

APRIL 14, 2022 | TRADITIONAL LABOR RELATIONS

District Court Allows Pension Fund to Exercise "Nuclear Option"

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Two months ago, we brought you [the story](#) of the ongoing fight between Penske Truck Leasing ("Penske") and the Central States Pension Fund ("Central States"). This article will provide an update in the case of *Penske Truck Leasing Co. v. Central States, Southeast and Southwest Areas Pension Plan*, 21-cv-05518 (N.D. Ill). 

By way of background, just before Christmas, a Chicago district court entered a temporary restraining order preventing Central States from ejecting a unit of Penske employees or from taking any action to trigger a partial withdrawal. The contemplated expulsion would have triggered a partial withdrawal, which Penske alleged would trigger well over ten million dollars in withdrawal liability for the company.

As noted in our earlier article, Central States asserted that Penske was engaged in "a scheme to minimize its withdrawal liability by lining up all ten of its bargaining units for negotiations in 2022 in order to trigger a complete withdrawal from the Fund in 2022 rather than triggering a partial withdrawal in 2021 followed by a complete withdrawal in 2022." Thus, when Penske and its local union in Dallas also agreed to extend that agreement until 2022, Central States' trustees rejected the extension, asserting the extension "could significantly reduce Penske's withdrawal liability exposure."

Last week, following expedited discovery and briefing by the parties, the district court [sided with Central States](#). Specifically, it declined to enter a preliminary injunction and vacated its prior entry of a TRO. While not clear from the record, it is presumed that this order will allow the fund to expel the single unit of employees and to assess a partial withdrawal liability against Penske.

Based on language from the fund's trust agreement, the Court held that contrary to Penske's argument for de novo review, an arbitrary and capricious standard applied to the fund trustees' interpretation of their own authority under the trust agreement, as well as to the actual expulsion decision. Thus, despite Penske's argument that the language of the trust agreement allowed the trustees to expel only an employer as a whole (rather than a single unit or group of an employer), the Court ruled that "[w]hile not a model of clarity," the provision could "reasonably be interpreted as allowing the trustees to terminate an affected group of an employer and not just the employer as a whole."

Penske asserted that Central States' decision was arbitrary and capricious because the trustees' justifications were illogical, and that the fund failed to follow its own process or to investigate properly and provided shifting

justifications for its actions. Rejecting each of Penske's arguments, the Court held that the fund's decision to expel the single bargaining unit was not arbitrary and capricious.

The Court also rejected Penske's further argument that the fund has a rule prohibiting contributing employers with multiple collective bargaining agreements, and that the rule violated a provision of ERISA requiring plan rules to be applied uniformly to contributing employers. Central States denied this, saying it had 37 current employers with multiple collective bargaining agreements set to expire in the same year, and that it only had a practice since 2009 of reviewing all collective bargaining agreements with a duration of less than two years. The Court agreed with the fund, and found that it had not adopted the rule alleged by Penske and that the fund trustees' policy of reviewing short-term bargaining agreements applied uniformly.

Finally, the Court also rejected Penske's arguments that the fund's decision to expel the single unit violated ERISA's labor dispute exception and the NLRA. Accordingly, the Court held that Penske had not shown a likelihood of success on the merits, and could not establish entitlement to preliminary injunctive relief.

Notably, the Court agreed that Penske had made a sufficient showing of irreparable harm and the lack of an adequate remedy at law, and that the balance of harms weighed in Penske's favor. But given Penske's failure to meet the threshold requirement – a likelihood of success on the merits – the Court denied Penske's motion and vacated its' prior TRO.

It remains to be seen whether the expulsion will be retroactive to the date of the trustees' original decision in 2021, although it is safe to assume the fund will assess it as a partial withdrawal for that year, and the trust agreement contains language purporting to allow the trustees to determine the date for any termination or rejection, even retroactively. However, the Court's original TRO ordered Central States to "continue to accept" Penske's contributions, which have now carried over into 2022. Given that the fund was obligated to accept such contributions, which Penske was obligated to make pursuant to its duty under the National Labor Relations Act to maintain the "status quo," it is possible that the withdrawal must be assessed for plan year 2022, rather than 2021.

We will keep an eye on this. This decision illustrates the huge amount of power a multiemployer pension fund may hold over its participating employers, even to the point of expelling a participating employer (or one of its units) and sticking it with millions of dollars in withdrawal liability. The arbitrary and capricious standard of review makes it difficult to stop a fund from exercising this "nuclear option," leaving an employer to deal with the significant fallout.