

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2181

Summary Calendar

THE LABORERS NATIONAL PENSION
FUND, ET AL.,

Plaintiffs-Appellants,

v.

SNEAD SITE PREPARATION,
INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-90-2728)

(December 9, 1993)

Before KING, HIGGINBOTHAM and BARKSDALE, Circuit Judges.

PER CURIAM:*

A number of multi-employer trust funds (the trust funds) sued Snead Site Preparation, Inc. (Snead), a construction company, alleging that Snead had violated an agreement to pay benefits to the trust funds based on the wages paid by Snead to certain covered employees. After a bench trial, the district

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the court has determined that this opinion should not be published.

court entered final judgment in favor of Snead. The trust funds appeal the judgment.

I.

A. *Factual Background*

Snead entered into a contract with Blount Brothers Corporation (Blount) under which Blount subcontracted to Snead site preparation work for the George R. Brown Convention Center in Houston, Texas. This contract was dated March 1, 1985. The contract defined the boundaries of the George R. Brown Convention Center as Dallas Street on the south, Walker Street on the north, U.S. Highway 59 on the east, and Chenevert Street on the west. Work performed at this site was called "inside" or "on-site" work.

On March 21, 1985, Snead executed a Uniform Agreement by Project with the Southern Texas Laborers' District Council (the Council), which was representing Locals # 18, 116, and 313. Under the uniform agreement, Snead was obligated to make specific contributions to the trust funds for all laborers' work "to be performed on the George Brown Convention Center job." The uniform agreement does not define the scope of the "George Brown Convention Center job," although the parties agree that the uniform agreement covered employees performing on-site work as defined by the Snead-Blount contract.

On October 1, 1986, Snead received a change order from Blount. In the change order, Blount authorized Snead to perform

additional work outside the boundaries defined in the Snead-Blount contract. This additional work included the performance of concrete and asphalt paving tasks and the construction of curbs, gutters, and sidewalks. These tasks were referred to as "off-site" work. The district court made the following findings with respect to Snead's performance of the off-site work. Snead used some non-union employees for the off-site work, as well as some employees who had finished their on-site work. The assigned steward from the local union did not treat on-site and off-site employees the same; specifically, he checked the union cards and books of the on-site employees only. The steward also helped the project manager, Frankie Snead, record the employees' hours on a daily basis, but he never asked Frankie Snead for information regarding off-site work. Snead, in maintaining its certified payrolls, accurately recorded whether employees were working on-site or off-site. From May of 1985 through May of 1987, Snead made contributions to the trust funds based solely on work performed on-site.

In 1989, the trust funds conducted an audit of Snead's certified payrolls. The auditor included all hours worked by all employees in her audit; she did not differentiate between on-site and off-site employees in determining the amount owing to the trust funds. The auditor's revised audit showed that Snead reported all employee hours for employees performing on-site work, and that Snead paid all monies owing to the trust funds for

those hours. Snead made no contributions for hours worked off-site.

B. *Procedural History*

On August 27, 1990, the trust funds filed suit in federal district court against Snead, alleging that it had breached the uniform agreement by failing to pay monies to the trust funds in accordance with the uniform agreement for employee hours worked off-site. Jurisdiction was predicated on the Labor Management Relations Act of 1947, 29 U.S.C. § 185, and the Multiemployer Pension Plan Amendments Act of 1980, 29 U.S.C. §§ 1132, 1451. Snead denied that it owed the trust funds any money. The trust funds moved for summary judgment, and the district court denied the motion. The action was tried to the court on January 6, 1993, and the district court entered final judgment in favor of Snead on January 21, 1993. Findings of fact and conclusions of law were also filed on that date. The trust funds timely filed their notices of appeal.

II.

Choice of Law and Standard of Review

The central issues in this case are whether the district court correctly considered parol evidence in interpreting the uniform agreement between Snead and the trust funds and whether the district court correctly interpreted that agreement to exclude coverage of Snead employees who worked off-site. Section 301(a) of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a), "not only provides federal-court jurisdiction over

controversies involving collective-bargaining agreements, but also 'authorizes federal courts to fashion a body of federal law for the enforcement of these collective bargaining agreements.'" Lingle v. Norge Div. of Magic Chef, Inc., 486 U.S. 399, 403 (1988) (quoting Textile Workers Union v. Lincoln Mills, 353 U.S. 448, 451 (1957)). Federal law governs the interpretation of collective bargaining agreements that come within the scope of 29 U.S.C. § 185. Id. at 404; Local 174, Teamsters, Chauffeurs, Warehousemen & Helpers v. Lucas Flour Co., 369 U.S. 95, 103 (1962); D.E.W., Inc. v. Local 93, Laborers' Int'l Union, 957 F.2d 196, 199 (5th Cir. 1992). We apply traditional rules of contractual interpretation unless their application would be inconsistent with federal labor policies. D.E.W., Inc., 957 F.2d at 199.

The district court admitted parol evidence in aid of interpretation of the uniform agreement because it held that the agreement, specifically the phrase "George Brown Convention Center job," was ambiguous. The determination of whether a contract is ambiguous is a question of law. Id. Thus, the district court's determination that the uniform agreement was ambiguous is reviewable de novo. Bennett v. Local Union No. 66, Glass, Molders, Pottery, Plastics and Allied Workers Int'l Union, 958 F.2d 1429, 1434 (7th Cir. 1992); see also Carpenters Amended and Restated Health Benefit Fund v. Holleman Constr. Co., 751 F.2d 763, 767 (5th Cir. 1985) ("This preliminary question of whether an ambiguity exists is a question of law, which we, as a

court of review, must answer ourselves."). If the agreement is indeed ambiguous, we apply the clearly erroneous standard in reviewing the interpretation of the contract arrived at by the district court. Holleman Constr. Co., 751 F.2d at 769.

III.

The trust funds raise two main points of error. First, they contend that the district court erred in determining that the uniform agreement was ambiguous and in hearing parol evidence in aid of resolving the ambiguity. Second, they contend that the district court's interpretation of the uniform agreement was erroneous.

A. Ambiguity

The trust funds challenge the district court's conclusion that the uniform agreement executed by Snead and the Council was ambiguous in defining the term "George Brown Convention Center job." We proceed to our de novo review of the ambiguity issue.

The uniform agreement is itself a brief document adopting an existing collective bargaining agreement and amending that agreement by addressing, inter alia, general working conditions, its effective duration, and wage rates. The first sentence of the uniform agreement reads, "Now come all parties undersigned hereto and agree to the following amendment to the Associated General Contractors Master Collective Bargaining Agreement, and/or Agreements covering Laborers [**sic**] work to be performed on the George Brown Convention Center job." Most of the agreement

is typed, but the words "George Brown Convention Center" in the quoted sentence are handwritten into a space left blank for that purpose. The term "George Brown Convention Center job" is not defined in the uniform agreement. There are only two other references to the "job" or "project" in the uniform agreement, neither of which defines the scope of the project being undertaken by Snead and subject to the uniform agreement.¹

Terms of an agreement are ambiguous if they are susceptible to more than one reasonable interpretation. Amoco Canada Petroleum Co. v. Wild Well Control, Inc., 889 F.2d 585, 587 (5th Cir. 1989). Ordinarily, courts attempt to resolve ambiguities in a contract by looking to the contract itself, on the theory that the parties' words best represent their intentions. As long as

¹ The two references to the "job" are as follows:

GENERAL WORKING CONDITIONS

* * *

The Employer agrees that all Labor work at the jobsite, herein described, will be performed on an hourly basis on the employers [**sic**] payroll under the terms and provisions set forth in this Agreement, or subbed under the terms and provisions of this Agreement.

* * *

DURATION

This Agreement shall become effective at the outset of the project herein described and shall continue in full force and effect until completion of the project herein described. This Agreement shall specifically apply to this project only.

Despite the language of these provisions, there is no further description of the jobsite or the project anywhere in the uniform agreement.

the contract as a whole is coherent, ambiguities can be resolved as a matter of law, without looking beyond the four corners of the document. Holleman Constr. Co., 751 F.2d at 766. If the ambiguities cannot be resolved even by looking at the entire document, the interpreting court must turn to extrinsic or parol evidence. Id.

We hold that certain terms of the uniform agreement are susceptible to more than one reasonable interpretation. Admittedly, certain obligations do emerge with clarity. Under the uniform agreement, Snead plainly adopts with only minor amendments the existing collective bargaining agreement. Included in the obligations thereby imposed on Snead is the duty to contribute to the trust funds based on work performed by covered employees. However, not every employee employed by Snead on any construction job anywhere in the world automatically becomes a covered employee by virtue of the uniform agreement; the uniform agreement specifically limits its adoption of the collective bargaining agreement to coverage of employees whose work is performed on the "George Brown Convention Center job." Unfortunately, no further description of the scope of the adoption is provided beyond this brief phrase. "[N]o word or phrase has one true and unalterable meaning," 3 Arthur L. Corbin, Corbin on Contracts § 535 (1960), and this is particularly true in the case of a phrase as brief and enigmatic as the one at issue in the instant case.

The ambiguity created by the phrase "George Brown Convention Center job" is easily demonstrated. One might reasonably conclude that "job" refers only to those aspects of the construction of the convention center for which Snead was already responsible at the time of the agreement. The trust funds urge an alternate possible interpretation: that the phrase "George Brown Convention Center job" means both work already contracted to Snead by Blount and any work Blount might assign to Snead in the future. It is not possible to choose one reading over the other with any degree of confidence based only on the language within the four corners of the uniform agreement.

We thus reject the trust funds' argument that the phrase "George Brown Convention Center job" is unambiguous. The trust funds argue that "[i]f the blank had been filled in with 'current contract on George R. Brown Convention Center' or 'men currently working on George R. Brown Convention Center' it is possible that the Agreement could be construed as ambiguous." We believe the converse is true; the phrases proposed by the trust funds are actually much clearer than the phrase actually used. We also disagree with the trust funds' argument that "[t]here is nothing indefinite or ambiguous about 'jobsite,'" the term used in the "general working conditions" section of the uniform agreement. It is impossible to know what the word "jobsite" means without a prior determination of what the "job" is. For the reasons detailed above, the parameters of the "job" covered by the uniform agreement are indefinite and ambiguous.

The district court correctly concluded that the uniform agreement was ambiguous with respect to the scope of its application. It therefore correctly considered parol evidence in interpreting the agreement.

B. Interpretation of the Agreement

We next inquire whether the interpretation of the uniform agreement reached by the district court is clearly erroneous in light of all the evidence introduced at trial in aid of interpretation. The district court concluded that "the Uniform Agreement by Project covered only those employees who worked on-site, and that the term 'George R. [sic] Brown Convention Center job' applies only to inside, on-site work." We will reverse the district court's interpretation only if it is clearly erroneous; an interpretation is clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Holleman Constr. Co., 751 F.2d at 769 & n.9 (quoting United States v. United States Gypsum Co., 333 U.S. 364, 395 (1948)).

Snead refers this court to the following evidence in support of the district court's interpretation of the uniform agreement. At the time Snead entered into the uniform agreement with the Council, Snead was under contract with Blount to perform site preparation work within carefully defined boundaries. Snead's president, Daryl L. Snead, testified at trial that he discussed the scope of Snead's contract with Blount with the

representatives of the Council that negotiated the uniform agreement with him. He testified that his intention in executing the uniform agreement was not to be bound under the terms of that agreement with respect to any additional work Snead might receive, and that he had no reason to believe that the negotiators from the Council had any different understanding of the agreement. He also testified that a map of the convention center clearly marked with the boundaries specified in the original Blount-Snead contract was referred to during the negotiations. Those who negotiated on behalf of the Council did not testify at trial regarding the meaning of the uniform agreement.

The parties' behavior after the execution of the contract is strong evidence of the meaning of ambiguous terms. Laborers Health and Welfare Trust Fund for N. Cal. v. Kaufman & Broad of N. Cal., Inc., 707 F.2d 412, 418 (9th Cir. 1983) (Kennedy, J.); see also Schultz v. Metropolitan Life Ins. Co., 872 F.2d 676, 679 (5th Cir. 1989) ("When a contract is reasonably susceptible to different interpretations, the conduct of the parties before the advent of a controversy may be relied upon to discover the parties' understanding of the contract."). As the district court found, the assigned steward from the local union treated employees who worked off-site differently from those who worked on-site. The steward never checked off-site employees' union cards or books, and he never asked the project manager for information regarding hours worked off-site. For two years Snead

made contributions to the trust funds based only on hours worked by employees on-site. All these facts tended to suggest that the parties regarded the uniform agreement as applicable with respect to on-site work only.

The trust funds' brief belabors the mechanics by which Snead became obligated to abide by the Associated General Contractors Bargaining Agreement, which includes the obligation to contribute to the trust funds for covered employees. The uniform agreement executed by Snead and the Council simply adopted this overarching collective bargaining agreement, with certain amendments. Snead's individual assumption and adoption of the terms of the multi-employer union trust fund agreements and its agreement to make contributions to the funds for covered workers are typical of "adoption agreements." See D.E.W., Inc., 957 F.2d at 198 & n.2 (describing the mechanics of adoption agreements).

The trust funds' characterization of this arrangement is true, but it does not go to the heart of the matter. Snead does not deny that it was obligated to make contributions for employees covered by the uniform agreement. The dispute is over the threshold question of who qualifies as a covered employee under the uniform agreement; because only employees working on the "George Brown Convention Center job" were in fact covered employees, the district court correctly focused the inquiry on the meaning of that ambiguous phrase. The trust funds argue that "the trial court failed to look at all the terms of the [uniform] agreement along with the incorporated collective bargaining

agreement which defines employees and demands payment by Defendant on behalf of all their employees working in covered employment on the George R. Brown Convention Center job." The argument begs the question of which employees are deemed to be working on that "job" under the uniform agreement and which are not.

The authorities cited by the trust funds are inapposite. D.E.W., Inc. is characteristic of those cases. In that case the employer, D.E.W., entered into an adoption agreement like the uniform agreement in the instant case. D.E.W., Inc., 957 F.2d at 198. D.E.W. thereby adopted the contribution provisions of the existing collective bargaining agreement, id. at 201, which required contribution for "all employees in the defined labor classifications." Id. at 200. The central issue in D.E.W., Inc. was whether non-union as well as union employees were covered under the adoption agreement. Id. (noting the critical fact that the terms "union" and "non-union" did not appear anywhere in the contribution provision adopted in the adoption agreement). We held that all employees, whether union or non-union, were covered under the adoption agreement. Id. at 203. The issue in the instant case, however, is whether employees who worked off-site were even intended to be covered by the uniform agreement. In other words, there was no dispute in D.E.W., Inc. as to whether the employees, whether union or non-union, came within the "defined labor classifications," while that is the heart of the dispute in the instant case.

In sum, the issue before the district court was whether the phrase "George Brown Convention Center job" in the uniform agreement referred only to Snead's existing contract with Blount, or whether it included as well all potential future contracts related to the convention center that Snead might obtain from Blount. On this record, we hold that the district court's adoption of the first interpretation was not clearly erroneous.

C. The Trust Funds' Attorneys' Fees

Because we affirm the district court's holding that Snead owed no deficiencies to the trust funds, we also affirm the court's denial of the trust funds' request for attorneys' fees.

D. The Award of Costs to Snead

The district court's final judgment ordered all costs to be borne by the plaintiff trust funds. On appeal they assert, without argumentation or citation to authority, that the district court's award of costs to Snead was erroneous. We see no basis for altering the district court's assessment of costs against the plaintiffs.

IV.

For the foregoing reasons, we AFFIRM the district court's judgment in all respects.