

EMPLOYER AVOIDS WITHDRAWAL LIABILITY UNDER CONSTRUCTION INDUSTRY EXEMPTION

Stevens Eng'rs & Constructors, Inc. v. Iron Workers Local 17 Pension Fund (N. D. Ohio, 2016)

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Under the Employee Retirement Income Security Act of 1974 (ERISA), an employer performing work in the construction industry and contributing to a construction industry multiemployer plan is not subject to withdrawal liability following what otherwise would be a withdrawal unless the employer continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or resumes such work within five years. In a recent case, the District Court for the Northern District of Ohio upheld an arbitration decision finding that an employer was not subject to withdrawal liability under this exemption.

In 2013, a construction company terminated its collective bargaining agreement with an Iron Workers Local and ceased to make contributions to the related multiemployer pension plan. The construction company then undertook a project in the geographic jurisdiction covered by the prior agreement with the Iron Workers Local. However, certain work that the company performed was performed by millwrights at the construction job. The Iron Workers Local issued a challenge claiming that the work being performed should be performed by ironworkers rather than millwrights. The construction company responded that the work was able to be performed by millwrights. The Iron Workers Local did not follow through under a procedure on overlapping jurisdiction of craft unions to proceed with the challenge.

The trustees of the multiemployer pension fund assessed withdrawal liability against the construction company claiming that the construction company was performing work in the jurisdiction of the type which previously would have been performed by ironworkers under the collective bargaining agreement and that would have required that contributions be made.

In arbitration, the arbitrator found that the failure of the Iron Workers Local to pursue the claim that the work should have been performed by ironworkers, as opposed to millwrights, determined that the work performed by millwrights was not within the craft jurisdiction of ironworkers and, as a result, found that the construction company was not performing the type of work that it was previously required to make contributions for within the jurisdiction of the ironworkers plan.

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The District Court upheld the decision of the arbitrator and the fund lost its claim for withdrawal liability.

While the multiemployer withdrawal rules have been in place for many years, we are seeing increasing litigation over the application of the rules. Employers involved in multiemployer plans should carefully examine the funding status of those plans and whether the actions they are taking could result in assertion of withdrawal liability. *Stevens Eng'rs & Constructors, Inc. v. Iron Workers Local 17 Pension Fund* (N.D. Ohio, 2016)