PLUNKETT COONEY

Reading The Fine Print: What You Should Know About Your Union Contract

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Many employers in the construction industry remain unionized. This is especially true given the project nature of the work and the pressure to be a union employer in order to secure certain projects.

Once an employer becomes unionized, it is held to the language of the collective bargaining agreement ("agreement") that then governs its employee relations. Therefore, it is imperative for employers to read and become familiar with the agreement and the obligations that go into effect.

Importantly, there are certain portions of the agreement that directly impact an employer's future business decisions such as becoming non-union or closing the business. The specific points that an employer should be aware of are: (1) The type of collective bargaining agreement has the employer signed; (2) Whether the collective bargaining agreement imposes withdrawal liability; and (3) the rights the union trust funds have as they relate to the employer.

Once an employer is aware of these three items, it will be in a better position to make confident business decisions without unforeseen consequences.

What Type of Collective Bargaining Agreement has the Employer Signed?

Typically, labor agreements between unions and management are governed by Section 9(a) of the National Labor Relations Act (the "Act").

The terms of a Section 9(a) agreement continue on indefinitely, and cannot be terminated unless there is an objective showing that the union has lost majority support. That said, it is extremely difficult to terminate a Section 9(a) collective bargaining agreement and once it is in place it is there to stay.

However, the Act has created another type of agreement which can be utilized in the construction industry within Section 8(f) of the Act. Section 8(f) allows for what are called "pre-hire" agreements, in which the employer can recognize a particular union to represent its employees without the required majority showing of interest or a union election and enter into an agreement.

Contrary to a Section 9(a) agreement, a Section 8(f) agreement can be unilaterally cancelled by the employer at the end of its term. This feature makes it much more attractive to an employer.

A review of the agreement will reveal whether an employer has signed a Section 9(a) or 8(f) agreement, and if it is a Section 8(f) agreement, the terms that need to be followed to cancel the agreement.

In the construction industry employers often only sign a one-page document called a "letter of assent" which binds it to the underlying agreement. The employer should also review the "letter of assent" for additional terms on cancelling the agreement, because this document often contains additional terms that need to be followed.

Does The Collective Bargaining Agreement Impose Withdrawal Liability?

When an employer signs an agreement to become unionized, the agreement often obligates the employer to participate in a multi-employer pension fund and provides benefit contributions on behalf of the employees. Once an employer is a member of a multi-employer pension fund it may now have what is called "withdrawal liability," which can have a devastating impact on the employer.

If an employer decides to become nonunion or to simply close the business and leave the pension fund, and the fund is underfunded (which most presently are), the price tag can be extremely steep. The employer is obligated to pay not only the share of the underfunding for its employees but a proportionate share of the underfunding for all other employers.

A bargaining unit of 10 employees or more, depending on the circumstances, can lead to withdrawal liability in the millions of dollars! Knowledge of an employer's withdrawal liability will certainly impact its future business decisions.

What Rights Do Union Trust Funds Have?

Within a labor agreement, the employer may also be required to provide contributions for employee fringe benefits. When an employer is obligated to make these contributions, its books and records are now open to be audited by the trust funds.

The agreement allows a trust fund auditor broad powers to review an employer's books and records to ensure that proper contributions have been paid. Moreover, given that union fringe benefit funds are also presently underfunded, the funds are being very aggressive and creative in attempting to ensure cash flow to the funds.

Auditors will look for any number of issues in the employer's books and records, including non-payment for all hours worked, payment for other classifications of employees, liability for sub-contracting, and other instances where payment may have been required. If the auditor uncovers non-payment and the

trust fund brings a lawsuit to collect, the fund is entitled to damages, including back contributions, audit fees, penalties and attorney's fees.

Therefore, it is very important for employers to understand its fringe benefit obligations within the agreement and to keep quality records to support its transactions. Quality books and records will allow an employer to better defend a potential audit or lawsuit.

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