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Summary of State ex rel. Dep't of Transp. v. Pub. Employees' Retirement Sys., 120 Nev. Adv. Rep. 4

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State ex rel. Dep't of Transp. v. Pub. Employees' Retirement Sys., 120 Nev. Adv. Rep. 4, 83 P.3d 815 (2004)¹

EMPLOYMENT LAW

Summary

Appeal from a district court order granting a petition for writ of mandamus in favor Public Employees' Retirement System of Nevada (PERS) directing state agency to pay PERS for back employee and employer contributions to the retirement system plus interest on behalf of five archeologists whom the agency treated as independent contractors rather than employees.

Disposition/Outcome

Affirmed. The Nevada Supreme Court held that: the cause of action accrued when PERS Board determined that the archeologists where employees and not independent contractors; doctrine of laches did not bar action; and substantial evidence supported finding that the agency was obligated to pay PERS \$345,284.62 for back employee and employer contributions plus interest.

Factual and Procedural History

NDOT contracted with five archeologists during the period from March 1982 to September 1991, treating them as independent contractors. Thus, no contributions to the retirement system were paid on their behalf. PERS conducted an audit in 1997 and 1998 to determine whether the archeologists were employees or independent contractors after one of the archeologists inquired of PERS about his status. After finding that the terms on which the archeologists worked met the twenty-point test used by the Internal Revenue Service for classifying workers as employees rather than independent contractors, the auditors recommended that NDOT be responsible for paying the full cost of the five archeologists' retroactive enrollment in the retirement system.

The audit report and NDOT's response were given to the Public Employees' Retirement Board (the Board). The Board accepted the audit report and its recommendations and assessed NDOT \$206,475.14 for unpaid employee/employer contributions, plus \$138,809.49 in interest. NDOT then failed to pay and PERS filed a petition for writ of mandamus. NDOT filed a motion to dismiss the petition arguing the statute of limitations and laches bar recovery and that the archeologists were not employees during the contested period. The district court issued a writ of mandamus and NDOT appealed.

¹ By: Justen Ericksen

Discussion

Statute of Limitations

The issue disputed by the parties with respect to the statute of limitations is when it began to run.² NDOT argues that because the archeologists are the real parties in interest, the statute of limitations began to run when NDOT first contracted with them in 1981. “In determining whether a statute of limitations has run against an action, the time must be computed from the day the cause of action accrued. A cause of action ‘accrues’ when a suit may be maintained thereon.”³

Nevada law mandates that the Board determine who are employees for purposes of enrollment in the retirement system.⁴ It also designates the Board as being responsible for managing the system⁵ and maintaining the public employees’ retirement fund.⁶ All public employers must participate in the system and their employees must be members of the system.⁷ Public employers must deposit all contributions in to the retirement fund.⁸ If a public employer fails to properly enroll an employee, the Board must seek contributions from the public employer as part of its statutory duty,⁹ regardless of whether the employee wants PERS to pursue the action. Because PERS has a duty to manage the retirement system according to the statutes and is not bound by options selected by employees, PERS was the real party in interest for the petition for writ of mandamus. Thus, the cause of action arose when the Board determined that the archeologists were employees. After failed attempts to collect, PERS filed a petition with the district court well within the three-year statute-of-limitations window.

Doctrine of Laches

The doctrine of laches is not applicable here “because PERS had no knowledge of the relationship between NDOT and the subject archeologists until it audited the relationship. Knowledge on the part of the entity against whom laches is sought is an essential element of laches.”¹⁰ Additionally, because no evidence was shown that any delay caused NDOT prejudice, it cannot avoid its statutory obligation by asserting the equitable doctrine of laches.

Standard of Review

NRS 286.040(3) provides that “[t]he board shall determine who are employees.” No trial de novo is allowed in the district court.¹¹ The standard of review applied to other administrative

² Both parties agree that the applicable statute is NRS 11.190(3)(a) which provides that the statute of limitations for “[a]n action upon a liability created by statute” is three years.

³ Clark v. Robison, 113 Nev. 949, 951, 944 P.2d 788, 789 (1997) (citations omitted).

⁴ NEV. REV. STAT. 286.040(3) (2003).

⁵ NEV. REV. STAT. 286.190(1).

⁶ NEV. REV. STAT. 286.220.

⁷ NEV. REV. STAT. 286.290.

⁸ NEV. REV. STAT. 286.421(4).

⁹ See NEV. REV. STAT. 286.460(6).

¹⁰ The Nevada Supreme Court quoted the district court’s finding on laches.

¹¹ See NEV. REV. STAT. 233B.135(3).

actions will be used by the courts for reviewing decisions made by the PERS board.¹² Here, NDOT argued that PERS's finding was clearly erroneous and arbitrary and capricious. The court disagreed. Because the audit was based on substantial evidence, the court refused to "substitute its judgment of the evidence for that of the administrative agency."¹³

Conclusion

The order of the district court was affirmed. NDOT was required to pay the amount assessed for unpaid employee/employer contributions plus interest.

¹² *Id.*

¹³ *United Exposition Service Co. v. SIIS*, 109 Nev. 421, 423, 851 P.2d 423, 424 (1993).