

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**GARY T. WINNETT, FREDA** )  
**JACKSON-CHITTUM, CASPER R.** )  
**HARRIS, WILLIAM H. DAILEY,** )  
**CALVIN E. GROGAN, KENNETH C.** )  
**HAMMER, and CHARLES A.** )  
**WATERFIELD, on behalf of themselves** )  
**and others similarly situated,** )  
  
**Plaintiffs,** )  
  
**v.** )  
  
**CATERPILLAR, INC.,** )  
  
**Defendant/Third-Party Plaintiff,** )  
  
**v.** )  
  
**INTERNATIONAL UNION, UAW, et. al,** )  
  
**Third-Party Defendants.** )

**Case No. 3:06-cv-00235**  
**District Judge Trauger**  
**Magistrate Judge Brown**  
  
**Class Action**

**ORDER**

In this class action involving retiree health care benefits, the subclass of CLS retirees and surviving spouses of CLS retirees filed a Motion for Preliminary Injunction (Docket No. 200) on December 21, 2007. Caterpillar responded by seeking a period of expedited discovery on the issues raised by the plaintiffs' motion. (Docket No. 205). Caterpillar contended in its response that an evidentiary hearing was necessary to resolve numerous disputed issues of material fact. (*Id.*) The plaintiffs objected, asserting there were no disputed facts to resolve. (Docket No. 208 at 3).

The court allowed Caterpillar to engage in expedited discovery through February 19, 2008, and set a hearing for March 7, 2008. (Docket No. 221). The hearing would not be an evidentiary hearing; the parties were ordered to submit evidence by way of affidavits or declarations. (*Id.*) After the expedited discovery period, Caterpillar produced approximately 5,000 pages of documents. (Docket No. 257 at 1).

Plaintiffs thereafter sought and received permission to submit a reply brief supported by affidavits of counsel and thirty-one (31) exhibits. (Docket Nos. 253 and 258). Caterpillar then renewed its request to set an evidentiary hearing on the CLS retirees' Motion for Preliminary Injunction, arguing that the CLS retirees' voluminous reply brief and attached exhibits confirmed Caterpillar's assertion that the plaintiffs' claim for extraordinary relief could not be decided without the court's first resolving numerous disputed issues of fact. (Docket No. 256).

The court conducted a teleconference with the attorneys on March 6, 2008, regarding Caterpillar's assertion, and decided that oral argument would be held the following day as scheduled. The court heard oral argument on March 7, 2008, and took the plaintiffs' motion under advisement. (Docket Nos. 259, 260). Caterpillar's motion for an evidentiary hearing also remains pending.

After hearing the parties' respective arguments and reviewing the materials submitted thus far in support of those arguments, the court has been persuaded that an evidentiary hearing on the plaintiffs' motion for preliminary injunctive relief is necessary. Federal Rule of Civil Procedure 65 provides: "[W]here facts are bitterly contested and credibility determinations must be made to decide whether injunctive relief should issue, an evidentiary hearing must be held." *See, e.g., Certified Restoration Dry Cleaning Network, L.L.C. v. Tenke Corp.*, 511 F.3d 535, 553 (6th Cir. 2007) (quoting *County Sec. Agency v. Ohio Dept. of Commerce*, 296 F.3d 477, 484 (6<sup>th</sup>

Cir. 2002)) (citations omitted). Here, it is clear that there are numerous disputed material facts. The parties have presented conflicting evidence as to the interpretation and application of the CLS Agreement and the vesting of retiree medical benefits under the CLS Agreement and 1988 labor contract. There are also disputed issues of fact regarding Caterpillar's estoppel and statute of limitations defenses, as well as whether the CLS plaintiffs have suffered irreparable harm. It will be necessary for the court to make credibility assessments in considering and weighing the evidence presented. Accordingly, Caterpillar's "Motion to Set Evidentiary Hearing on CLS Retirees' Motion for Preliminary Injunction" (Docket No. 256 ) is hereby GRANTED.

The main issues to be addressed at the evidentiary hearing will include: the interpretation of the 1988 labor contract as modified by the CLS Agreement (in particular, what "Covered Employees" means), whether the plaintiffs vested in lifetime, no-cost retiree medical benefits under the governing documents (and how this determination relates to the court's prior ruling regarding other class members, a ruling currently on interlocutory appeal to the Sixth Circuit), Caterpillar's statute of limitations and estoppel defenses, and whether the plaintiffs have demonstrated irreparable harm under the governing standard for issuance of preliminary injunctive relief.

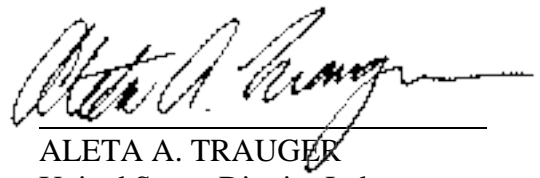
Specifically, the parties are advised to present any evidence showing the course of conduct between the Union and Caterpillar as it relates to the interpretation of the CLS Agreement and 1988 labor contract and to Caterpillar's estoppel defense. For example, any evidence establishing the existence of, and defining, the practice and theory of "pattern bargaining" and "parity" would be beneficial in this regard, as well as evidence, if it exists, detailing prior occasions when retirees allowed the Union to negotiate on their behalf.

Further, the parties should produce any evidence of the parties' knowledge and intent at the time they negotiated, drafted, and ratified the CLS Agreement. The parties should also produce any evidence of the retirees' knowledge and intent at the time they accepted certain benefits of the 1998 labor contract. Such evidence, if it exists, might include: contemporaneous notes, minutes, etc. from any CLS Agreement negotiation and/or drafting sessions, correspondence to and from Union members to Caterpillar prior to the ratification of the CLS Agreement, summaries of the proposed CLS Agreement, summaries of available retiree medical benefits under a given contract, and testimony regarding what employees or retirees were told regarding their benefits, the CLS Agreement and 1988 and 1998 labor contracts, and their application to the plaintiffs.

The parties should submit any other documentary or testimonial evidence relevant to the court's disposition of the pending motion for injunctive relief.

The court will schedule a telephone conference for purposes of scheduling the evidentiary hearing.

Entered this 2<sup>nd</sup> day of April 2008.

A handwritten signature in black ink, appearing to read "Aleta A. Trauger", written over a horizontal line.

ALETA A. TRAUGER  
United States District Judge