STATE OF WISCONSIN CIRCUIT COURT DANE COUNTY

WISCONSIN EMPLOYMENT RELATIONS COMMISSION,

Plaintiff,

vs.

LIEDTKE VLIET SUPER, INC.,

Defendant.

DECISION

Case No. 133-437
Decision No. 9717

BEFORE HON. RICHARD W. BARDWELL, CIRCUIT JUDGE

This case involves two actions -- one a review and the other an enforcement proceeding, both stemming from an order of the WERC.

The WERC has ordered Liedke-Vliet to contribute to a certain welfare fund on behalf of some of its employees.

STATUTE INVOLVED

"LABOR-MANAGEMENT RELATIONS

"302 (c) The provisions of this section shall not be applicable; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office." (emphasis supplied)
29 USC 186

The determinative issue is whether the fund in question satisfies the exception in 29 USCA 186, which is section 302 (c) of the Labor-Management Act. We find that the fund is in compliance with this section, and that the order of the WERC should be affirmed and enforced.

Liedtke-Vliet has thus far declined to contribute to this fund on the grounds that such contribution might be an illegal act. We find no basis for this fear. The opinion of the attorney general on this matter stated that the trust fund was within the exceptions. Our findings affirm this view.

The facts are not in dispute. Liedtke-Vliet purchased a supermarket which had an outstanding collective bargaining agreement with certain employees, members of the Amalgamated Meat Cutters. This agreement required employer contributions to a welfare fund administered for the benefit of these union employees. Liedtke-Vliet correctly asserts that the pension payments must be in compliance with section 302 (c). We find that such payments do comply and can be made without fear of violating the law.

The payments first qualify under the second exception, 302. (c) (2) above, having been directed by an arbitrator. Also the payments qualify under the fifth exception, 302 (c) (5) if the fund meets the further provisions of A and B set forth in subsection (5). We find that the questioned payments do meet these requirements.

The word "payments" in both (A) and (B) means the same thing. "Payments" refers to payments made by the employer to the welfare fund. Section B is not a subsection of A, but rather a separate condition. That which must be spelled out in the written agreement is the employer's contributions rather than the welfare or benefit disbursements. This was held in Employing Plasterers Assoc. v. Journeymen, 186 F. Supp. 91 (E.D. ILL. 1960) and in Doyle v. Shortman (S.D.N.Y. 1970) 311 F. Supp. 187.

The purpose of the statute was to prevent employer contributions to union slush funds. Section A requires that funds be held in trust for proper purposes. Section B requires a written agreement that funds are given and received for the delineated purposes only.

The Southern District federal court in New York held in Doyle v. Shortman that this agreement need not be a collective bargaining agreement. The employer in the present case concedes that the Trust Agreement could satisfy the requirement, if it contained the proper terms.

The Bey case, Bey v. Maldoon (E.D.Penn. 223 F. Supp. 489 1963) aff'd 354 F. 2d 1005 (3rd Cir 1966) cert. denied 384 U.S. 987 (1966), cited by plaintiff applied to compliance with section A. We find that the terms of the Trust Fund Agreement sufficiently delineate the purposes of the fund to satisfy the requirements of section A.

The case of Lewis v. Seanor Coal Company, 382 F. 2d 437 (E.D.Penn) cert. den. 390 U.S. 947 (1968), is cited by Liedtke to support its interpretation of section B "payments." The court there determined that the term "payments" did include employer payments to the fund. Although the court first said that the language seems to look to disbursements from the fund, it later modifies that interpretation in its decision, which is grounded on employer payments to the fund. Payments out of the fund were not there at issue, and we do not find Lewis v. Seanor Coal Company (supra) to be a viable authority for the dispute at bar.

In Moglia v. Geoghegan, 403 F. 2d 110, 114-5 (2nd Cir. 1968), also cited by Liedtke, there was a complete absence of written agreements. The court at p. 646-7 did comment that such agreement should include disbursements as well as payments to the fund. Neither of the cases cited determined the present question of whether the basis for making disbursements must be specified in the agreement. This was not at issue in those cases. They therefore do not afford reliable precedent.

We find two relevant cases to the contrary. In Van Horn v. Lewis et al, 79 F. Supp. 541 (1948) the court found no violation in letter or in spirit in a trust agreement which stated: "Benefits for any and all purposes which may be specified, provided for or permitted in sec. 302 (c) of the 'Labor-Management Relations Act, 1947, as agreed upon from time to time by trustees." p. 543 (emphasis added)

A second case which supports this viewpoint is William Dunbar Co. v. Painters & Glaziers District Council (1955, D.C. Dist. Col) 129 F. Supp. 417, which held that although the agreement must be written, it need not be signed. 129 F. Supp. at 423. The court considered and accepted evidence that the employer knew of the agreement even though he had not signed it.

We further take judicial notice of the fact that such funds are commonly administered in the manner as is the fund in question. These funds are subject to the scrutiny of the U.S. Department of Labor, which has never suggested that a possible violation might exist.

We therefore affirm the order of the WERC and direct that Liedtke-Vliet comply with its terms. We find that the fund in question satisfies the 302 (c) exemption requirements, and that such payments are legal.

Counsel for the department may prepare a judgment affirming its order and embodying findings of this decision. Copies of the proposed judgment should be submitted to opposing counsel before submission to the Court for signature.

March 16, 1973

BY THE COURT:

Richard W. Bardwell /s/
Circuit Judge, Branch #1