS §1.7
— ERISA — suspension of benefits — anti–cutback rule
Headnote: [1A] [1B] [1C] [1D] [1E] [1F]

The "anti–cutback" rule of § 204(g) of the Employee Retirement Income Security Act (ERISA) (*29 USCS § 1054(g)*)—in (1) generally prohibiting any amendment of an ERISA–covered pension plan that would decrease a plan participant's "accrued benefit"; and (2) providing that an amendment that had the effect of "eliminating or reducing an early retirement benefit" attributable to service before the amendment was to be treated as reducing accrued benefits—prohibited a plan amendment expanding the types of postretirement employment that would trigger a mandatory suspension of early–retirement benefits already accrued. For purposes of *§ 204(g)*, an amendment to a multiemployer plan administered by a labor union had had the effect of eliminating or reducing an early retirement benefit for two plan participants who had retired from the construction industry after accruing enough credits to qualify for early retirement payments from the plan's "service only" defined–benefit pension, as:

(1) The plan had a policy under which monthly payments of service–only pensions were suspended while the beneficiary engaged in "disqualifying employment," which, when the [***48] two participants had retired, had been defined by the plan to include a job as a construction worker but not as a construction supervisor.

(2) The amendment, made after the participants had taken jobs as construction supervisors, (a) expanded the definition of "disqualifying employment" to include any construction–industry job, and (b) stopped the participants' monthly payments.

(3) As a matter of common sense, a participant's benefits could not be understood without reference to the conditions imposed on receiving the benefits.

(4) An amendment placing materially greater restrictions on the receipt of benefit reduced the benefit just as surely as did a decrease in the size of the monthly payment.

(5) In the case at hand (a) the participants (i) had worked and accrued benefits under a plan with terms allowing them to supplement retirement income by certain employment, and (ii) were being reasonable if they relied on those terms in planning retirement; (b) the amendment had undercut any such reliance; and (c) the United States Supreme Court did not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of the participants' pension rights and reducing their promised benefits.

(6) With respect to the anti–cutback rule of *§ 204(g)* showing up in substantially identical form as *§ 411(d)(6) of the Internal Revenue Code* (*26 USCS § 411(d)(6)*), (a) the Internal Revenue Service (IRS), speaking in its most authoritative voice by implementing regulations concerning *§ 411(d)(6)*, had approved the interpretation of the anti–cutback rule that the court was adopting in the case at hand; and (b) these IRS regulations applied with equal force to *§ 204(g)*.

[***LEdHN2]
PENSIONS AND RETIREMENT FUNDS §1.3
— ERISA — requirements — purpose
Headnote: [2]

Nothing in the Employee Retirement Income Security Act of 1974 (ERISA) (*29 USCS §§ 1001 et seq.*) requires employers to establish employee–benefits plans, nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan. ERISA does, however, seek to ensure that employees will not be left empty–handed once employers have guaranteed them certain benefits. When Congress enacted ERISA, Congress wished to make sure that if a worker has been promised a defined pension benefit upon retirement, and if the worker has fulfilled whatever conditions are required to obtain a vested benefit, then the worker will receive the benefit.

[***LEdHN3]
PENSIONS AND RETIREMENT FUNDS §1.3
— ERISA — suspension of benefits — anti–cutback rule
Headnote: [3]

Conditions set before a benefit accrues can survive the anti–cutback rule of § 204(g) of the Employee Retirement Income Security Act (ERISA) (*29 USCS § 1054(g)*)—

which (1) generally prohibits any amendment of an ERISA–covered pension plan that would decrease a plan participant's accrued benefit; and (2) provides that an amendment that has the effect of eliminating or reducing an early retirement benefit attributable to service before the amendment is to be treated as reducing accrued benefits—even though the conditions' sanction is a suspension of benefits. Because such conditions are elements of the benefit [***49] itself and are considered in valuing it at the moment it accrues, a later suspension of benefit payments according to the plan's terms does not eliminate the benefit or reduce its value. In a given case, a new condition may or may not be invoked to justify an actual suspension of benefits, but at the moment the new condition is imposed, the accrued benefit becomes less valuable, irrespective of any actual suspension.

[***LEdHN4]
INTERNAL REVENUE §2
INTERNAL REVENUE §2.7
— agency manual and practice — regulation — change in status — retroactivity
Headnote: [4A] [4B]

With respect to an Internal Revenue Manual provision that a pension–plan amendment that reduced a retiree's pension benefits protected under *§ 411(d)(6) of the Internal Revenue Code* (IRC) (*26 USCS § 411(d)(6)*) (which generally prohibited an amendment that decreased a participant's accrued benefit) on account of the plan's "disqualifying employment" provision did not violate *§ 411(d)(6)*—and with respect to the Internal Revenue Service's (IRS's) purported routine approval of amendments to plan definitions of disqualifying employment, even when the definitions applied retroactively to accrued benefits—neither an unreasoned statement in the manual nor allegedly longstanding agency practice could trump a formal IRS regulation (prohibiting plans from attaching new conditions to benefits that an employee already had earned) with the procedural history necessary to take on the force of law. However, nothing that the United States Supreme Court held in the case at hand required the IRS to revisit the tax–exempt status in past years of plans that had been amended in reliance on the agency's representations in its manual by expanding the categories of work that would trigger suspension of benefit payments as to already–accrued benefits, as (1) *IRC § 7805(b)(8)* (*26 USCS § 7805(b)(8)*) gave the United States Commissioner of Internal Revenue discretion to decline to apply Supreme Court decisions retroactively, and (2) the case at hand would be an appropriate occasion for exercise of that discretion.

[***LEdHN5]
PENSIONS AND RETIREMENT FUNDS §1.3
— ERISA — benefits — suspension — forfeiture
Headnote: [5A] [5B]

The provision in § 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (*29 USCS § 1053(a)(3)(B)*)—that a right to an accrued pension benefit derived from employer contributions would not be treated as forfeitable solely because the pension plan provided that the payment of benefits was suspended for any period when beneficiaries such as those involved in the case at hand were employed in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when the benefits commenced—was irrelevant to the question, before the United States Supreme Court in the case at hand, whether the "anti–cutback" provision in § 204(g) of ERISA (*29 USCS § 1054(g)*), prohibiting any pension–plan amendment that would reduce a participant's "accrued benefit," prohibited an amendment expanding the types of postretirement employment that would trigger suspension of early–retirement benefits already accrued, as:

(1) The two sections addressed distinct questions, for (a) *§ 203(a)* addressed benefit forfeitures, where *§ 203(a)(3)(B)* was in the portion of [***50] ERISA that regulated vesting; (b) *§ 204(g)* belonged to the portion of ERISA that set forth requirements for benefit accrual; and (c) it would have been a non sequitur to conclude that, because an amendment did not constitute a prohibited forfeiture under *§ 203*, the amendment was not a prohibited reduction under *§ 204*.

(2) Read most simply and in context, *§ 203(a)(3)(B)* was a statement about the terms that could be offered to plan participants up front and enforced without amounting to forfeiture, not as an authorization to adopt retroactive amendments, for *§ 203(a)(3)(B)* spoke only to the permissible substantive scope of existing ERISA plans, not to the procedural permissibility of plan amendments.

(3) The fact that ERISA allowed plans to include a suspension provision going to benefits not yet accrued had no logical bearing on the analysis of how ERISA treated the imposition of such a condition on implicitly bargained–for benefits that had accrued already.

[***LEdHN6]
PENSIONS AND RETIREMENT FUNDS §1.3
— ERISA — suspension of benefits
Headnote: [6A] [6B]

Pension plans were free to add new suspension provisions under § 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) (*29 USCS § 1053(a)(3)(B)*)—which provided that a right to an ac-

crued pension benefit derived from employer contributions would not be treated as forfeitable solely because the pension plan provided that the payment of benefits was suspended for any period when beneficiaries were employed in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when the benefits commenced—so long as the new provisions applied to only the benefits that would be associated with future employment. *Section 203* regulated the contents of the bargain that could be struck between employer and employees as part of the complete benefits package for future employment.

[***LEdHN7]
PENSIONS AND RETIREMENT FUNDS §1.3
— ERISA — benefits — allocation — suspension
Headnote: [7A] [7B]

For purposes of determining whether the "anti–cutback" rule of § 204(g) of the Employee Retirement Income Security Act (ERISA) (*29 USCS § 1054(g)*), prohibiting any pension–plan amendment that would reduce participant's "accrued benefit," prohibited an amendment expanding the types of postretirement employment that would trigger suspension of early–retirement benefits already accrued, a plan's reliance on 26 CFR § 1.411(c)–1(f)—which provided that, for the purpose of allocating accrued benefits between employer and employee contributions, no adjustment to an accrued benefit was required on account of any suspension of benefits if such suspension was permitted under § 203(a)(3)(B) of ERISA (*29 USCS § 1053(a)(3)(b)*)—was unavailing, as the United States Supreme Court read this provision as simply establishing that the suspension of benefit payments pursuant to an existing suspension provision did not affect the actuarial value of a beneficiary's total benefits package for the purpose of allocation calculations, since the suspension provision had already been accounted for in the initial valuation. [***51]

SYLLABUS:

Respondents (collectively, Heinz) are retired participants in a multiemployer pension plan (hereinafter Plan) administered by petitioner. Heinz retired from the construction industry after accruing enough pension credits to qualify for early retirement payments under a "service only" pension scheme that pays him the same monthly benefit he would have received had he retired at the usual age. The Plan prohibits such beneficiaries from certain "disqualifying employment" after they retire, suspending monthly payments until they stop the forbidden work. When Heinz retired, the Plan defined "disqualifying employment" to include a job as a construction worker but not as a supervisor, the job Heinz took. In 1998, the Plan expanded its definition to include any construction industry job and stopped Heinz's payments when he did not leave his supervisor's job. Heinz sued to recover the suspended benefits, claiming that the suspension violated the "anti–cutback" rule of the *Employee Retirement Income Security Act of 1974 (ERISA)*, which prohibits any [***52] pension plan amendment that would reduce a participant's "accrued benefit," ERISA § 204(g), *29 U.S.C. § 1054(g) [29 USCS § 1054(g)]*. The District Court granted the Plan judgment on the pleadings, but the Seventh Circuit reversed, holding that imposing new conditions on rights to benefits already accrued violates the anti–cutback rule.

Held: ERISA § 204(g)

prohibits a plan amendment expanding the categories of postretirement employment that triggers suspension of the payment of early retirement benefits already accrued.

(a) The anti–cutback provision is crucial to ERISA's central object of protecting employees' justified expectations of receiving the benefits that they have been promised, see *Lockheed Corp. v. Spink, 517 U.S. 882, 887, 135 L. Ed. 2d 153, 116 S. Ct. 1783.* The provision prohibits plan amendments that have "the effect of . . . eliminating or reducing an early retirement benefit." *29 U.S.C. § 1054(g)(2) [29 USCS § 1054(g)(2)]*. The question here is whether the Plan's amendment had such an effect. Although the statutory text is not as helpful as it might be, it is clear as a matter of common sense that a benefit has suffered under the amendment. Heinz accrued benefits under a plan allowing him to supplement his retirement income, and he reasonably relied on that plan's terms in planning his retirement. The 1998 amendment undercut that reliance, paying benefits only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. There is no way that, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz's pension rights and reducing his promised benefits.

(b) The Plan's technical responses are rejected. To give the anti–cutback rule the constricted reading urged by the Plan—applying it only to amendments directly altering the monthly payment's nominal dollar amount and not to a suspension when the amount that would be paid is unaltered—would take textual *force majeure*, and certainly something closer to irresistible than language in *29 U.S.C. § 1002(23)(A) [29 USCS § 1002(23)(A)]* to the effect that accrued benefits are ordinarily "expressed in the form of an annual benefit commencing at normal retirement age." And the Plan's argument that *§ 204(g)*'s "eliminat[e] or reduc[e]" language does not apply to mere suspensions misses the point. ERISA permits conditions that are elements of the benefit itself but the question here

is whether a new condition may be imposed after a benefit has accrued. The right to receive certain money on a certain date may not be limited by a new condition narrowing that right.

(c) This Court's conclusion is confirmed by an Internal Revenue Service regulation that adopts the reading of *§ 204(g)* approved here.

(d) ERISA § 203(a)(3)(B), *29 U.S.C. § 1053(a)(3)(B) [29 USCS § 1053(a)(3)(B)]*—which provides that the right to an accrued benefit "shall not be treated as forfeitable solely because the plan" suspends benefit payments when beneficiaries like respondents are employed in the same industry and the same geographic area covered by the plan—is irrelevant to the question here. *Section 203(a)* addresses the entirely distinct concept of benefit forfeitures. And read most simply and in context, *§ 203(a)(3)(B)* is a statement about the terms that can be offered to plan [***53] participants up front, not as an authorization to adopt retroactive amendments. *303 F.3d 802*

, affirmed.

COUNSEL:

Thomas C. Goldstein argued the cause for petitioner.

John P. Elwood argued the cause for the United States, as amicus curiae, by special leave of court.

David M. Gossett argued the cause for respondents.

JUDGES: Souter, J., delivered the opinion for a unanimous Court. Breyer, J., filed a concurring opinion, in which Rehnquist, C. J., and O'Connor and Ginsburg, JJ., joined.

OPINIONBY: SOUTER

OPINION: [*741] [**2234] Justice **Souter** delivered the opinion of the Court.

[***LEdHR1A] [1A] With few exceptions, the "anti-cutback" rule of the *Employee Retirement Income Security Act of 1974 (ERISA)* prohibits any amendment of a pension plan that would reduce a participant's "accrued benefit." 88 Stat 858, *29 U.S.C. § 1054(g) [29 USCS § 1054(g)]*. The question is whether the rule prohibits an amendment expanding the categories of postretirement employment that triggers suspension of payment of early retirement benefits already accrued. We hold such an amendment prohibited.

I

Respondents Thomas Heinz and Richard Schmitt (collectively, Heinz) are retired participants in a multiemployer pension plan (hereinafter Plan) administered by petitioner Central Laborers' Pension Fund. Like most other participants in the Plan, Heinz worked in the construction industry in central Illinois before retiring, and by 1996, he had accrued enough pension credits to qualify for early retirement payments under a defined benefit "service only" pension. This scheme pays him the same monthly retirement benefit [*742] he would have received if he had retired at the usual age, and is thus a form of subsidized benefit, since monthly payments are not discounted even though they start earlier and are likely to continue longer than the average period.

Heinz's entitlement is subject to a condition on which this case focuses: the Plan prohibits beneficiaries of service only pensions from certain "disqualifying employment " after they retire. The Plan provides that if beneficiaries accept such employment their monthly payments will be suspended until they stop the forbidden work. n1 When Heinz retired in 1996, the Plan defined "disqualifying employment " as any job as "a union or non-union construction worker." This condition did not cover employment in a supervisory capacity, however, and when Heinz took a job in central Illinois as a construction supervisor after retiring, the Plan continued to pay out his monthly benefit.

n1 This suspension provision was adopted on the authority of *ERISA § 203(a)(3)(B), 29 U.S.C. § 1053(a)(3)(B) [29 USCS § 1053(a)(3)(B)]*. In authorizing such suspensions, Congress seems to have been motivated at least in part by a desire "to protect participants against their pension plan being used, in effect, to subsidize low-wage employers who hire plan retirees to compete with, and undercut the wages and working conditions of employees covered by the plan." 120 Cong. Rec. 29930 (1974) (statement of Sen. Williams regarding *§ 203(a)(3)(B)*). That explains why ERISA permits multiemployer plans to suspend a retiree's benefits only if he accepts work "in the same industry, in the same trade or craft, and the same geographic area covered by the plan." *29 U.S.C. § 1053(a)(3)(B)(ii) [29 USCS § 1053(a)(3)(B)(ii)]*.

In 1998, the Plan's definition of disqualifying employment was expanded by amendment to include any job "in any capacity in the construction [***54] industry (either as a union or non-union construction worker)." The Plan took the amended definition to cover supervisory work and warned Heinz that if he continued on as a supervisor, his monthly pension payments would be suspended. Heinz kept working, and the Plan stopped paying.

Heinz sued to recover the suspended benefits on the ground that applying the [**2235] amended definition of disqualifying [*743] employment so as to suspend payment of his accrued benefits violated ERISA's anti–cutback rule. On cross–motions for judgment on the pleadings under *Federal Rule of Civil Procedure 12(c)*, the District Court granted judgment for the Plan, only to be reversed by a divided panel of the Seventh Circuit, which held that imposing new conditions on rights to benefits already accrued was a violation of the anti–cutback rule. *303 F.3d 802 (CA7 2002)*. We granted certiorari in order to resolve the resulting Circuit split, see *Spacek v Maritime Ass'n, 134 F.3d 283 (CA5 1998)*, and now affirm.

II

A

[***LEdHR2] [2] There is no doubt about the centrality of ERISA's object of protecting employees' justified expectations of receiving the benefits their employers promise them.

> "Nothing in ERISA requires employers to establish employee benefits plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan. ERISA does, however, seek to ensure that employees will not be left empty–handed once employers have guaranteed them certain benefits . . . . [W]hen Congress enacted ERISA, it 'wanted to . . . mak[e] sure that if a worker has been promised a defined pension benefit upon retirement—and if he has fulfilled whatever conditions are required to obtain a vested benefit—he actually will receive it.'" *Lockheed Corp. v. Spink, 517 U.S. 882, 887, 135 L. Ed. 2d 153, 116 S. Ct. 1783 (1996)* (quoting *Nachman Corp. v. Pension Benefit Guaranty Corporation, 446 U.S. 359, 375, 64 L. Ed. 2d 354, 100 S. Ct. 1723 (1980)* (citations omitted)).

See also J. Langbein & B. Wolk, Pension and Employee Benefit Law 121 (3d ed. 2000) (hereinafter Langbein & Wolk) ("The central problem to which ERISA is addressed is the loss of pension benefits previously promised").

[*744] [***LEdHR1B] [1B] ERISA's anti–cutback rule is crucial to this object, and (with two exceptions of no concern here n2) provides that "[t]he accrued benefit of a participant under a plan may not be decreased by an amendment of the plan . . . ." *29 U.S.C. § 1054(g)(1) [29 USCS § 1054(g)(1)]*. After some initial question about whether the provision addressed early retirement benefits, see Langbein & Wolk 164, a 1984 amendment made it clear that it does. Retirement Equity Act of 1984, § 301(a), (2), 98 Stat 1451. Now *§ 204(g)* provides that "a plan amendment which has the effect of . . . eliminating or reducing an early retirement benefit . . . with respect to benefits attributable to service before the amendment shall be [***55] treated as reducing accrued benefits." *29 U.S.C. § 1054(g)(2) [29 USCS § 1054(g)(2)]*.

> n2 *ERISA § 204(g)* allows the reduction of accrued benefits by amendment in cases where a plan faces "substantial business hardship," *29 U.S.C. § 1082(c)(8) [29 USCS § 1082(c)(8)]*, and in cases involving terminated multiemployer plans, *§ 1441*.

Hence the question here: did the 1998 amendment to the Plan have the effect of "eliminating or reducing an early retirement benefit" that was earned by service before the amendment was passed? The statute, admittedly, is not as helpful as it might be in answering this question; it does not explicitly define "early retirement benefit," and it rather circularly defines "accrued benefit" as "the individual's accrued benefit determined under the plan . . . ." *§ 1002(23)(A)*. Still, it certainly looks as though a benefit has suffered under the amendment here, for we agree with the Seventh Circuit that, as a matter of common sense, "[a] participant's benefits [**2236] cannot be understood without reference to the conditions imposed on receiving those benefits, and an amendment placing materially greater restrictions on the receipt of the benefit 'reduces' the benefit just as surely as a decrease in the size of the monthly benefit payment." *303 F.3d, 805*. Heinz worked and accrued retirement benefits under a plan with terms allowing him to supplement retirement income by certain employment, and he was being reasonable if he relied on those terms in planning his retirement. [*745] The 1998 amendment undercut any such reliance, paying retirement income only if he accepted a substantial curtailment of his opportunity to do the kind of work he knew. We simply do not see how, in any practical sense, this change of terms could not be viewed as shrinking the value of Heinz's pension rights and reducing his promised benefits.

B

The Plan's responses are technical ones, beginning with the suggestion that the "benefit" that may not be devalued is actually nothing more than a "defined periodic benefit the plan is legally obliged to pay," Brief for Petitioner 28, so that *§ 204(g)* applies only to amendments directly altering the nominal dollar amount of a retiree's monthly pension payment. A retiree's benefit of $100 a

month, say, is not reduced by a postaccrual plan amendment that suspends payments, so long as nothing affects the figure of $100 defining what he would be paid, if paid at all. Under the Plan's reading, *§ 204(g)* would have nothing to say about an amendment that resulted even in a permanent suspension of payments. But for us to give the anti–cutback rule a reading that constricted would take textual *force majeure*, and certainly something closer to irresistible than the provision quoted in the Plan's observation that accrued benefits are ordinarily "expressed in the form of an annual benefit commencing at normal retirement age," *29 USC § 1002(23)(A)* [*29 USCS § 1002 (23)(A)*].

[***LEdHR3] [3] The Plan also contends that, because *§ 204(g)* only prohibits amendments that "eliminat[e] or reduc[e] an early retirement benefit," the anti–cutback rule must not apply to mere suspensions of an early retirement benefit. This argument seems to rest on a distinction between "eliminat[e] or reduc[e]" on the one hand, and "suspend" on the other, but it just misses the point. No one denies that some conditions enforceable by suspending benefit payments are permissible under ERISA: conditions set before a benefit accrues can survive the anti–cutback [***56] rule, even though their sanction is [*746] a suspension of benefits. Because such conditions are elements of the benefit itself and are considered in valuing it at the moment it accrues, a later suspension of benefit payments according to the Plan's terms does not eliminate the benefit or reduce its value. The real question is whether a new condition may be imposed after a benefit has accrued; may the right to receive certain money on a certain date be limited by a new condition narrowing that right? In a given case, the new condition may or may not be invoked to justify an actual suspension of benefits, but at the moment the new condition is imposed, the accrued benefit becomes less valuable, irrespective of any actual suspension.

C

[***LEdHR1C] [1C] Our conclusion is confirmed by a regulation of the Internal Revenue Service (IRS) that adopts just this reading of *§ 204(g)*. When *Title I of ERISA* was enacted to impose substantive legal requirements on employee pension plans (including the anti–cutback rule), *Title II of ERISA* amended the Internal Revenue [**2237] Code to condition the eligibility of pension plans for preferential tax treatment on compliance with many of the Title I requirements. Employee Benefits Law 47, 171–173 (S. Sacher et al., eds. 2d ed. 2000). The result was a "curious duplicate structure" with nearly verbatim replication in the Internal Revenue Code of whole sections of text from Title I of ERISA. Langbein & Wolk 91, P 6. The anti–cutback rule of *ERISA § 204(g)* is one such section, showing up in substantially identical form as *26 U.S.C. § 411(d)(6) [26 USCS § 411(d)(6)]*. n3 This duplication explains the provision of the *Reorganization Plan No. 4 of 1978, § 101*, 43 Fed. Reg. 47713 (1978), 92 Stat 3790, giving the Secretary of the Treasury [*747] the ultimate authority to interpret these overlapping anti–cutback provisions. See also Langbein & Wolk 92, P 7 ("The IRS has [regulatory] jurisdiction over . . . benefit accrua[l] and vesting"). Although the pertinent regulations refer only to the Internal Revenue Code version of the anti–cutback rule, they apply with equal force to *ERISA § 204(g)*. See 53 Fed. Reg. 26050, 26053 (1988) ("The regulations under *section 411* are also applicable to provisions of [ERISA] Title I").

n

[***LEdHR1D] [1D] "A plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment of the plan, other than an amendment described in *section 412(c)(8)* [of this Code], or [*29 U.S.C. § 1441 [29 USCS § 1441]*]." *26 U.S.C. § 411(d)(6)(A) [26 USCS § 411(d)(6)(A)]*; see also *§ 411(d)(6)(B)* (clarifying that the anti–cutback rule applies to early retirement benefits). Cf. n 2, *supra*, and accompanying text (detailing *ERISA § 204(g)*).

[***LEdHR1E] [1E] The IRS has formally taken the position that the anti–cutback rule does not keep employers from specifying in advance of accrual that "[t]he availability of a *section 411(d)(6)* protected benefit [is] limited to employees who satisfy certain objective conditions . . . ." 26 CFR §§ 1.411(d)–4, A–6(a)(1) (2003). Without running afoul of the rule, for example, plans may say from the outset that a single sum distribution of benefits is conditioned on the execution of a covenant not to compete. § 1.411(d)–4, A–6(a)(2). And employers are perfectly free to modify the deal they are offering their employees, as long as the change goes to the terms of compensation for continued, [***57] future employment: a plan "may be amended to eliminate or reduce *section 411(d)(6)* protected benefits with respect to benefits not yet accrued . . . ." § 1.411(d)–4, at A–2(a)(1). The IRS regulations treat such conditions very differently, however, when they turn up as part of an amendment adding new conditions to the receipt of benefits already accrued. The rule in that case is categorical: "[t]he addition of . . . objective conditions with respect to a *section 411(d)(6)* protected benefit that has already accrued violates *section 411(d)(6)*. Also, the addition of conditions (whether or not objective) or any change to existing conditions with respect to *section 411(d)(6)* protected benefits that results in any further restriction violates *section 411(d)(6)*." §

1.411(d)–4, A–7. So far as the IRS regulations are concerned, then, the anti–cutback provision flatly prohibits plans from attaching new conditions to benefits that an employee has already earned.

[*748] [***LEdHR1F] [1F] [***LEdHR4A] [4A] The IRS has, however, told two stories. The Plan points to a provision of the Internal Revenue Manual that supports its position: "[a]n amendment that reduces *IRC 411(d)(6)* protected benefits on account of [a plan's disqualifying employment provision] does not violate *IRC 411(d)(6)*." Internal Revenue Manual 4.72.14.3.5.3(7) (May 4, 2001), available at http//www.irs.ustreas.gov/irm/part4/ch49s18.html. And the United States as *amicus curiae* says that the IRS has routinely [**2238] approved amendments to plan definitions of disqualifying employment, even when they apply retroactively to accrued benefits. But neither an unreasoned statement in the manual nor allegedly long-standing agency practice can trump a formal regulation with the procedural history necessary to take on the force of law. See generally Note, Taxpayers' *Bill of Rights* Act: Taxpayers' Remedy or Political Placebo?, *86 Mich. L. Rev. 1787, 1799–1801 (1988)* (discussing legal status of the Internal Revenue Manual). Speaking in its most authoritative voice, the IRS has long since approved the interpretation of *§ 204(g)* that we adopt today. n4

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[***LEdHR4B] [4B] Nothing we hold today requires the IRS to revisit the tax–exempt status in past years of plans that were amended in reliance on the agency's representations in its manual by expanding the categories of work that would trigger suspension of benefit payments as to already–accrued benefits. The Internal Revenue Code gives the Commissioner discretion to decline to apply decisions of this Court retroactively. *26 U.S.C. § 7805(b)(8) [26 USCS § 7805(b)(8)]* ("The Secretary may prescribe the extent, if any, to which any ruling (including any judicial decision or any administrative determination other than by regulation) relating to the internal revenue laws shall be applied without retroactive effect"). This would doubtless be an appropriate occasion for exercise of that discretion.

III

[***LEdHR5A] [5A] In criticizing the Seventh Circuit's reading of *§ 204(g)*, the Plan and the United States rely heavily on an entirely separate section of ERISA § 203(a)(3)(B), *29 U.S.C. § 1053(a)(3)(B) [29 USCS § 1053(a)(3)(B)]*. Here they claim to find specific authorization [*749] to amend suspension provisions retroactively, in terms specific enough to trump any general prohibition imposed by *§ 204(g)*. *Section 203(a)(3)(B)* provides that

> "[a] right to an accrued benefit derived from employer contributions shall not be treated as forfeitable solely because the plan provides that the payment of benefits [***58] is suspended for such period as [beneficiaries like respondents are] employed . . . in the same industry, in the same trade or craft, and the same geographic area covered by the plan, as when such benefits commenced." *29 U.S.C. § 1053(a)(3)(B) [29 USCS § 1053(a)(3)(B)]*.

The Plan's arguments notwithstanding, *§ 203(a)(3)(B)* is irrelevant to the question before us, for at least two reasons.

First, as a technical matter, *§ 203(a)* addresses the entirely different question of benefit forfeitures. This is a distinct concept: *§ 204(g)* belongs to the section of ERISA that sets forth requirements for benefit accrual (the rate at which an employee earns benefits to put in his pension account), see *29 U.S.C. § 1054 [29 USCS § 1054]*, whereas *§ 203(a)(3)(B)* is in the section that regulates vesting (the process by which an employee's already–accrued pension account becomes irrevocably his property), see *29 U.S.C. § 1053 [29 USCS § 1053]*. See generally *Nachman Corp., 446 U.S., at 366, n. 10, 64 L. Ed. 2d 354, 100 S. Ct. 1723* ("*Section 203(a)* is a central provision in ERISA. It requires generally that a plan treat an employee's benefits, to the extent that they have vested by virtue of his having fulfilled age and length of service requirements no greater than those specified in *§ 203(a)(2)*, as not subject to forfeiture"). To be sure, the concepts overlap in practical effect, and a single act by a plan might raise both vesting and accrual concerns. But it would be a non sequitur to conclude that, because an amendment does not constitute a prohibited forfeiture under *§ 203*, it must not be a prohibited reduction under *§ 204*. Just because *§ 203(a)(3)(B)* failed to forbid it would not mean that *§ 204(g)* allowed it.

[*750] [***LEdHR5B] [5B] [***LEdHR6A] [6A] [***LEdHR7A] [7A] Second, read most simply and in context, *§ 203(a)(3)(B)* is a statement [**2239] about the terms that can be offered to plan participants up front and enforced without amounting to forfeiture, not as an authorization to adopt retroactive amendments. *Section 203(a), 29 U.S.C. § 1053(a) [29 USCS § 1053(a)]*, reads that "[e]ach pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age." This is a global di-

rective that regulates the substantive content of pension plans; it adds a mandatory term to all retirement packages that a company might offer. *Section 203(a)(3)(B)*, in turn, is nothing more than an explanation of this substantive requirement. Congress wanted to allow employers to condition future benefits on a plan participant's agreement not to accept certain kinds of postretirement employment, see n 1, *supra*, and it recognized that a plan provision to this effect might be seen as rendering vested benefits improperly forfeitable. Accordingly, adding *§ 203(a)(3)(B)* made it clear that such suspension provisions were permissible in narrow circumstances. But critically for present purposes, *§ 203(a)(3)(B)* speaks only to the permissible substantive scope of existing ERISA plans, not to the procedural permissibility of plan amendments. The fact that ERISA allows plans to include a suspension provision going to benefits not yet accrued has no logical bearing on the analysis of how ERISA treats the imposition of such a condition on (implicitly) bargained–for benefits that have [***59] accrued already. n5 *Section 203(a)(3)(B)* is no help to the Plan. n6

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[***LEdHR6B] [6B] This is not to say that *§ 203(a)(3)(B)* does not authorize some amendments. Plans are free to add new suspension provisions under *§ 203(a)(3)(B)*, so long as the new provisions apply only to the benefits that will be associated with future employment. The point is that this section regulates the contents of the bargain that can be struck between employer and employees as part of the complete benefits package for future employment.
n6

[***LEdHR7B] [7B] For analogous reasons, the Plan's reliance on 26 CFR § 1.411(c)–1(f) (2003) is unavailing. That section provides that, for the purpose of allocating accrued benefits between employer and employee contributions, "[n]o adjustment to an accrued benefit is required on account of any suspension of benefits if such suspension is permitted under *section 203(a)(3)(B)*." We read this provision as simply establishing that the actual suspension of benefit payments pursuant to an existing suspension provision does not affect the actuarial value of a beneficiary's total benefits package for the purpose of allocation calculations, since the suspension provision has already been accounted for in the initial valuation. Cf. n 3, *supra*. Far from helping the Plan, this regulation tends to support our larger proposition that it is the addition of a suspension condition, not the actual suspension of a benefit, that reduces an employee's accrued benefit.

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The judgment of the Seventh Circuit is affirmed.

CONCURBY: BREYER,CHIEF JUSTICE,O'CONNOR,GINSBURG

CONCUR: Justice **Breyer,** with whom the **Chief Justice,** Justice **O'Connor,** and Justice **Ginsburg** join, concurring.

I join the opinion of the Court on the assumption that it does not foreclose a reading of the *Employee Retirement Income Security Act of 1974* that allows the Secretary of Labor, or the Secretary of the Treasury, to issue *regulations* explicitly allowing plan amendments to enlarge the scope of disqualifying employment with respect to benefits attributable to already–performed services. Cf. *Christensen v. Harris County, 529 U.S. 576, 589, 146 L. Ed. 2d 621, 120 S. Ct. 1655 (2000)* (Souter, J., concurring).

REFERENCES: Go To Full Text Opinion

Go to Supreme Court Brief(s)

Go to Supreme Court Transcripts

60A Am Jur 2d, Pensions and Retirement Funds §§ 361 – 363

26 USCS § 411(d)(6); *29 USCS § 1054(g)*

L Ed Digest, Pensions and Retirement Funds §§ 1.3, 1.7

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Annotation References

Supreme Court's view as to weight and effect to be given, on subsequent judicial construction, to prior administrative construction of statute. *39 L Ed 2d 942*.

Construction and application of internal revenue statute (*§ 7805(b)*, Code of 1954; § 3791(b), Code of 1939) relating to retroactivity of rulings and regulations. *1 L Ed 2d 2051*.

Employer's liability, under state law, for fraud or misrepresentation inducing employee to take early retirement. *14 ALR5th 537*.