

Sally's Story:

A tale of contiguous noncovered service

Western States Pension Assistance Project April, 2014

Meet Sally

- 52 year-old single mother
- Attends night school
- Full-time employee
- Believes she should be vested in a pension

The Facts - Timeline

1999: Hired as Case Manager for Hospital.

- Hospital sponsored a 401(k) plan. Sally participated.

The Facts - Timeline, cont.

2005

- Union representing other groups at Hospital will soon represent Case Managers and other people in Sally's department.
 - Sally told she will be "grandfathered in."
 - No change in duties, no breaks in service.
 - 401(k) participation ends, Union plan begins.

The Facts - Timeline, cont.

2008

- Sally quits her job, believing she is vested (1999 to 2008...that's enough, right?)

2010

- Sally gets a printout saying she is not vested. Short by six months. Sally tries to fight it; gets nowhere. She finds me.

The Plan

SEIU. Office in DC. Representative sends me:

- Plan
- SPD
- CBA
- Statement showing Sally not vested

SPD

- “Past Service counts toward [a participant’s] eligibility for a pension and toward vesting.”
- “Pay stubs” can be submitted to prove past employment.

The Plan

“Covered Employment for Past Service” includes work for an employer before that employer joined the Plan.

- SSA statements, statements from Contributing Employers acceptable proof.

The CBA

“Contributing Employer” or “Employer” means an employer which has adopted the Plan for its Employees as defined in a Collective Bargaining Agreement with a Local, or, if applicable, a Participation Agreement with the Fund...

An Employer who enters into Collective Bargaining Agreement with more than one Local Union shall be deemed to be a separate Contributing Employer with respect to each Collective Bargaining Agreement.

More CBA

"Notwithstanding any other provisions of this Plan, qualified Covered Employees who terminated from a Contributing Employer's own pension plan as of the Contributing Employer's Contribution Date shall be granted Past Service Credit for all periods of employment with said Employer without regard to job classification."

More more CBA

and,

*"All employees covered by this Agreement shall be given credit for service from the initial date of hire and such seniority shall prevail with respect to tenure of wages, **benefits** and all other conditions of employment as provided for in this Agreement."*

The Approach

- 1) Sally will gather evidence: pay stubs, SSA earnings, statement from employer
- 1) I will submit claim for verification of vested status
- 1) Vested!

What Could Go Wrong?

The Plan, SPD and CBA appear consistent.

- Prove your past employment, get past service.

...easy, right?

Meet Ted

“Assistant Contributions Compliance Manager”

- Called me from SEIU and said he was speaking for the Plan.
- Sally is not vested.

Why, Ted? Why??

- Hospital was a “Contributing Employer” before Sally was even hired. Past Service only available for work done before any of Hospital became “Contributing Employer.”
- In other words, Hospital unionized too soon for poor Sally.

Going Nowhere Slow

I was done fighting over the meaning of the Plan, SPD, and CBA.

- My many conversations and clarifying emails with Ted left us with two possibilities:

Possible Explanations

- 1)
- 1) Plan is unlawful, or
- 1) Administrator (via Ted) interpreting the Plan in unlawful manner.

Why? Because DOL, that's why

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- I explicated 29 CFR 2530.210 for Ted in a formal email addendum to the original claim.
- Noted that he should spend some extra time on this one.

29 CFR 2530.210

Covered service =

"Service with an employer or employers maintaining the plan within a job classification or class of employees covered under the plan."

Noncovered service =

"Service with an employer or employers maintaining the plan which is not covered service."

"Contiguous noncovered service."

Noncovered service shall be deemed "contiguous" if

- (1) the noncovered service precedes or follows covered service and
- (2) no quit, discharge, or retirement occurs between such covered service and noncovered service.

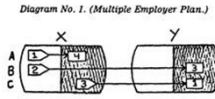
What does that mean, Ted?

For vesting purposes:

"All covered service with an employer or employers maintaining the plan and all contiguous noncovered service with an employer or employers maintaining the plan shall be taken into account."

Visual Representations Help Ted

I showed Ted DOL's helpful diagram:



After completing 1 year of noncovered service [for X], employee A immediately enters covered service with X and completes 4 years of covered service. For purposes of eligibility to participate and vesting, the plan is required to credit employee A with 5 years of service with employee X.

I click “Send.”

...and hear nothing for two weeks.

Then I get a voicemail message from Ted.

His voice is subdued. Softer than before.

VICTORY

- Sally is vested, Ted admits. SEIU finally gets it.
- SEIU sends Sally a Pension Benefit Statement, confirming her vested Status.
- She will receive a single life annuity of \$282.32 when she reaches age 65.

Questions?

rgronsky@lsnc.net
(916) 930-4926

Ryan Gronsky

Staff Attorney, Western States Pension Assistance Project
Legal Services of Northern California – Senior Legal Hotline
