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Pensions

First Circuit Adopts Burden-Shifting Rule In ERISA Cases for Failure to Track Hours

In an action for unpaid contributions to several multiemployer benefit funds, an employer's failure to provide accurate records of the hours its employees spent performing work covered by a collective bargaining agreement created a rebuttable presumption that the employer was liable for contributions regarding all hours worked in which some covered work was performed, the U.S. Court of Appeals for the First Circuit ruled Sept. 12 (*Central Pension Fund of Int'l Union of Operating Eng'rs v. Ray Haluch Gravel Co.*, 1st Cir., No. 11-1944, 9/12/12).

Deciding an issue of first impression in the circuit, Judge Bruce M. Selya vacated a decision of the U.S. District Court for the District of Massachusetts and remanded the case with instructions to shift the burden to the employer to provide records of hours worked by its employees.

In so ruling, Selya found that the burden-shifting paradigm ''makes good sense'' because it prevents employers from escaping responsibility for benefit remittances ''by the simple expedient of failing to keep the records that the law requires.''

Disagreement Over Covered Work. In 1988, Ray Haluch Gravel Co. entered into a series of collective bargaining agreements with International Union of Operating Engineers Local 98 that required it to remit contributions to several multiemployer employee benefit plans primarily for the benefit of a single employee.

In the years that followed, Ray Haluch shifted its primary business from on-site landscaping and excavation work to selling landscaping products.

In 2007, the funds audited Ray Haluch's books and determined that it owed additional contributions for previously unreported work that the funds alleged was covered by the CBA. When Ray Haluch did not remit the contributions, the funds sued. The district court awarded the funds $26,897 for covered work performed by a specific employee.

The funds appealed, arguing that they were entitled to additional contributions for work performed by other, unspecified employees.

Issue of First Impression. The First Circuit determined that Section 209(a)(1) of the Employee Retirement Income Security Act required Ray Haluch to maintain records sufficient to determine the benefits to which its employees might become entitled.

The evidence ''indicates quite clearly'' that one or more employees performed work covered by the CBA during the time period in question, the appeals court said. But it found that Ray Haluch did not provide sufficient records to determine the required contributions and benefits resulting from this covered work.

The First Circuit determined that Section 209(a)(1) of the Employee Retirement Income Security Act required the company to maintain records sufficient to determine the benefits to which its employees might become entitled.

The court found that the evidence of covered work, coupled with the lack of sufficient records, justified shifting the burden to Ray Haluch to prove it was not obligated to make contributions for all hours potentially representing covered work.

''[I]n a case like this one, in which ERISA-protected benefit plans seek to enforce remittance requirements, burden-shifting occurs only when a fiduciary seeking remittance of unpaid benefit contributions shows both that some employees performed covered work that was not reported to the benefit plan and that the employer neglected to maintain adequate records,'' the court said. It explained that an employer can rebut this presumption if it can ''separate wheat from chaff'' and present evidence allowing a proper calculation of benefits.

In adopting this burden-shifting paradigm, the court observed that employers have strong incentives to underreport the number of covered employees and the covered work performed, because such underreporting reduces required contributions. Shifting the evidential burden to employers that fail to provide sufficient records limits the incentive to underreport, the court said.

Judge O. Rogeriee Thompson and Judge Timothy B. Dyk joined in the decision.

The funds were represented by Kenneth L. Wagner, Charles E. Blitman, Daniel R. Brice, and Jennifer A. Clark of Blitman & King in Syracuse, N.Y. Ray Haluch was represented by José A. Aguiar of Doherty Wallace Pillsbury & Murphy in Springfield, Mass.

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Text of the opinion is available at http://op.bna.com/pen.nsf/r?Open=jwie-8y4gre.

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