ARBITRATION CLAUSE IN COLLECTIVE BARGAINING AGREEMENT REGARDING PENSION TERMINATION ENFORCEABLE

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Practices & Industries

Employee Benefits

Landmark Medical Center ("Landmark") was a party to a collective bargaining agreement ("CBA") with Allied Professionals, Local 5067 ("Union"). The CBA included a pension provision as follows:

The Employer and the Union agree that, if during the term of this Agreement the Employer sells more than fifty (50) percent of its assets, the Employer may terminate the Landmark Medical Center Retirement Plan for Union Employees in accordance with the requirements of ERISA. The Union acknowledges and agrees it is clearly and unmistakably waiving any and all rights it has or may have to bargain with the Employer over any aspect of the termination, provided such termination shall not reduce benefits accrued by any participant in the Landmark Medical Center Retirement Plan for Union Employees as of the date of termination.

The CBA also included a provision that any unresolved disputes concerning the interpretation, application or meaning of the CBA would be submitted to arbitration.

Landmark experienced financial difficulties and ceased making minimum funding contributions to the pension plan. As a result, the PBGC initiated an involuntary termination of the pension plan and ultimately took over the pension plan.

In addition, due to its financial woes, Landmark was placed under the oversight of a special master. After the PBGC involuntarily terminated the pension plan, Prime Healthcare Services ("Prime") entered into an asset purchase agreement with the special master to purchase Landmark's assets. Before entering into the asset purchase agreement, Prime entered into an agreement with the Union providing that Prime would recognize and continue to process any grievances or labor arbitrations pending at the time of closing. Prime and the Union also entered into a CBA that included the same grievance and arbitration provisions as the Landmark CBA.

Before the closing of the asset purchase by Prime, the Union filed a grievance, alleging that Landmark violated the CBA "when it changed the terms of the defined pension benefit provisions and ceased making contributions to employees' pensions." When Landmark denied the grievance, the Union filed for arbitration. In response,

Prime sought an order staying the arbitration, asserting that ERISA preempted the CBA's arbitration clause insofar as the pension provision.

The district court ruled in favor of Prime. On appeal, however, the First Circuit first held that the agreement between Prime and the Union clearly intended that the dispute be submitted to arbitration, rather than to the courts. The First Circuit explained that, notwithstanding parties' contractual agreement, arbitration might be foreclosed if Congress did not intend for judicial remedies to be contractually waived. Although not asserted by Prime, the First Circuit noted that it was highly implausible that Congress intended for ERISA to preclude waiver of judicial remedies in the present circumstances.

In response to Prime's assertion that only the PBGC could bring the claims brought by the Union and, therefore, the Union's claims were preempted by ERISA, the First Circuit explained that the issue before it was not whether the Union could bring its claim, but who decides whether the Union may bring its claim – court or arbitrator. *Prime Healthcare Services v. United Nurses and Allied Professionals, Local 5067* (1st Cir.).