

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BOARD OF TRUSTEES OF THE : CIVIL ACTION  
LABORERS' DISTRICT COUNCIL :  
HEALTH AND WELFARE FUND, et al. :  
 :  
v. :  
 :  
THE SKELLY GROUP, et al. : NO. 05-4509

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Bartle, C.J.

March 20, 2007

Plaintiffs, the Board of Trustees of the Laborers' District Council Health and Welfare Fund, the Laborers' District Council Pension and Annuity Fund, the Laborers' District Council Industry Advancement Program, the Laborers' District Council Prepaid Legal Services Plan, the Laborers' District Council Education and Training Fund, the Laborers' District Council Health & Safety Fund, and the Laborers' District Council of Philadelphia and Vicinity, have sued defendants, The Skelly Group, Environmental Equipment & Services, Inc., and J J S Enterprises, Inc., in this action for violation of § 515 of the Employee Retirement Income Security Act ("ERISA") and § 301 of the Labor-Management Relations Act ("LMRA"). 29 U.S.C. § 1132(a)(3); 29 U.S.C. § 185(c). We have subject matter jurisdiction over civil actions brought pursuant to ERISA and the LMRA. See id.

Plaintiffs are the Trustees of joint labor-management funds established and maintained pursuant to the LMRA and the

Laborers' District Council. See 29 U.S.C. § 186(c). Defendant, The Skelly Group is the holding company for defendants Environmental Equipment & Services, Inc. and J J S Enterprises, Inc. Thomas E. Holmbeck and Kyle P. Holmbeck are the owners of all three corporations.

In an Order dated January 5, 2007, we granted the motion of defendants' attorneys, the law firm of Lamm Rubenstone Lesavoy Butz & David LLC, to withdraw as counsel for defendants and scheduled the trial for Tuesday, February 27, 2007 at 9:30 a.m. We further instructed defendants' attorneys to serve our January 5, 2007 Order on defendants. On January 15, 2007, Stephen Levin of Lamm Rubenstone Lesavoy Butz & David, LLC filed an affidavit with this court certifying that service had been made on Kyle Holmbeck and Thomas Holmbeck. No successor counsel ever entered an appearance on defendants' behalf. We held a non-jury trial, as scheduled, on Tuesday, February 27, 2007. Defendants did not appear at the trial. We now make the following findings of fact and conclusions of law.

Section 515 of ERISA provides:

Every employer who is obligated to make contributions to a multiemployer plan under the terms of the plan or under the terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make such contributions in accordance with the terms and conditions of such plan or such agreement.

29 U.S.C. § 1145.

If an employer fails to make payments in accordance with § 515 of ERISA, § 505(g)(2) provides:

In any action under this subchapter by a fiduciary for or on behalf of a plan to enforce section 1145 of this title in which a judgment in favor of the plan is awarded, the court shall award the plan-

- (A) unpaid contributions,
- (B) interest on the unpaid contributions,
- (C) an amount equal to the greater of-
  - (i) interest on the unpaid contributions, or
  - (ii) liquidated damages provided for under the plan in an amount not in excess of 20 percent (or such higher percentage as may be permitted under Federal or State law) of the amount determined by the court under subparagraph (A),
- (D) reasonable attorney's fees and costs of the action, to be paid by the defendant, and,
- (E) such other legal or equitable relief as the court deems appropriate.

29 U.S.C. § 1132(g)(2).

During the trial, plaintiffs introduced into evidence three collective bargaining agreements between: (1) J J S Enterprises and Laborers' Local Union 57, in effect from May 1, 2000 until April 30, 2004; (2) The Skelly Group and Laborers' Local Union 57, in effect from May 1, 2004 until April 30, 2006; and (3) Environmental Equipment & Services, J J S Enterprises and Laborers' Local Union 413, commencing July 1, 1996. The three collective bargaining agreements were in effect during all periods relevant to this action.

At trial, Perry N. Blackmun, CPA, testified. Mr. Blackmun audited The Skelly Group, Environmental Equipment & Services, and J J S Enterprises on plaintiffs' behalf to determine the amount of past due contributions defendants owed to plaintiffs under the terms of the collective bargaining agreements in issue. The contributions included money owed to plaintiffs for health and welfare services, pensions, training, and legal services. We find that for the period of May 1, 2005 through August 11, 2006, defendant J J S Enterprises owes plaintiffs \$637,469.46 in contributions. Of the \$637,469.46, \$223,350.23 was held in escrow or held in lieu of bond and therefore must be credited toward the total amount due. J J S Enterprises therefore owes plaintiffs \$414,119.23 in past due contributions. Mr. Blackmun's audit concluded that neither The Skelly Group nor Environmental Equipment & Services, Inc. owed past due contributions to plaintiffs.

In addition to past due contributions, plaintiffs also seek damages for the cost of the audit, interest on the past due contributions as of December 5, 2006, the date of the audit, and liquidated damages. As Mr. Blackmun testified, the interest on the past due contributions, calculated as two points over prime under the terms of the collective bargaining agreement, is \$57,412.39. The audit fees total \$29,157.50. Liquidated damages, as provide under the collective bargaining agreement, are 10% of the past due contributions and cost of audit, plus interest on that amount, or \$50,068.91.

Accordingly, we will enter judgment in favor of plaintiffs and against defendant, J J S Enterprises, in the amount of \$550,758.03.

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JUDGMENT

AND NOW, this 20th day of March, 2007, based on the accompanying Findings of Fact and Conclusions of Law, it is hereby ordered that:

(1) judgment is entered in favor of plaintiffs, the Board of Trustees of the Laborers' District Council Health and Welfare Fund, the Laborers' District Council Pension and Annuity Fund, the Laborers' District Council Industry Advancement Program, the Laborers' District Council Prepaid Legal Services Plan, the Laborers' District Council Education and Training Fund, the Laborers' District Council Health & Safety Fund, and the Laborers' District Council of Philadelphia and Vicinity, and against defendant, J J S Enterprises Inc., in the amount of \$550,758.03; and

(2) judgment is entered in favor of defendants, The Skelly Group and Environmental Equipment & Services, Inc., and against plaintiffs, the Board of Trustees of the Laborers' District Council Health and Welfare Fund, the Laborers' District

Council Pension and Annuity Fund, the Laborers' District Council Industry Advancement Program, the Laborers' District Council Prepaid Legal Services Plan, the Laborers' District Council Education and Training Fund, the Laborers' District Council Health & Safety Fund, and the Laborers' District Council of Philadelphia and Vicinity.

BY THE COURT:

/s/ Harvey Bartle III

C.J.