Proskauer

Seventh Circuit Holds Withdrawal Liability Cannot Be Based on Extra-Contractual Contributions

Employee Benefits & Executive Compensation on **April 11, 2024**

In *Bulk Transp. v. Teamsters Union No. 142 Pension Fund*, No. 23-1563, 2024 WL 1230236 (7th Cir. Mar. 22, 2024), the Seventh Circuit held that the contributions used to calculate an employer's withdrawal liability may include only the contributions the employer was required to remit pursuant to the terms of the parties' collective bargaining agreement ("CBA"). The employer remitted two sets of contributions to the plan: (i) for steel mill work pursuant to the terms of the CBA, and (ii) for hauling work that was not covered by the terms of the CBA, but that the employer nevertheless remitted to the plan to head off labor strife. After the hauling work ended, the plan assessed the employer withdrawal liability. The employer disputed the calculation, arguing that the contributions associated with the hauling work should not have been included in the calculation because those contributions were not required by the CBA or any other written agreement. The arbitrator and the district court disagreed, holding that by remitting contributions for the hauling work, the employer by its conduct effectively amended the CBA to require contributions for the hauling work, and therefore, those contributions were properly included in calculating the employer's withdrawal liability. The Seventh Circuit reversed, explaining that while an employer may by its conduct become bound by a labor agreement and even amend the agreement's provisions on wages and the terms and conditions of employment, 29 U.S.C. § 1145 requires that any changes regarding the obligation to contribute to an ERISA plan must be in writing. Because it was undisputed that the CBA could not be construed to cover the hauling work, the court held that contributions relating to that work should not be included in the withdrawal liability calculation.

View original.

Related Professionals

- **Daniel B. Wesson**
  Associate
- **Neil V. Shah**
  Associate