

Paying the Salary of Certain Union Officers Held to Be Unlawful

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The Case

Earlier this month, the United States Court of Appeals for the Seventh Circuit (which covers Illinois, Indiana and Wisconsin) held it illegal for employers to pay the full-time salary of union officials who spend their time representing employees rather than working for the employer. *Titan Tire v. USW*, Case No. 12-1152 (Nov. 1, 2013). In this case, the employer historically had paid the entire salary of a number of USW officials. The company had done so notwithstanding the fact that the union officials did not work for the employer and also spent time representing employees of another employer.

Titan decided to stop payments after determining that such payments violated the Labor Management Relations Act (which has a criminal component). After Titan stopped its payments to the USW officials, the union filed a grievance, which ultimately was referred to arbitration. The arbitrator and, on review, the U.S. District Court, disagreed with Titan held that the payments were lawful and were required by the parties' agreements. The Seventh Circuit disagreed and reversed. Essentially the Seventh Circuit held that the payments violated Section 302 of the Labor Management Relations Act, which could under some circumstances lead to criminal charges.

This decision creates a split among Courts of Appeal because the Third Circuit in *Caterpillar v. UAW*, 107 F.3d 1052 (3d Cir. 1997), reached an opposite conclusion. Ultimately, this issue may be resolved by the Supreme Court.

What Employers Should Do

Unless and until this decision is disturbed by the Supreme Court, it is binding on employers in the Seventh Circuit. This decision also may be persuasive in other areas of the country outside the Third Circuit (which covers Delaware, New Jersey and Pennsylvania).

Employers should confer with their labor counsel and review any arrangements where the employer is paying the salary of union representatives. Employers should determine the potential legal risk associated with such an arrangement, particularly where, as the Seventh Circuit noted, violations could carry criminal liability.

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