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District Court Holds Employer "Expelled" From Plan May Not Have Effected a "Withdrawal"

Employee Benefits & Executive Compensation on **May 26, 2023**

In *Central States v. Wingra*, No. 21-cv-3684, 2023 WL 199360 (N.D. Ill. Jan. 17, 2023), the district court held that an employer expelled from a multiemployer pension plan may not owe withdrawal liability because the permanent cessation of the employer's obligation to contribute was not voluntary. While the court subsequently limited the decision as being for discovery purposes only (*see Central States v. Wingra*, No. 21-cv-3684 (N.D. Ill. Mar. 17, 2023)), the court allowed the employer to assert its challenge in the district court, rather than in arbitration, because the employer plausibly alleged that its expulsion from the plan was in bad faith.

Background

The plan expelled the employer because it was transferring work to non-union workers. The plan assessed the employer over $58 million in withdrawal liability and filed suit to collect when the employer refused to pay. The employer counterclaimed, alleging that its expulsion from the plan was arbitrary and capricious, and sought discovery on that basis. The plan objected to the employer's discovery requests, arguing that the employer waived its defenses by not timely commencing arbitration to challenge the plan's withdrawal liability assessment, making the requested discovery irrelevant.

The Court's Decisions

The court disagreed with the plan, holding that the employer never effectuated a "complete withdrawal" in the first place. The court relied on the dictionary definition and common usage to conclude that the term "withdrawal" presupposes a voluntary act by the employer, and analogized the term to a general's "retreat" or an employee's "retirement," both of which require a conscious decision by the actor. In considering the definition of "complete withdrawal" in 29 U.S.C. § 1383(a)(1), which defines the term to mean "when an employer permanently ceases to have an obligation to contribute under the plan," the court opined that the definition clarifies when a withdrawal is "complete," not when a "withdrawal" occurs. In reaching its decision, the court parted ways with other decisions in which district courts held that "voluntariness" has no bearing on whether an employer is deemed to have effected a "withdrawal." Having concluded that the employer did not "withdraw" within the meaning of the statute, the court held that the employer retained its defenses to the assessment and was entitled to the requested discovery.

While a subsequent motion for reconsideration was denied, the court clarified that its interpretation of the term "withdrawal" was for discovery purposes only, and that the parties would have an opportunity at summary judgment to argue whether there was a "withdrawal" within the meaning of the statute. The court also clarified that the employer's right to the requested discovery was predicated on its counterclaim, which the court reasoned equitably tolled the time for it to commence arbitration.

Proskauer's Perspective

While the court clarified its decisions as being limited to discovery, employers are likely to rely on these decisions to argue that they do not owe withdrawal liability in other instances where their obligation to contribute ceased because of reasons beyond their control, such as where a union disclaims representation, the bargaining unit is decertified, the employer's principal client terminates its relationship, or where there is a precipitous decline in the industry or the economy. Employers may also seek to avoid the arbitration process altogether by alleging bad faith by the plan so they can dispute the basis for imposing withdrawal liability in district court. Whether other courts will employ the same reasoning as in *Wingra* remains to be seen.

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