

# Washington Supreme Court says ERISA doesn't preempt construction lien laws

OLYMPIA, Wash. — The Washington Supreme Court ruled March 20 that ERISA laws regulating Taft-Hartley pension and welfare plans do not preempt state lien laws when it comes to collecting unpaid or delinquent benefits for union construction workers on publicly-funded projects.

Taft-Hartley plans are multi-employer pension plans collectively bargained by a union and a group of employers, usually in a related industry. Such plans are governed by a trust — half of whose trustees are appointed by the employers, and half by the union.

The state of Washington enacted laws a century ago designed to ensure that construction workers on public projects were paid for their work. General contractors are required to obtain a surety bond and withhold a certain percentage of the contract amount as a guaranty that taxpayers won't be on the hook for unpaid claims. If workers aren't paid correctly, liens can be placed on the project to ensure payment. Taft-Hartley trust funds in the state of Washington have routinely asserted such claims on behalf of their participants.

However, in 1994, a contractor

(Merit Co.) challenged the lien law. It went all the way to the Washington Supreme Court, which held that ERISA (Employee Retirement Income Security Act) preempted state lien claims.

It upheld that decision in another case in 2000.

"Taft-Hartley trusts in Washington basically were left without a state court remedy," said Jeff Maxwell, an attorney with the Seattle-based law firm Ekman Thulin, P.S. Maxwell argued the most recent case before the Supreme Court on behalf of the Carpenters Trusts of Western Washington.

Maxwell said Washington's federal courts stepped in to help protect the trusts' rights to file claims. But the protection was not complete, as some sureties and general contractors became savvy enough to seek declaratory relief in state court, which, when reduced to judgment, forced the federal courts to dismiss the trusts' claims.

"Such actions resulted in increased, scorched-earth litigation tactics and raised costs for all involved," Maxwell said.

The case that led to the Supreme Court reversal involved Carpenters Union members working for California-based Paramount Scaffold Inc. on a student housing project at the University of Washington. W. G. Clark Construction was the general contractor on the project.

While the project was ongoing, the Carpenters Trusts of Western Washington discovered Paramount had failed to make \$64,905 in required payments to its employees' health and welfare plans. The Carpenters Trusts sued Paramount. The scaffolding company became insolvent, so the trusts served liens on W.G. Clark, the univer-

sity, and the insurance company that issued the performance bond. [Litigation against Paramount Scaffold and its purported successor is ongoing.]

W.G. Clark ran directly to state court for declaratory relief, knowing it likely would receive a favorable ruling based on the ERISA preemption. Which it did.

Meantime, the union trusts filed a separate action in federal court. However, in light of the decision in state court, the federal court judge had no choice but to dismiss the case.

The trusts then mounted an appeal, asking the Washington Supreme Court to overturn its 2000 decision that ERISA preempted state claims. The case was accepted on direct review, briefed, and argued before the justices on Jan. 14. After a short nine weeks, on March 20, the Supreme Court issued a unanimous opinion, holding that claims under state statutes were not preempted by ERISA.

"This is a huge victory for all Taft-Hartley trusts in Washington and benefits thousands of Washington workers," Maxwell said. "Routine claims on project bonds and retained percentage can be made for delinquent fringe benefit contributions of a subcontractor, and can now again be enforced in a simple action in state court."

Maxwell said the decision should allow trusts and general contractors to work together to obtain payment by joint check and actually lessen the amount of liens on the bonds, "all while ensuring union construction workers get paid the benefits that are due."

"We view it as a win-win for everyone," he said, while acknowledging that sureties and general contractors haven't yet come around to that viewpoint.



The Oregon School Employees Association was a first-time participant at the 25th annual Labor Bowl for MDA. Pictured above right to left are Mike Ali, Wendy Warner, Kirk Wilkins (wearing hat), Robert Bowles, Lawrence Rajotte, Scott George (holding bowling ball), Cheri Arthur and Trish Callaway. The union sponsored two teams and together raised \$500 for MDA. "We had so much fun," said George, vice president of the union's Executive Board. "Look for more next year!"

## Union members raise \$11,000 for MDA

Union members raised \$11,000 at the 25th annual Muscular Dystrophy Labor Bowl, held April 13 at Sunset Lanes in Beaverton. Since its inception in 1989, union members have donated \$362,025 to MDA.

Money is raised through pledges and from a silent auction and goes to buy wheelchairs and braces for children, as well as for research and summer camps. Muscular dystrophy is a hereditary condition marked by a progressive weakening and wasting of the muscles over time.

This year's event brought 71 bowlers from 13 labor organizations, as well as from Northwest Priority Credit Union. The top individual fundraiser was Cal Eddy, a retired Portland firefighter and member of Local 43. He raised \$1,230. Rick Brandt of Machinists Lodge 1005 captured the men's high series trophy, and Marilyn Rae of United Food and

Commercial Workers (UFCW) Local 555 took home women's high series hardware. A low score trophy went to Lois Brumfield of Letter Carriers Branch 82. Score totals were not available. Each winning bowler took home a \$50 gift card. For his efforts, Eddy received a round of golf and dinner for two at Chinook Winds, plus a \$25. gift card to the gift shop.

Unions represented at the MDA Bowl were National Association of Letter Carriers Branches 82 and 1104; the Northwest Oregon Labor Council; Fire Fighters Local 43; Machinists Lodges 63, 1005, and 1432; UFCW Local 555; Plumbers and Fitters Local 290; American Federation of Teachers Local 6732; the Oregon School Employees Association; Labor's Community Service Agency; Hillsboro Classified United Local 4671; and NW Priority Credit Union.

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