IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

MARTIN BEALE, SR., ROBERT GARROW, MELVIN HILL, for themselves and all persons similarly situated, and UNITED FOOD AND COMMERCIAL WORKERS LOCAL UNION 431, Plaintiffs, v. KRAFT HEINZ FOODS COMPANY, INC., Defendant.	)	Case No. 3:16-CV-00119-SMR-HCA ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Plaintiffs Martin Beale, Sr., Robert Garrow, and Melvin Hill filed this putative class action against Defendant Kraft Heinz Foods Company, Inc. ("Kraft"),[1] claiming Kraft violated their collective bargaining agreements, the Labor Management Relations Act ("LMRA"), 29 U.S.C. § 185, and the Employee Income Security Act ("ERISA"), 29 U.S.C. § 1132, by reducing or terminating retiree health and prescription drug insurance benefits. [ECF No. 1]. Before the Court is Kraft's Motion for Summary Judgment, [ECF No. 8].[2] The matter is fully submitted and ready for decision. For the reasons below, the Court GRANTS Kraft's Motion for Summary Judgment.

I. BACKGROUND

The following facts are undisputed, unless otherwise indicated. Kraft makes food products sold under the Oscar Meyer brand name at a meat processing plant in Davenport, Iowa. Plaintiff

[1] Per Kraft's representation in its motion, [ECF No. 8], the Court has corrected its name.

[2] Kraft originally filed as a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). The Court then converted the motion to one for summary judgment pursuant to Federal Rule of Civil 12(d). [ECF No. 16].

United Food and Commercial Workers Local Union 431 ("UFCW Local 431") represents the workers of Kraft's Davenport plant and negotiates collective bargaining agreements ("CBAs") on their behalf. Plaintiffs Martin Beale, Sr., Robert Garrow, and Melvin Hill ("Plaintiffs") are retired employees who worked at the Davenport plant and, as Kraft employees, they were subject to the terms of CBAs between Kraft and UFCW Local 431. Plaintiffs currently receive retiree health and prescription drug insurance from Kraft. Plaintiffs seek to represent a class consisting of Kraft retirees from the Davenport plant who were represented by UFCW Local 431, who participate in the Kraft retiree health and prescription drug insurance plans, and are age sixty-five or older. The rights of Kraft employees and retirees are set forth in the CBAs and other documents referred to as summary plan descriptions ("SPDs") and Memoranda of Agreements ("MOAs"), which describe changes made to the previous CBA.

The CBA in force during the year of a Kraft employee's retirement governs his or her retirement benefits. Plaintiffs each retired from working at Kraft in different years, thus their claims are governed by different CBAs and plan documents.

A. Documents Applicable to Melvin Hill

Plaintiff Melvin Hill retired on December 30, 1995. The CBA in effect at the time of Hill's retirement went into effect on April 3, 1995, and it provides that the agreement "shall remain in full force and effect through midnight, April 5, 1998." [ECF Nos. 18-5 at 2; 18-10 at 60].[3] The only reference to health benefits in the CBA appears in the section, "Pension, Insurance and Other Benefits," which states: "Pension Plan No. 1, Health and Life Insurance and 401(k) Provisions, as

[3] Plaintiffs dispute this fact by arguing that the "[t]he CBA does not state that retiree health benefits provided by the CBA are limited to the term of the CBA." [ECF No. 20 at 16]. That dispute, however, goes to the meaning of the provision rather than the language itself, which does appear in the CBA.

negotiated and amended by the company and the Union, are set forth in separate booklets." [ECF No. 18-10 at 59]. The CBA itself contains no other language addressing medical benefits or retiree medical benefits.

The MOA in effect when Hill retired also became effective in April 1995 and states it "shall remain in full force and effect through midnight 4-5-98." [ECF No. 18-11 at 8]. The MOA references retiree life insurance but does not address retiree medical benefits. *Id*. at 4.

The SPD applicable to Hill based on his retirement date, the "1995 SPD," states in its "INTRODUCTION," under the subheading "***Right to Amend or Terminate the Plan***":

> Oscar Mayer Foods Corporation (hereinafter called the "Company"), acting through the Kraft Foods, Inc. Management Committee for Employee Benefits reserves the right to amend or terminate any or all of the Group Insurance Plans at any time, subject to the provisions of any applicable collective bargaining agreement or as required to comply with applicable federal law or regulations. You would be properly notified of any changes, and all changes would be subject to the Plan's provisions and applicable laws.

[ECF No. 18-12 at 3]. The 1995 SPD further provides that when a retiree or dependent "become[s] eligible for Medicare, medical benefits from the Company may change depending on Federal Law." *Id*. at 14. "Those employees retiring after February 1, 1992, may be required to share in the cost of the Group Insurance Plan." *Id*.

B. Documents Applicable to Martin Beale, Sr.,

Plaintiff Martin Beale, Sr., retired on April 29, 2001. The CBA in effect at the time of his retirement became effective on April 5, 1998, and it provides that the agreement "shall remain in full force and effect through midnight, April 7, 2002." [ECF Nos. 18-5 at 2; 18-14 at 23]. The only reference to health benefits in the CBA appears in the section, "Pension, Insurance and Other Benefits," which states: "Pension Plan No. 1, Health and Life Insurance and 401(k) Provisions, as negotiated and amended by the company and the Union, are set forth in separate booklets." [ECF

No. 18-14 at 22]. The CBA itself contains no other language addressing medical benefits or retiree medical benefits.

The MOA in effect when Beale retired also became effective in April 1998 and states it "shall remain in full force and effect through midnight April 7, 2002." [ECF No. 18-16 at 6]. The 1998 MOA does not address past retirees' medical benefits. The MOA addressed future retirees' medical benefits in a section entitled "HEALTH & WELFARE." *Id*. at 4. "Effective no later than 10-01-98 employees and future retirees will be able to choose between two new health plans that will replace the current plan . . . ." *Id*.

The SPD applicable to Beale based on his retirement date, the "1998 HMO SPD," contains a section entitled, "Retiree Coverage." [ECF No. 18-17 at 24]. According to the introduction to this section, "When you retire, you'll have the option to continue medical coverage for yourself and your family." *Id*. "If the options offered to active employees change, the options offered to retirees *may change* at the same time." *Id*. Regarding eligibility, the SPD provides that employees and their dependents "qualify for retiree medical coverage if you leave Kraft after age 55 with at least 10 years of service or after completing 30 years of service." *Id*. With respect to monthly contributions, "[t]he amount you pay towards the cost of retiree medical coverage is the same as the active rates unless you retire with 30 years of service; then the retiree medical coverage is at no cost." *Id*. at 25. "Plan benefits are coordinated with Medicare" for retirees who become eligible for Medicare coverage. *Id*. Under the heading, "When Retiree Coverage Ends," the SPD states:

> Your coverage will end on the earliest of these dates:
>
> - The end of the period for which you last made the required contribution if you stop paying your share of the plan's cost
> - The date of your death. (Coverage for your surviving spouse will continue provided contributions are made) or
> - The date the plan is terminated.
>
> Your dependent child(ren)'s coverage will end on the date they lose dependent status, as defined in "Enrolling Your Dependents". As long as the plan remains in effect and you make the required contributions, they will continue to have coverage.

Id. Under the heading, "Right to Amend or Terminate the Plan," the SPD provides:

> Kraft Foods, Inc., or its Management Committee for Employee Benefits reserves the right to amend or terminate the Kraft Medical Plan at any time, subject to the provisions of any applicable collective bargaining agreement or as required to comply with applicable federal law or regulations. In such a case, you would be properly notified of any changes, and all changes would be subject to the plan's provisions and applicable laws.

Id. at 30. Kraft terminated the plan described in the 1998 HMO SPD for individuals sixty-five years old and older on December 31, 2015. [ECF No. 18-20 at 1]. Plaintiffs dispute this averment by responding that Kraft could not terminate the plan without the consent of UFCW Local 431, the other party to the CBA. [ECF No. 20 at 30].

C. Documents Applicable to Robert Garrow

Plaintiff Robert Garrow retired on November 29, 2004. The CBA in effect at the time of his retirement became effective in April 2002 and it provides that the agreement "shall remain in full force and effect through midnight, April 9, 2006." [ECF Nos. 18-5 at 2; 18-6 at 35]. The only reference to health benefits in the CBA appears in the section, "Pension, Insurance, and Other Benefits," which states: "Pension Plan No. 1, Health and Life Insurance and 401(k) Provisions, as negotiated and amended by the company and the Union, are set forth in separate booklets." [ECF No. 18-6 at 34]. The CBA itself contains no other language addressing medical benefits or retiree medical benefits.

The MOA in effect when Garrow retired also became effective in April 2002 and states it "shall remain in full force and effect through midnight April 9, 2006." [ECF No. 18-18 at 6]. The MOA provides that "[m]odifications to the medical benefit are outlined in Attachment B." *Id*. at 4. Attachment B details the coverage terms of the medical plan "[f]or Active and Retiree" and states that "[t]he Company retains the right to change benefit providers as long as benefit levels are not changed." *Id*. at 9.

The SPD that applies to Garrow based on his retirement date, the "2003 HMO SPD," contains a section entitled, "Retiree Coverage." [ECF No. 18-7 at 36]. According to the introduction to this section, "When you retire, you'll have the option to continue medical coverage for yourself and your family." [ECF No. 18-7 at 36]. "Keep in mind, if the options offered to active employees change, the options offered to retirees may change at the same time. Some of the medical options available to active employees may not be available to retirees." *Id*. Regarding eligibility, the SPD provides that employees "qualify for retiree medical coverage if you leave Kraft after age 55 with at least 10 years of service or after completing 30 years of service." *Id.* With respect to monthly contributions, "[t]he amount you pay towards the cost of retiree medical coverage is the same as the active rates unless you retire with 30 years of service; then there is no cost for retiree medical coverage." *Id*. at 37. "Plan benefits are coordinated with Medicare" for retirees who become eligible for Medicare coverage. *Id*. Under the heading, "When Retiree Coverage Ends," the SPD states:

> Your coverage will end on the earliest of these dates:
>
> - The end of the period for which you last made the required contribution (if applicable), if you stop paying your share of the plan's cost
> - The date of your death. (Coverage for your surviving spouse will continue provided contributions are made) or
> - The date the plan is terminated.
>
> Your dependent child(ren)'s coverage will end on the date they lose dependent status, as defined in "Enrolling Your Dependents". As long as the plan remains in effect and you make the required contributions, they will continue to have coverage.

Id. This language appears under the heading, "Right to Amend or Terminate the Plan":

> Kraft or its Management Committee for Employee Benefits reserves the right to amend or terminate the Kraft Foods Global, Inc. Medical Plan at any time for any reason, subject to the provisions of any applicable collective bargaining agreement or as required to comply with applicable federal law or regulations. In such a case, you would be properly notified of any changes, and all changes would be subject to the plan's provisions and applicable laws. Keep in mind, health care benefits do not vest like retirement plan benefits. That means you do not have a guaranteed right, at any time, to receive plan benefits.

Id. at 44. Two other SPDs from this same time period, the 2003 Out of Area SPD and the 2003 Network SPD contain provisions "reserv[ing] the right to amend or terminate" the plan described in the respective SPDs. [ECF Nos. 18-8 at 40; 18-9 at 44]. Kraft terminated the plan described in the 2003 HMO SPD for individuals sixty-five years old and older on December 31, 2015. [ECF No. 18-20 at 1]. Plaintiffs dispute this averment, responding that Kraft could not terminate the plan without the consent of UFCW Local 431, the other party to the CBA. [ECF No. 20 at 14].

D. Changes to Retiree Health Plans

In a September 1, 2015 letter, Kraft informed Plaintiffs and other Kraft retirees that effective January 1, 2016, their health plans would be terminated and they would be given the option of participating in one of two retiree health and prescription drug insurance plans. Some retirees were given the option of participating in OneExchange, a privately-run Medicare insurance exchange. For retirees who participate in OneExchange, Kraft will make an annual contribution

to each retiree's Health Reimbursement Account ("HRA")[4] in the amount of the cost of obtaining health and prescription drug coverage through OneExchange plans. Other Kraft retirees were given the option of participating in the Aetna Medicare Advantage Preferred Provider Organization with Extended Service Area. Kraft did not negotiate these changes and plan terminations with UFCW Local 431. UFCW Local 431 did not agree to any of the changes or plan terminations announced in Kraft's September 1, 2015 letter.

E. Procedural History

Plaintiffs' Complaint alleges two counts based on Kraft's changes to their health and prescription drug insurance as announced in the September 2015 letter. [ECF No. 1]. Under Count I, Plaintiffs allege Kraft violated "the terms of the CBA's, Section 301 of the LMRA," 29 U.S.C. § 185. *Id*. at 9–10. Under Count II, Retirees and UFCW Local 431 allege Kraft violated Section 502(a)(1)(B) of the ERISA, 29 U.S.C. § 1132. *Id*. at 10–11. Kraft originally moved to dismiss Plaintiffs' Complaint under Federal Rule of Civil Procedure 12(b)(6). [ECF No. 8]. The Court converted that motion into a motion for summary judgment pursuant to Rule 12(d). [ECF No. 16]. Plaintiffs subsequently requested and received limited discovery on the motion. [ECF Nos. 26; 31].[5]

[4] HRAs are funded entirely by the company that provides them. Through these accounts, an individual can receive reimbursement for qualified medical expenses tax-free, carry unused amounts forward, and company contributions are excluded from the individual's gross income.

[5] Plaintiffs filed a motion to strike Kraft's Response to Plaintiffs' Additional Statement of Undisputed Facts and Kraft's Reply to Plaintiffs' Response to Defendant's Statement of Undisputed Facts, [ECF Nos. 21; 22; 23], pursuant to Federal Rule of Civil Procedure 12(f). In its Order converting the motion to dismiss to one for summary judgment, the Court stated that it did "not request additional briefing; the Court [would] rely on the briefs already submitted." [ECF No. 16 at 2]. Plaintiffs argue Kraft's filings violate this statement and Local Rule 56(a)–(d), which they contend do not allow legal argument in responses to statements of facts. Though filings that do not comply with the Federal Rules of Civil Procedure "may be stricken in their entirety . . . such an extreme result is not warranted here." *Wilson v. City of Des Moines*, 338 F. Supp. 2d 1008,

II. SUMMARY JUDGMENT STANDARD

"Summary judgment is proper if there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." *Paulino v. Chartis Claims, Inc.*, 774 F.3d 1161, 1163 (8th Cir. 2014); *accord* Fed. R. Civ. P. 56(a). "A dispute is genuine if the evidence is such that it could cause a reasonable jury to return a verdict for either party; a fact is material if its resolution affects the outcome of the case." *Doe v. Hagar*, 765 F.3d 855, 860 (8th Cir. 2014) (quoting *Amini v. City of Minneapolis*, 643 F.3d 1068, 1074 (8th Cir. 2011)). The moving party bears the burden of demonstrating there are no genuine issues of material fact. *Gibson v. Geithner*, 776 F.3d 536, 539 (8th Cir. 2015). Courts must view "the facts in the light most favorable to the nonmoving party and giv[e] that party the benefit of all reasonable inferences that can be drawn from the record." *Pedersen v. Bio-Med. Applications of Minn.*, 775 F.3d 1049, 1053 (8th Cir. 2015) (quoting *Johnson v. Wells Fargo Bank, N.A.*, 744 F.3d 539, 541 (8th Cir. 2014)).

III. ANALYSIS

As an initial matter, Plaintiffs argue this action's status as a putative class action means any ruling the Court issues will not bind absent class members, meaning that resolving this matter prior to class certification will result in piecemeal litigation. Nevertheless, before a class is certified, the action is one by the named plaintiffs. *See Gruss v. Kraft Heinz Foods Co., Inc.*, No. 15-CV-788-WMC, 2017 WL 4119658, at *8 (W.D. Wis. Sept. 15, 2017) (rejecting identical argument). Granting summary judgment against the named plaintiffs in a putative class action is not futile because in order for the named plaintiffs to later serve as class representatives they must

1022–23 (S.D. Iowa 2004) (citation omitted). To the extent Kraft's filings violated Federal Rule 56 or Local Rule 56, the Court disregarded them in analyzing Kraft's motion. Accordingly, the Court denies Plaintiffs' Motion to Strike, [ECF No. 23], "as essentially moot under these circumstances." *See id.* at 1023.

have viable claims. *See* Fed. R. Civ. P. 23(a) (requiring class representatives to have claims that are typical of the class and to adequately protect the class's interests); *Amburgy v. Express Scripts, Inc.*, 671 F. Supp. 2d 1046, 1050 (E.D. Mo. 2009) ("In class action litigation, the named plaintiff purporting to represent a class must establish that he, personally, has standing to bring the cause of action. If the named plaintiff cannot maintain the action on his own behalf, he may not seek such relief on behalf of the class."). Plaintiffs argue many other iterations of plan documents belonging to putative members exist, and the language in those documents is different from the documents presently before the Court. But the present inquiry is limited to the documents governing *Plaintiffs'* claims. Put differently, Plaintiffs cannot argue that their action should survive summary judgment based on hypothetical claims belonging to hypothetical class members. Additionally, as Kraft argues, the Court's decision would be dispositive of any actions brought by putative class members whose claims are governed by the same plan documents as Plaintiffs. Plaintiffs' action must turn on whether their own contracts establish a vested right to plan benefits.

Turning now to the merits of Plaintiffs' claims, the question presented is whether Plaintiffs can establish Kraft acted to modify or terminate vested retirement benefits.[6] The retiree health benefits at issue amount to welfare benefits under ERISA. 29 U.S.C. §§ 1001, 1002. "When [CBAs] create pension or welfare benefits plans, those plans are subject to rules established in ERISA." *M & G Polymers USA, LLC v. Tackett*, 135 S. Ct. 926, 933 (2015). "ERISA does not mandate that employee welfare benefit plans provide vested benefits." *Maytag Corp. v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 687 F.3d 1076, 1084 (8th

[6] "A 'vested right' is 'a right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person's consent.'" *Maytag Corp. v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am.*, 687 F.3d 1076, 1084 n.5 (8th Cir. 2012) (quoting *Halbach v. Great-W. Life & Annuity Ins. Co.*, 561 F.3d 872, 877 (8th Cir. 2009)).

Cir. 2012); *see* 29 U.S.C. §§ 1002(1), 1051(1). Accordingly, "unless an employer has contractually agreed to provide vested retiree health benefits, it may unilaterally modify or terminate the benefits at any time." *Maytag Corp.*, 687 F.3d at 1084; *Curtiss-Wright Corp. v. Schoonejongen*, 514 U.S. 73, 78 (1995) ("Employers are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans."). Plan administrators have a duty to ensure that plans are "maintained pursuant to written instrument[s]" establishing them. 29 U.S.C. § 1102(a)(1). "[T]he rule that contractual 'provisions ordinarily should be enforced as written is especially appropriate when enforcing an ERISA [welfare benefits] plan.'" *Tackett*, 135 S. Ct. at 933 (second alteration in original) (quoting *Heimeshoff v. Hartford Life & Accident Ins. Co.*, 134 S. Ct. 604, 611–12 (2013)). "Plaintiffs have the burden of proving vested welfare benefits." *Howe v. Varity Corp.*, 896 F.2d 1107, 1109 (8th Cir. 1990).

The United States Supreme Court has set forth the principles governing review of CBAs establishing ERISA welfare benefit plans. *See Tackett*, 135 S. Ct. at 933. Courts are to "interpret [CBAs], including those establishing ERISA plans, according to ordinary principles of contract law, at least when those principles are not inconsistent with federal labor policy." *Id.* Thus, "as with any other contract, the parties' intentions control." *Id.* (quoting *Stolt–Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 682 (2010)). "Where the words of a contract in writing are clear and unambiguous, its meaning is to be ascertained in accordance with its plainly expressed intent." *Id.* (quoting 11 R. Lord, Williston on Contracts § 30:6, p. 108 (4th ed. 2012) (Williston)).

Tackett was an appeal from a decision by the United States Court of Appeals for the Sixth Circuit applying the so-called "*Yard-Man*" inferences and "conclud[ing] that, in the absence of extrinsic evidence to the contrary, the provisions of the contract indicated an intent to vest retirees

with lifetime benefits." *Id.*; *see Int'l Union, United Auto., Aerospace, & Agric. Implement Workers of Am. (UAW) v. Yard–Man, Inc.*, 716 F.2d 1476, 1479 (6th Cir. 1983), *abrogated by Tackett*, 135 S. Ct. 926. The Supreme Court determined that "those inferences conflict with ordinary principles of contract law." *Tackett*, 135 S. Ct. at 933. "[The Sixth Circuit] failed to consider the traditional principle that 'contractual obligations will cease, in the ordinary course, upon termination of the bargaining agreement.'" *Id.* at 937 (quoting *Litton Fin. Printing Div., Litton Bus. Sys., Inc. v. NLRB*, 501 U.S. 190, 207 (1991)). "That principle does not preclude the conclusion that the parties intended to vest lifetime benefits for retirees. . . . '[A] collective-bargaining agreement [may] provid[e] in explicit terms that certain benefits continue after the agreement's expiration.'" *Id.* (second and third alterations in original) (quoting *Litton Fin. Printing Div.*, 501 U.S. at 207). However, "when a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life." *Id.*

The Court recently addressed the *Yard-Man* inferences again in *CNH Industrial N.V. v. Reese*, 138 S. Ct. 761 (2018) (per curiam). In *Reese*, the Court reversed the Sixth Circuit's holding that the *Yard-Man* inferences could be "used to render a [CBA] ambiguous as a matter of law, thus allowing courts to consult extrinsic evidence about lifetime vesting." *Id.* at 763. The Court acknowledged that, as an ordinary principle of contract law, a court can consider extrinsic evidence in order to determine the parties' intentions if a contract is ambiguous. *Id.* at 765. "But a contract is not ambiguous unless, 'after applying established rules of interpretation, [it] remains reasonably susceptible to at least two reasonable but conflicting meanings.'" *Id.* (alteration in original) (quoting Williston § 30:4, at 53–54 (footnote omitted)). Hence, the CBA at issue "was not ambiguous unless it could reasonably be read as vesting health care benefits for life." *Id.* The CBA did not contain explicit vesting language and it stated the health benefits plan was concurrent

with the CBA. *Id*. at 766. Consequently, the Court concluded "the health care benefits expired when the [CBA] expired." *Id*.

The principles above are consistent with those articulated by the United States Court of Appeals for the Eighth Circuit prior to the Supreme Court's ruling in *Tackett*. *See Maytag Corp.*, 687 F.3d at 1084. A court must "determine the duration of ERISA benefits by examining the plan documents." *Id*. "If examination of the plan documents reveals ambiguities, extrinsic evidence may be considered." *Id*. (quoting *DeGeare v. Alpha Portland Indus., Inc.*, 837 F.2d 812, 816 (8th Cir. 1988), *vacated and remanded on other grounds sub nom., DeGeare v. Slattery Grp., Inc.*, 489 U.S. 1049 (1989)).

Thus, a threshold question is whether the contracts at issue—the CBAs and accompanying plan documents—contain an ambiguity. If there is no ambiguity, both the Eighth Circuit and the Supreme Court have directed that the consideration of extrinsic evidence is inappropriate. *See Reese*, 138 S. Ct. at 765; *Maytag Corp.*, 687 F.3d at 1084. Plaintiffs' primary argument is that the CBAs and plan documents are ambiguous such that the Court may consider extrinsic evidence.

The Court finds the plan documents are not ambiguous. All of the SPDs contain similar, almost identical reservation-of-rights provisions: they all state Kraft "reserves the right to amend or terminate" the benefits plans at any time. [*See, e.g.*, ECF No. 18-12 at 3]. Plaintiffs point out that the provisions additionally state that Kraft's right to amend or terminate the plans is "subject to the provisions of any applicable [CBA]." *Id*. True, however, the CBAs themselves contain no language supporting the contention that benefits vested. Instead, the CBAs only refer back to the SPDs, stating that negotiated health benefits are set forth in other booklets.

The Eighth Circuit has "repeatedly held that an unambiguous reservation-of-rights provision is sufficient without more to defeat a claim that retirement welfare plan benefits are

vested. . . . [T]here must be an affirmative indication of vesting in the plan documents to overcome an unambiguous reservation of rights." *Maytag Corp.*, 687 F.3d at 1085 (alteration in original) (quoting *Stearns v. NCR Corp.*, 297 F.3d 706, 712 (8th Cir. 2002), *cert. denied*, 537 U.S. 1160 (2003)); *see Crown Cork & Seal Co. v. Int'l Ass'n of Machinists & Aerospace Workers*, 501 F.3d 912, 918 (8th Cir. 2007) (finding that a "blanket reservation of rights . . . to unilaterally modify or terminate the retiree health plans . . . [was] fatal to any vesting argument"); *Hughes v. 3M Retiree Med. Plan*, 281 F.3d 786, 792–93 (8th Cir. 2002) (affirming summary judgment because plaintiffs had "not met the burden of proving vesting language" where SPD lacked vesting language and contained reservation-of-rights provision); *Howe*, 896 F.2d at 1110 (determining plaintiffs' burden was not met where employer had reserved right to terminate or amend plan at any time); *Anderson v. Alpha Portland Indus., Inc.*, 836 F.2d 1512, 1518 (8th Cir. 1988) (finding "no credible evidence of intent to vest exist[ed]" during a time period when CBAs and plan booklets stated that employer reserved the right to change or discontinue the plans); *see also United Paperworkers Int'l Union, AFL-CIO, CLC v. Jefferson Smurfit Corp.*, 961 F.2d 1384, 1385–86 (8th Cir. 1992) (holding oral agreement could not supersede contradictory terms in concededly unambiguous, written plan and noting that there was "absolutely nothing in the plan to contradict or cloud the plain and obvious meaning of this reservation-of-rights clause"). Additionally, the 1998 HMO SPD and the 2003 HMO SPD explicitly provided that retiree coverage would end on the date the plan was terminated, further undercutting any argument that the plan documents evince an intent to provide vested, lifetime benefits. *See Gruss*, 2017 WL 4119658, at *9–*10 (considering similar language and finding both that the plan documents were not ambiguous and that they did not contain any vesting language).

The Eighth Circuit cases Plaintiffs cite in support of their argument that the plan documents are ambiguous are distinguishable. *See Local Union No. 150-A, United Food & Commercial Workers Int'l Union, AFL-CIO, CLC v. Dubuque Packing Co.*, 756 F.2d 66 (8th Cir. 1985); *Jensen v. SIPCO, Inc.*, 38 F.3d 945 (8th Cir. 1994). In *Jensen*, the court concluded a reservation-of-rights provision that allowed the employer "to alter, amend, or annul any of the provisions of this Pensioner Medical Plan" was "not facially unambiguous." 38 F.3d at 948, 950. A subpart to the provision stated that any amendment would be become effective as of the date adopted and would not be applicable to "persons who are receiving pensions" before the date of the amendment. *Id.* at 948–49. Thus, the provisions left "at least some doubt as to whether [the employer] intended to reserve the right to change or terminate benefits to already retired pensioners, or only the right to make prospective changes for those covered by the Plan but not yet retired." *Id*. at 950. Other, similarly qualified reservation-of-rights clauses have also been found ambiguous. *See Halbach v. Great-W. Life & Annuity Ins. Co.*, 561 F.3d 872, 880 (8th Cir. 2009); *Barker v. Ceridian Corp.*, 122 F.3d 628, 636 (8th Cir. 1997). However, the reservation-of-rights clauses here are not similarly qualified and do not contain such ambiguity.

Dubuque Packing is also not on point here. In *Dubuque Packing*, evidence existed "that the parties implicitly intended to provide lifetime benefits to retirees." 756 F.2d at 70. In particular, the employer admitted there was language that "could be interpreted to promise continued welfare benefits to the eligible survivors of certain retirees for periods extending beyond the expiration of the [Health and Welfare] Plan." *Id*. at 69–70 (alteration in original). The decision does not quote that language, which prohibits any direct comparison. *See id*. There is no such admission from Kraft in this case. Moreover, the language Plaintiff identifies in the 1998 HMO SPD and the 2003 HMO SPD as being similar in nature to that referenced in *Dubuque Packing*

explicitly states that benefits will continue "[a]s long as the plan remains in effect" and that coverage will end "the date the plan is terminated." [*See, e.g.*, ECF No. 18-17 at 25].

The documents contain additional language inconsistent with an intent to vest retirement benefits. All three SPDs have, in some form, a coordination-of-benefits provision or section. [ECF Nos. 18-7 at 29, 37; 18-12 at 14; 18-17 at 25–26]. These types of provisions are not consistent with an intent to provide vested benefits. *See Maytag Corp.*, 687 F.3d at 1086; *Crown Cork*, 501 F.3d at 918; *Anderson*, 836 F.2d at 1518.

Unable to defeat the language of the SPDs, Plaintiffs argue that there is no evidence Plaintiffs or UFCW Local 431 received the documents or agreed that they were consistent with the relevant CBAs or MOAs. As Kraft points out, Plaintiffs' Complaint references and quotes several SPDs and further alleges that their rights are set forth in SPDs. [ECF No. 1 at 5–7]. Plaintiffs also admitted that their rights are set forth in the CBAs, MOAs, and SPDs. [ECF No. 20 at 3]. Furthermore, Plaintiffs repeatedly assert that the CBAs incorporated the SPDs. In effect, Plaintiffs are asking the Court to believe UFCW Local 431 negotiated CBAs incorporating other documents and then agreed to bind its members to those CBAs without determining what the other documents in fact said. The Court finds this argument lacks merit.

Finally, Plaintiffs provide evidence of a course of conduct that, in their view, establishes that their benefits vested. For instance, Plaintiffs present minutes from negotiations, evidence of hypotheticals discussed during negotiations, other statements made across the bargaining table, and proposals to alter retiree coverage that UFCW Local 431 rejected and Kraft subsequently withdrew. They also state that no member of Kraft's negotiating committee ever stated or implied that Kraft could unilaterally alter retiree benefits. However, absent an ambiguity in the contracts, the Court cannot consider this extrinsic evidence. *See Maytag Corp.*, 687 F.3d at 1085.

The Court finds the plan documents do not establish a right to vested retiree benefits. Thus, as a matter of law, Plaintiffs cannot establish Kraft breached the applicable CBAs or violated ERISA when it unilaterally altered or terminated retiree health benefits after the expiration of the CBAs creating those benefits.

IV. CONCLUSION

For the foregoing reasons, Defendant Kraft Heinz Foods Company's Motion for Summary Judgment, [ECF No. 8], is GRANTED. Plaintiffs' Motion to Strike, [ECF No. 23], is DENIED.

IT IS SO ORDERED.

Dated this 27th day of March, 2018.

Stephanie M. Rose

STEPHANIE M. ROSE, JUDGE
UNITED STATES DISTRICT COURT