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Bankruptcy - Priorities - Status of Employer Contributions to Union Welfare Fund

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RECENT DECISIONS

BANKRUPTCY—PRIORITIES—STATUS OF EMPLOYER CONTRIBUTIONS TO UNION WELFARE FUND—Under a collective bargaining agreement an employer was required to contribute eight dollars monthly to a union welfare fund for each of its employees who were union members. A trust agreement authorized the trustees of this fund to file claims of priority in any proceeding involving the employer's insolvency. In a bankruptcy proceeding the trustees of the fund sought priority as wage claimants for the employer's unpaid contributions to the fund which had accrued during the three months prior to bankruptcy. In the same proceeding the United States sought priority for unpaid taxes. The referee ruled that the unpaid employer contributions were not "wages" within section 64a(2) of the Bankruptcy Act,[1] and relegated the trustee's claim to the status of payments due unsecured creditors. The district court vacated the referee's order and granted wage priority to the employer contributions.[2] On appeal, *held,* affirmed. Since employer contributions to union welfare funds are in a realistic sense part of the agreed compensation for services rendered, and are also bargained for as an integral part of the wage package, they must be considered as "wages" under section 64a(2) of the Bankruptcy Act. *Matter of Embassy Restaurant,* (3d Cir. 1958) 254 F. (2d) 475, cert. granted 79 S. Ct. 42 (1958).

The Bankruptcy Act provides for priority in the payment of certain debts, and designates five classes of priority claims, each of which is given precedence in payment over succeeding classes. Wages are given second priority and government tax claims are fourth.[3] Priority under the bankruptcy law was accorded wages long before fringe benefits such as welfare plans became common.[4] Such fringe benefits have now become an important part of the wage structure, and special attention is given to these benefits in collective bargaining practices.[5] As a result of this increase in importance, courts have been faced with the problem of determining whether "wages" as used in the priority section of the Bankruptcy Act should include fringe benefits. It has been held that vacation pay,[6] back

1 30 Stat. 563 (1898), as amended, 11 U.S.C. (Supp. V, 1958) §104(a).

2 Matter of Embassy Restaurant, (E.D. Pa. 1957) 154 F. Supp. 141.

3 "(a) The debts to have priority . . . and the order of payment, shall be . . . (2) wages and commissions, not to exceed $600 to each claimant, which have been earned within three months before the date of the commencement of the proceeding, due to workmen . . . (4) taxes legally due and owing by the bankrupt to the United States. . . ." 11 U.S.C. (Supp. V, 1958) §104(a).

4 The Bankruptcy Act of 1867 was the first to give priority status to "wages." For legislative history, see 3 COLLIER, BANKRUPTCY, 14th ed., §§64.01, 64.201 (1941; Supp. 1957).

5 79 MONTHLY LAB. REV. 172, 812 (1956); Bulletin No. 1113, United States Department of Labor, Bureau of Labor Statistics, "Wages and Related Benefits—40 Labor Markets —1951-1952."

6 In re Kinney Aluminum, (S.D. Cal. 1948) 78 F. Supp. 565 at 568-569; United States v. Monro-Van Helms Co., (5th Cir. 1957) 243 F. (2d) 10 at 13.

pay,[7] severance pay[8] and disability insurance premiums deducted by the employer and paid to an insurance company[9] are "wages" under section 64a(2). Despite this authority for a liberal definition of "wages," the federal courts are divided on the question whether employer contributions to union welfare funds, one of the most common types of fringe benefits, are entitled to priority as "wages . . . due to workmen."[10] The courts which have denied priority to such unpaid contributions have reasoned that "wages . . . due to workmen" in the context of the Bankruptcy Act include only direct, present payments to the employee rather than indirect, deferred payments.[11] It is argued that the legislative intent behind the wage priority section was only to provide emergency funds to the employee to help him meet his needs during his period of unemployment. Since the benefits that the employee derives from a welfare fund do not come directly from the employer but are instead administered by the union and are contingent on some future retirement or sickness, these courts have concluded that contributions to welfare funds were not intended to be given priority.[12] A broader purpose which today might be assigned to the wage priority section, however, is that of insuring economic security for workers rather than merely guaranteeing them an emergency fund.[13] If this broader purpose is recognized it is not difficult to fit employer contributions to a welfare fund into the term "wages."[14] No technical definition of this

7 Nathanson v. NLRB, 344 U.S. 25 (1952).

8 McCloskey v. Division of Labor Law Enforcement, (9th Cir. 1952) 200 F. (2d) 402.

9 In re Ross, (N.D. Cal. 1953) 117 F. Supp. 346.

10 Allowing priority: In re Otto, (S.D. Cal. 1956) 146 F. Supp. 786; In re Schmidt, (S.D. Cal. 1953) 33 L.R.R.M. 2283. Denying priority: Local 140 Security Fund v. Hack, (2d Cir. 1957) 242 F. (2d) 375, cert. den. 355 U.S. 833 (1957); In re Victory Apparel Mfg. Corp., (D.C. N.J. 1957) 154 F. Supp. 819; In re Brassel, (N.D. N.Y. 1955) 135 F. Supp. 827. In view of this confusion H.R. 8805 was introduced in the House of Representatives by Representative Celler of New York to amend §64a(2) of the Bankruptcy Act to require that wage priority be given to union welfare funds. The bill is pending in the House Judiciary Committee.

11 Local 140 Security Fund v. Hack, note 10 supra, at 377-378; In re Brassel, note 10 supra; In re Victory Apparel Mfg. Corp., note 10 supra. See also Forman, "Priority of Union Welfare Funds as Wages in Bankruptcy," 62 COM. L.J. 321 (1957); note, 42 MINN. L. REV. 295 (1957); COLLIER, BANKRUPTCY, 14th ed., §64.201 at 2083 (1941; Supp. 1957.

12 See cases cited in note 11 supra. The fact that the priority claim is limited to $600 in §64a(2) may be used to support the "emergency fund" argument.

13 This argument gains added force in light of unemployment compensation benefits available on termination of employment. See note, 66 YALE L.J. 449 at 460-461 (1957). See also In re Inland Waterways, Inc., (D.C. Minn. 1942) 71 F. Supp. 134; In re Paradise Catering Corp., (S.D. N.Y. 1941) 36 F. Supp. 974; In re Lawsam Electric Co., (S.D. N.Y. 1924) 300 F. 736; comment, 52 N.W. UNIV. L. REV. 681 (1957). The court in the principal case at 476 points out that the achievement of complete economic security for workers is the goal of organized labor.

14 "The term 'wages', as used in this section, has received a very liberal construction." In re Roebuck Weather Strip and Wire Screen Co., (S.D. N.Y. 1910) 180 F. 497 at 498. See also note, 66 YALE L.J. 449 at 459 (1957). The granting of priority to the welfare fund may be to the detriment of the general creditors in some cases. However, the wage earners

term is found in the act, and the usual definition of "wages" under section 64a(2) is "the agreed compensation for services rendered."[15] An employer's contribution to a welfare fund generally represents another method of computing and paying compensation for services rendered.[16] The compensation represented by these contributions is present security, a valuable and direct benefit to the employee.[17] If such an interpretation of the term "wages" is adopted, however, a second argument can be made against priority status for employer contributions to union welfare funds. This argument is to the effect that the "wages" are not "due to workmen" in the sense that the employee has no individual or assignable proprietary interest in the welfare contribution.[18] Yet the language of the statute does not expressly require the worker to have an enforceable property right in the wages which are due to him.[19] The employee may not be able to sue the employer directly to enforce his rights in the welfare fund but the benefit of the fund is certainly "due" to the employee. The Supreme Court in a very recent decision rejected a similar argument made under the Miller Act[20] that trustees of a welfare fund could not sue as a "person who has furnished labor . . . for the sums justly due him."[21] This decision

and the union are involved with the employer in such a way that they cannot protect themselves from the impending insolvency of the employer, while the general creditors are not usually so unavoidably involved with an insolvent.

15 In re Gurewitz, (2d Cir. 1903) 121 F. 982 at 983; In re New England Thread Co., (1st Cir. 1907) 158 F. 788 at 792. The term "wages" as used in other statutes has been held to include employer's health and welfare contributions. Inland Steel Co. v. NLRB, (7th Cir. 1948) 170 F. (2d) 247 at 251, cert. den. 336 U.S. 960 (1949) (Labor-Management Relations Act of 1947); MacPherson v. Ewing, (N.D. Cal. 1952) 107 F. Supp. 666 (Social Security Act); City of Avalon, (9th Cir. 1946) 156 F. (2d) 500 (Federal Employment Tax Act).

16 United States for Benefit and on Behalf of Sherman v. Carter, 353 U.S. 210 at 217 (1957); In re Otto, note 10 supra, at 789. If a trust agreement specifically provided that the welfare contributions were to be "non-wage benefits," should the court still give priority to the contributions as "wages"? In other words, should the intent of the parties govern or should all welfare contributions of this nature be given wage priority?

17 The worker is thus given priority in bankruptcy for medical, hospital, surgical, and life insurance premiums, rather than cash. In re Otto, note 10 supra, at 791.

18 "Liberality of construction of the term 'wages' does not justify a nullification of the language of the statute which grants priority only to 'wages . . . due to workmen.' The employers' contribution here is never due to the employee." In re Brassel, note 10 supra, at 830. See also In re Victory Apparel Mfg. Corp., note 10 supra.

19 If the statute did require the employee to have a property right in the fund, various theories could be used to find such a right. See note, 66 YALE L.J. 449 at 454, 457 (1957).

20 49 Stat. 794 (1935), 40 U.S.C. (1952) §§270a and 270b.

21 United States for Benefit and on Behalf of Sherman v. Carter, note 16 supra. The Court's reply to the contention made was, at 220: "The trustees stand in the shoes of the employees and are entitled to enforce their rights. . . . [T]hese [welfare] contributions are in substance as much 'justly due' to the employees who have earned them as are the wages payable directly to them in cash." Although the statutory language of the Miller Act is broader than that of §64a(2) of the Bankruptcy Act, the case does illustrate the Supreme Court's attitude in recognizing the union welfare fund as a primary benefit to the employee and as part of the compensation for the work done.

does not provide a binding precedent for the principal case, but it perhaps indicates that the Supreme Court is disposed to follow a liberal policy with respect to protection of union welfare funds. The holding in the principal case represents a non-technical construction of section 64a(2) which comports with what today should be regarded as the broad purpose of that provision. An affirmance of the principal case by the Supreme Court, extending to union welfare funds priority status, would serve to buttress current labor activity which has strengthened employee security.

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