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SIXTH CIRCUIT RULES ACTIVE CBA IS REQUIRED IN ORDER TO COMPEL PAYROLL AUDIT UNDER ERISA

On June 5, 2024, the U.S. Court of Appeals for the Sixth Circuit issued a decision in the case of *Operating Engineers Local 324 Fringe Benefit Funds, et al. v. Rieth-Riley Construction Co., Inc.* The Plaintiff benefit funds brought this case against the Defendant employer in 2020 to compel the production of payroll records for audit and for the collection of delinquent fringe benefit contributions under the Employee Retirement Income Security Act ("ERISA"). The Court ultimately held that the Funds could compel the employer to provide payroll records only for periods during which there was an active collective bargaining agreement ("CBA").

The employer and the relevant Union – Operating Engineers Local 324 – had previously been parties to a CBA which required the employer to pay contributions and provide payroll records for audit to the Funds. However, that CBA had expired in 2018, and the Union had refused to negotiate a new agreement. Following the expiration of the CBA, the employer attempted to continue paying contributions to the Funds. The Funds, operating under an incorrect understanding as to the governing provision of the National Labor Relations Act ("NLRA"), rejected these contributions for several months. In October 2018, after realizing their mistake and learning that they were required to maintain the status quo established under the previous CBA, the Funds began accepting the employer's contributions. In October 2019, the Funds submitted an audit request to the employer for both pre- and post-expiration payroll records. The employer failed to provide certain requested records, and the Funds then brought this suit to compel their production.

Despite the CBA having expired, the Funds posited several alternative sources of a contractual obligation to contribute and provide records for audit: (1) the language of the trust agreements incorporated by reference into the CBA; (2) certain certification language included in the employer's contribution reports; and (3) the employer's conduct following the expiration of the CBA. The Court rejected all three of these arguments. The Court held that, in the absence of a new agreement, the expiration of the previous CBA released the employer from its obligations under the incorporated trust agreements. The Court also held that neither the certification language in the employer's contribution reports nor the employer's conduct following the expiration of the CBA demonstrated the mutual assent required to create a contract. The Court emphasized the Funds' refusal to accept the employer's contributions and the Union's refusal to negotiate a new CBA as evidence that neither assented to ongoing contractual obligations.

Based on its holding that the previous CBA was no longer enforceable and its rejection of any alternative sources of a contractual obligation on the part of the employer, the Court in this case held that the Funds could not compel the Defendant to provide payroll records for any period following the expiration of the last CBA. The Court also held that the Funds had failed to plead a claim for pre-expiration records, and therefore, that the employer was not required to provide any records to the Funds.

This ruling creates a split between the Sixth and Seventh Circuits. The Seventh Circuit, unlike the court in this case, generally allows employee benefit funds governed by ERISA to compel employers to produce records for audit purposes even after the underlying CBA has expired.[1] However, regardless of the Circuit, the fund must demonstrate an ongoing contractual obligation on the part of the employer. The key distinction between the Circuits is that the Seventh Circuit does not consider an employer's obligations under a fund's trust agreement to terminate when the underlying CBA expires. Therefore, if a fund trust agreement incorporated in a CBA requires the production of records for audit beyond the expiration date of the CBA, then, in the Seventh Circuit, the employer must comply with that requirement even in the absence of an active CBA.

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This release informs you of items of interest in the field of labor relations. It is not intended to be used as legal advice or opinion.

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[1] *See, e.g., Unite Here Health v. Pittsburgh Athletic Ass'n,* 2014 WL 1228443 (N.D. Ill. Mar. 25, 2014); *Cent. States, Se. & Sw. Areas Pension Fund v. Beelman Truck Co.,* 653 F. Supp. 678 (N.D. Ill. 1987).