

Can A Struggling Multi-Employer Plan Override A Collective Bargaining Agreement?

Background:

After bargaining to impasse, Just Born implemented its last, best and final offer, which included a soft-freeze type provision, where contributions would be made to the Multiemployer Pension Fund (MEPP), just for existing employees, but not new hires. This decision (*Just Born*, 4th circuit court of appeals; April 26, 2018) requires Just Born to continue contributions for all bargaining unit employees in accordance with terms of the MEPP's Rehabilitation Plan, regardless of any agreement between the parties, based upon the court's interpretation of the Multiemployer Pension Reform Act of 2014 (MPRA). It is of interest to note that this Pension Fund has been suffering since the 2012 Hostess bankruptcy, in which \$1 billion of liability was discharged.

What is the impact of this case from a non-legal perspective?

- Gives MEPPs (especially the underfunded ones) a new way to respond to employer attempts to reduce their contribution obligations. Before the MPRA, MEPPs could reject collective bargaining agreements (CBAs) and force a complete withdrawal on the employer, if the MEPP considered the CBA unacceptable, but could not impose a different contribution obligation on the employer; this circuit now obligates the employer to comply with the MEPP's Rehabilitation Plan, if the employer wants to continue participating in the MEPP.
- Clarifies what terms a Rehabilitation Plan imposes upon employers, without their consent. The Rehab Plans are adopted unilaterally by the MEPP Trustees. The contribution schedule required that Just Born not only comply with the amount of the contributions, but also with the employees for whom the contributions must be made.
- In my experience with collective bargaining, this would appear to diminish the ability of the employer and the union to negotiate terms and conditions of employment. Said a different way: What happened to the requirement that contributions and benefits must be made pursuant to a written agreement with the employer and the union, providing a detailed basis of terms and conditions?
- Would the court's answer have been different if, in fact, an agreement to implement a soft-freeze would have been reached vs. implementing the last, best, and final offer and declaring an impasse?

Employers participating in severely underfunded MEPPs have experienced increased contribution rates and higher Pension Benefit Guarantee Premiums. However, this, has clearly not solved many of these funds' problems. The fact is that many current and future retirees may never receive the full benefits promised by these MEPPs. Congress has now convened a Joint Select Committee on Solvency of Multiemployer Pension Plans to recommend a solution for the

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MEPP crisis, by the end of 2018. It is uncertain what type of packages will be included, although loans and other reforms will be proposed.

[Please share your thoughts!](#)

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