

## CLIENT BULLETIN

### ***District Court Upholds Arbitrator's Decision That "Employer Contributions" Included "PPA Funding Contributions" Under Reciprocity Agreement***

#### ***"Full Amount" of Employer Contributions Subject To Reciprocity Under the United Association (UA) Pension Reciprocal Agreement***

In [Client Bulletin 2014-49](#), we reported on the case of *Lehman v. Trustees of the IBEW Pacific Coast Pension Plan*, (D.Ct, W.D.), available by "[clicking here](#)."

In that case, the District Court granted summary judgment to a "traveler's" claim that an "Away" multiemployer pension fund that withheld the first dollar per hour of employer contributions for "funding improvement purposes" violated the terms of the Plan, the reciprocity agreement applicable to the "traveler" and his "Home" fund and the *Employee Retirement Income Security Act of 1974 (ERISA)*. The case was certified as a "class action" and included any other "travelers" affected by the Away Fund's withholding practices.

The District Court granted the plaintiff's motion asking for class-wide damages of \$2,473,132.77, which represented: (1) \$1,911,116.49 in pension contributions made on plaintiffs' (travelers') behalf that were wrongfully withheld by the "Away" plan defendants, and (2) \$562,016.28 in earnings thereon, based on the "Away" plans reported annual rates of return from 2008 through February 2015, when the practice stopped. The plaintiffs were granted over \$230,000 in attorney's fees.

#### **New District Court Decision - Reciprocity and "PPA Funding Contributions"**

A decision similar to that issued in *Lehman* was recently released by the District Court of the Northern District of California. That case is *Trustees of the U.A. Local 38 Defined Benefit Pension Plan v. Trustees of the Plumbers Pipe Fitters National Pension Fund*, available by "[clicking here](#)." We will refer to the parties as "Local 38" and the "NPF".

#### **The Dispute**

In this case, the plaintiff (Local 38) and defendant (NPF) were both signatories to the United Association Pension Reciprocal Agreement (the "Agreement"). The Agreement's purpose was to facilitate the transfer, *i.e.* reciprocation, of funds when

members of one local union visit and work in the territory of another local union. The Court explained, in such cases, the traveling member's employer makes pension contributions into the visited local's pension fund. The Agreement then requires reciprocity of those "*employer contributions*" from the visited fund to the member's home fund.

A dispute arose between the parties over whether Local 38 was reciprocating all of the contributions it received on behalf of travelers whose home fund was NPF, as the NPF contended is required under the Agreement. Local 38 was not reciprocating the portion of Employer Contributions that were "*PPA Contributions*" under the Local 38 pension plan's funding improvement plan. The matter eventually went to arbitration. We will limit our discussion to the arbitration and appeal to the District Court.

### **Arbitration and Appeal**

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In early 2007, the NPF first demanded "*full reciprocity for NPF's Travelers*" from Local 38. According to the Court's opinion, the NPF sent dozens of similar demand letters to Local 38 throughout the following years. In 2013, the parties submitted the dispute to a reciprocity coordinator pursuant to the Agreement. The NPF asserted it was owed approximately \$100,000 in full-rate reciprocity contributions, as well as an additional \$100,000 in *Pension Protection Act ("PPA")* Contributions. At the heart of the dispute was whether "*PPA Contributions*" are "*Employer Contributions*" within the meaning of the Agreement and subject to reciprocity.

After failing to solve the problem with the aid of the "reciprocity coordinator", the parties eventually went through arbitration under the Federal Arbitration Act (FAA) as required under the Agreement. The arbitrator decided in favor of the NPF that "*PPA Contributions*" were "*Employer Contributions*" within the meaning of the Agreement and subject to reciprocity and ordered Local 38 to pay more than \$200,000 in contributions to the NPF. Local 38 appealed to the District Court. The District Court confirmed the arbitration award and granted the NPF's request for damages.

It is important to remember that just because a District Court upholds an arbitration award, that does not mean the Court would have necessarily reached the same conclusion as the arbitrator. The Court's decision only means the appellant (Local 38) did not meet the burden of proof<sup>1</sup> to overturn the arbitrator.

However, given the prior result in *Lehman*, which case influenced the arbitrator, it seems more probable than not that the District Court would have reached the same decision in an independent examination of the matter. The Court here noted the

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<sup>1</sup> The role of courts in reviewing arbitration awards is extremely limited. The confirmation of an arbitration award is meant to be a summary proceeding. Neither erroneous legal conclusions nor unsubstantiated factual findings justify federal court review of an arbitral award. Rather, grounds for vacating an award are limited to those specified by statute. See case for full discussion.

similarity of the language of the UA Agreement at issue here to the National Electrical Industry Pension Reciprocal Agreement at issue in *Lehman*.

### **Conclusion**

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We will watch and see if this new case is appealed and report on any further proceedings. The *Lehman* case has been appealed to the Ninth Circuit and is still in briefing. (Available on the PACER website under the Ninth Circuit Court of Appeals – Docket # 15-35414).

In the meantime, Funds that have similar reciprocity agreement language and similar withholding practices to Local 38 may wish to review their documents and practices to determine how they are addressing reciprocation of “PPA Contributions”. With over 100 multiemployer pension plans in critical or endangered status under the *PPA*, this fact pattern may be common in practice.

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