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Construction Contractor Must Pay Subcontractors' Union Fringe Benefit Fund Contributions Due to Subcontract Language Deficiency

A federal district court in Michigan recently held that a union road construction general contractor (the "Contractor") was liable for multiemployer (union) fringe benefit fund contributions for employees of a non-union subcontractor (the "Sub") retained by the Contractor. The language in the Contractor's collective bargaining agreement (CBA) with the union required the Contractor to assure that contributions for the Sub's employees be paid, but the language in the subcontractor agreement between the Contractor and Sub did not require the Sub to pay such contributions. The fringe benefit funds included pension/retirement and welfare funds.

This February 2023 decision, in *Trustees of the Operating Engineers' Local 324 Pension Fund, et al., v. Tri-City Groundbreakers, Inc., and Edw. C. Levy Co. d/b/a Ace-Saginaw Paving Co.*, addressed a language deficiency in the subcontract. While the CBA required the Contractor to obtain the agreement of any subcontractor that it "will comply with all the rates, terms and conditions and fringe benefit contributions" of the CBA, the subcontractor agreement provided that the Sub would "comply with all rates, terms and conditions" of the Contractor's CBA, but it did not include a reference to the "fringe benefit contributions" referenced in the CBA. In addition, the Sub's bid for part of the work specifically disclaimed any obligation to make contributions to the union's fringe benefit plans, including the pension plan, in its bid sheet.

The Sub did perform work in the jurisdiction of the CBA but was not a party to the CBA and did not remit fringe benefit contributions to the union fringe benefit funds. The trustees for the union fringe benefit funds sued the Sub and the Contractor for contributions for the Sub's employees, claiming either the Sub or the Contractor was liable for such contributions.

The district court held that the trustees' claim against the Sub failed because the Sub did not agree to comply with the fringe benefit terms in the CBA and the subcontractor agreement did not obligate the Sub to pay fringe benefit contributions. Though the subcontractor agreement was a "fully integrated agreement" (i.e., it superseded any and all prior written or oral agreements), the court still noted that the Sub had disclaimed any responsibility to pay fringe benefit contributions in its bid sheet and that the Sub had previously withdrawn from participation in these same fringe benefit funds and become a non-union subcontractor. The court felt these factors supported the Sub's position that it not be obligated to pay fringe benefit contributions to the funds.

The Contractor was not accorded similar relief, however. The CBA provided that the Contractor not contract out any work unless the subcontractor agreed it would comply "with all the rates, terms and conditions and *fringe benefit contributions*" of the CBA. The subcontractor agreement did not require the Sub to make fringe benefit contributions. As a result, the district court found the Contractor liable to the funds for fringe benefit contributions for the Sub's employees for breaching its obligations under the CBA (not obligating the Sub to pay such contributions), specifically stating this finding was consistent with prior case law. According to the court, "Case law holds that the general contractor is liable in damages to the funds for such breaches of the CBA, measured by the contributions and related amounts due and owing based on the hours worked by the subcontractor."

The district court also noted that the Contractor was not saved by the CBA term which provided that the Contractor "shall not be liable for any subcontractor who becomes party to this Agreement" because the non-union Sub was not a party to the CBA.

The moral of this story for union general contractors is to make sure any subcontract to which it is a party clearly obligates the subcontractor to comply with any terms for which the contractor would otherwise be liable.

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