Union Pension Fund Can't Have It Both Ways: Federal Appeals Court Orders Fund to Repay Employer $2 Million

Insights
3.28.24

In a classic man-bites-dog turnaround, a federal appeals court ordered a Teamsters pension fund to return approximately $2 million in withdrawal liability payments to an employer that had stopped contributing in 2005. The case is remarkable because the court ruled against the Teamsters pension fund by relying on a legal principle normally invoked by pension funds to extract additional contributions from employers. While the 7th U.S. Circuit Court of Appeals' March 22 ruling will only directly impact employers in Illinois, Indiana, and Wisconsin, its reasoning can be an important reminder to employers in any location. We'll give you everything you need to know about the case and what you should take away from it.

What Happened?

- ***Union Demanded Pension Contributions, Refused to Negotiate a New Contract.*** In this case – *Bulk Transport Corp. v. Teamsters Union No. 142 Pension Fund, et al* – the dispute began when the company landed a contract to haul commodities. At the time, the company had a collective bargaining agreement with Teamsters Local 142, which covered steel mill operations but did not cover the new commodities work. When the company asked the union to negotiate a new contract to cover commodity hauling, the union refused and threatened a strike.
- ***Employer Made Pension Contributions for Non-Covered Work.*** The union insisted that the company apply wage and pension contribution obligations under the steel mill bargaining agreement to cover commodities work. The company capitulated to the union's demands and began contributing to the pension fund for the commodities without a new agreement, but no one told the pension fund that these contributions were being made for employees not covered under the express terms of the existing bargaining agreement.
- ***When Employer Lost That Work, Pension Fund Asserted Withdrawal Liability of About $2 Million.*** The company lost the commodities work in 2005 and stopped making contributions to the pension fund on behalf of the employees who formerly handled that work. As a result, the pension fund asserted withdrawal liability, which the company challenged under the provisions of the Multiemployer Pension Plan Amendments Act (the MPPAA), arguing that it was never "required" to contribute to the pension fund under the bargaining agreement since the agreement never covered commodities hauling.

- ***Company Contested But Paid Up, Arbitrator and Lower Court Ruled in Favor of Union.*** To comply with the MPPAA, the company paid withdrawal liability while contesting the assessment and demanding statutory arbitration. The arbitrator ruled that by making contributions to the pension fund for commodities work, the company had adopted the bargaining agreement by conduct. A federal district court affirmed the arbitrator's award.

How Did the 7th Circuit Rule?

The appeals court ruled in favor of the company and ordered the fund to return to the employer about $2 million in withdrawal liability payments. In reversing the lower court's ruling, the court explained that while the terms of a collective bargaining agreement can be changed by conduct, "the terms of pension contributions to multi-employer plans cannot be changed orally." The court explained that the precise contribution terms must be in writing – which in this case they were not – and cited both ERISA and the Taft-Hartley Act.

The court noted that this case was the "flip side of *Gerber Truck Service*," a 1989 case that has been a thorn in employers' sides for years. In that case, a written bargaining agreement <u>covered all workers</u> in a defined bargaining unit, but the union and employer agreed on the side that contributions would be made for <u>only three employees</u>. When the Teamsters pension fund in the *Gerber* case insisted on collecting contributions for <u>all</u> members of the bargaining unit, the 7th Circuit agreed, stating that pension funds were entitled to enforce bargaining agreements as written, even if doing so is inequitable.

So, in the current *Bulk Transport* case, the court held that pension funds can't enforce side agreements when they benefit the fund but ignore them when they benefit the employer. Essentially: Pension funds can't have it both ways.

4 Key Employer Takeaways

1. This ruling is a win for the employer, but you should note that side deals involving union pensions are risky.
2. This case is a further reminder that the written terms of a collective bargaining agreement governing contributions to union pension plans cannot be changed by oral side deals between employers and unions.
3. While unions will often cut special side deals with employers regarding the make-up of the bargaining unit (contrary to the written terms of the bargaining agreement), employers who engage in such practices do so at their own risk.
4. The *Bulk Transfer* case worked out for the employer, but more often the employer is obligated to pay delinquent contributions and/or additional withdrawal liability because of an unenforceable side agreement.

Conclusion

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Employers with questions about this case should contact their Fisher Phillips attorney, the author of this Insight, any attorney in our Employee Benefits and Tax Practice Group, or any attorney in our Labor Relations Practice Group. We will monitor developments and issue updates, so make sure you are signed up for the Fisher Phillips Insight service to get the latest news directly to your inbox.

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