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June 24, 2020

Rejection of Collective Bargaining Agreements as Part of COVID-19 Related Chapter 11 Reorganization

Employers with unionized workforces have inquired about the possibility of rejecting collective bargaining agreements as part of a Chapter 11 bankruptcy filing in their attempts to reorganize following COVID-19-related losses.

Following the U.S. Supreme Court's decision in NLRB v. Bildisco & Bildisco, it was a fairly easy matter for an employer or trustee, after the filing of a Chapter 11 bankruptcy petition, to reject existing collective bargaining agreements as executory contracts.

Congress quickly reacted to the Bildisco decision by amending the Bankruptcy Code, adding Section 1113 (11 USC § 1113), which set forth rigid requirements before a bankruptcy court could approve rejection of existing collective bargaining agreements.

Following the legislation, courts further developed the prerequisites that must be met before a bankruptcy court can approve rejection of an entire existing collective bargaining agreement or certain of its provisions. The burden is on the employer seeking rejection to establish that it has taken the following steps:

1. A proposal has been made to the union to modify the collective bargaining agreement;
2. The proposal was based on the most complete and reliable information then available as to the financial need for the rejection;
3. Rejection or modification is necessary to permit successful reorganization of the employer;
4. The modifications assure fair and equitable treatment of the employer, creditors, and all other affected parties;

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5. The employer has provided relevant information to the union to evaluate the proposal;
6. The employer and the union have met between the making of the proposal and the court hearing on rejection;
7. The employer has negotiated in good faith to reach a mutually satisfactory agreement modifying the labor agreement;
8. The union has refused to accept the proposal without good cause; and,
9. The balance of equities clearly favors rejection of the labor agreement or the particular challenged terms.

There have been many circuit court of appeal decisions, some conflicting, as to whether the rejection or modification is necessary; whether the union's refusal to accept the employer's proposals was without "good cause," and whether the balance of equities clearly favors rejection.

At the same time that Congress adopted Section 1113, it also adopted Section 1114 (11 USC §1114), which affords essentially the same type of protections and requirements with respect to the bankrupt employer's attempt to end or modify payment of insurance benefits to retired employees. Proposals to end or modify retiree health benefits must be negotiated with either a union or court-appointed committee of retired employees.

Courts have generally concluded they have the power to grant limited interim relief from the provisions of a collective bargaining agreement until rejection is approved or denied, if the interim relief is essential to either the continuation of the business of the employer or to avoid irreparable harm to the estate.

Once rejection of a collective bargaining agreement is approved, a union or other interested parties may not reopen the rejection decision due to the employer's improved economic circumstances.

Rejection of burdensome collective bargaining agreements can be an important part of an employer's restructuring following the filing of a Chapter 11 petition. Employers, however, face a heavy burden of convincing a bankruptcy judge to approve the rejection.

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