Purchaser May Be Liable for Predecessor's Unpaid Union Trust Fund Contributions
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Thanks to the downturn in the economy, many pension trust funds are seriously underfunded and companies are having trouble keeping current with their contractual obligations for trust fund contributions. The former creates unfunded vested liability for employers who have such plans (discussed in previous articles), and the latter creates a continuing liability where audit fees, interests, and liquidated damages soon dwarf the contributions at issue. This liability may be passed to the purchaser of a union company as held by the federal court in the Third Circuit in M. L. Ruberton Construction Company decision, handed down in January of this year.

Statewide Highway Safety, Inc., a highway construction company, was behind in its union trust fund contributions payments. Because of these financial difficulties, Ruberton, a general construction company, successfully negotiated a purchase of the assets of Statewide. Part of that agreement was to hire a certain number of Statewide's union employees, and continue to make trust fund contributions on their behalf. In neither the purchase and sale agreement nor the discussions with the Union, did Ruberton expressly agree to pay for Statewide's trust fund delinquencies. When, after the purchase, the Trust Fund demanded that Ruberton pay the delinquency, it refused, and the Trust Fund filed a lawsuit.

The federal court determined that the policies under ERISA for successor liability were as important as the successor liability policies under the National Labor Relations Act, which are very liberal. The Court therefore held that, despite the absence of an express agreement by Ruberton to pay the trust fund delinquencies, Ruberton was liable as a successor. According to the Court, such liability would serve the important federal interests in ERISA trust funds. In addition, the Court expressly referenced the buyer's knowledge of the delinquency, and sufficient evidence of continuity of the seller's operations after the buyer took over.

The case underscores the need for due diligence in any purchase and sale - especially of a unionized operation. The case also calls for a careful review of the governing collective bargaining agreements to determine whether those agreements create a continuing liability for the purchaser. Finally, the buyer needs to address this liability issue in an agreement since, even absent a written agreement addressing the issue, the courts may infer purchaser liability.