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SEVENTH CIRCUIT PROTECTS TAFT-HARTLEY BENEFIT FUNDS BY RULING THAT "EXPIRATION" OF A CONTRACT DOES NOT MEAN "TERMINATION"

On December 22, 2022, the Seventh Circuit decided *Central States Pension Fund v. Transervice Logistics* and *Central States Pension Fund v. Zenith Logistics*. The court found that the employers in these two cases were liable to the Central States Pension Fund for contributions under an expired collective bargaining agreement ("CBA") with an evergreen clause. The court made clear that benefit funds may rely on a CBA with an evergreen clause until it is "terminated." The "expiration" of the CBA alone does not deprive it of effect.

In the *Central States* cases, each employer entered into a CBA requiring contributions to the fund during the term of the CBA, including any extension. Each CBA provided that it would "expire" on January 31, 2019, but, in its evergreen clause, also provided that it would continue in force unless and until a party gave 60 days' written notice of its intent to <u>terminate</u> the CBA.

On November 6, 2018, the union sent a letter to each employer, noting the approaching expiration of the CBA and expressing a desire to bargain. Neither letter used the word "terminate." New CBAs took effect on February 1, 2019, and the employers started contributing to a different pension fund under those CBAs. The fund sued, arguing that the union's letters did not terminate the CBAs, because they did not express that intention. The employers argued that the letters were effective notice of termination. The court sided with the fund.

First, the court noted that in third-party fund beneficiary cases, third-parties (like the fund) are entitled to enforce written agreements according to their terms. This protects such entities, who are not part of CBA negotiations and are not aware of the parties' understandings, defenses, and unwritten agreements. Second, the court noted that strict contract interpretation is appropriate with CBA termination and evergreen clauses. Unambiguous termination language must be complied with. For these two reasons, the court explained, anything short of a clear expression of an intent to terminate would not constitute effective termination notice.

The notice here did not meet the standard. There was no notice of <u>termination</u> in the letters. Though they referenced the CBA's <u>expiration date</u>, this was insufficient. The purpose of an evergreen clause is to continue a CBA that has expired until it is positively terminated. The court reflected, "A collective bargaining agreement can 'expire' without 'terminating.' That's the whole point of an evergreen clause." Even though the letters stated a desire to negotiate a "new" CBA, that was not termination because it did not imply that the union would terminate the existing CBA regardless of the course of negotiations. Finally, the court recognized that its ruling would cause the employers to pay into two funds for the same work. But the court found this did not outweigh the need to protect third-party beneficiaries like the fund by allowing them to rely on the terms of written agreements.

These cases are more than just strict interpretation for its own sake. They confirm that courts will enforce termination language requirements in CBAs with evergreen clauses to protect funds. The cases align with the

Seventh Circuit's consistent practice of demanding clear, unambiguous statements in compliance with CBA requirements when the rights of a third-party Taft-Hartley benefit fund are at issue. Funds will benefit from this ruling. Specifically, they will not have to guess whether a writing could imply termination. Termination must be stated, and evergreen CBAs continue in perpetuity until then. More broadly, funds can continue to plan their economic affairs and remain solvent solely by reference to the relevant documents, without having to consider private and elusive understandings between unions and employers that depart from those documents.

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