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Matthew Blake/Daily Journal

Elinor Otto, better known as 'The Last Rosie the Riveter,' lost her appeal at the 9th U.S. Circuit Court of Appeals. Otto, who worked at Boeing until age 94, argued the company owed her almost \$1 million in back benefits.

9th Circuit rules against 'The Last Rosie the Riveter'

By Matthew Blake
Daily Journal Staff Writer

LONG BEACH — Ninety-six year-old Elinor Otto, better known as "The Last Rosie the Riveter," lost her battle with Boeing, Otto's employer for 49 years, over hundreds of thousands of dollars in retirement benefits.

In a one-page unpublished decision issued Friday, the 9th U.S. Circuit Court of Appeals noted deference is given to Boeing's retirement plan administrator when language is unclear and Otto's pension terms were too ambiguous to overrule the administrator or a district court summary judgment for the aeronautics giant. *Otto v. Employee Retirement Income Plan-Hourly West, 15-55987* (9th Circ.).

Otto's lawyer Ronald Dean, a sole practitioner, said the adverse ruling marked the "end of the road" for Otto's 23-year feud with Boeing over her retirement benefit, a unique fight among federal Employment Retirement Income Security Act disagreements since Otto worked for Boeing until age 94 when the company's Long Beach plant closed.

Otto, who has received a \$724.26 a month pension since 1993, told the Daily Journal that Boeing betrayed her and owes almost \$1 million in back benefits.

Boeing featured Otto in promotional literature, the longtime riveter noted,

and flew her to the company's Chicago headquarters where she signed autographs for Boeing personnel. Otto also contended Boeing benefited from the positive publicity she generated, from a Rosie the Riveter park in Long Beach to appearances on television shows. "They didn't take any of that into consideration," Otto said. "I've had so much fun working. But this puts a damper on it."

Boeing attorney Eric C. Sohlgren, partner at Payne & Fears LLP, said, "Boeing was very proud of her service to the company. But that was a separate issue to what pension benefits she was entitled to under the plan."

Otto first worked an aircraft assembly line in 1942 when the image of an empowered "Rosie the Riveter" encouraged women to help U.S. involvement in World War II. In 1965, she started with McDonnell Douglas, which later merged into Boeing. She first drew a pension in 1991 per federal law that those age 70 1/2 and older collect retirement benefits even if they are active workers.

Otto began writing to Boeing in 1992, concerned they were not providing her accrued benefits, that is, years of service multiplied by an escalating pension rate. Boeing would respond by notifying Otto she could file a complaint with a pension review committee, but the

riveter never went through the proper legal channels until she hired Dean in 2012.

Otto sued in 2014, and last year U.S. District Judge John A. Kronstadt granted summary judgment to Boeing, finding, "Defendant consistently applied the same formula in determining plaintiff's benefits," a formula that took into account the unusual fact that Otto also drew an employee's salary.

9th Circuit Judges Mary H. Murguia and Paul J. Watford, along with visiting 3rd Circuit Judge Thomas I. Vanaskie affirmed,

"The text of the plan does not unambiguously require that active employees' minimum payments be annually increased to the product of the employees' years of service and applicable rate from the previous year," the judges wrote.

Dean said he anticipated an adverse ruling after oral arguments because Watford was mostly silent during the *Otto* case after actively questioning lawyers in prior calendar matters.

Sohlgren noted Boeing persuaded the judges that the plan administrator did not abuse discretion in interpreting the language. Sohlgren's colleague Daniel F. Fears argued the case before the 9th Circuit.

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