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Pennsylvania Supreme Court Finds “No-Hire” Provision Unenforceable

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The Supreme Court of Pennsylvania recently affirmed a Superior Court order in *Pittsburgh Logistics Systems, Inc. v. Beemac Trucking, LLC et al.*, No. 31 WAP 2019, finding a no-hire provision between competing, sophisticated businesses to be void as a matter of public policy and not enforceable. See previous Troutman Pepper article on the Superior Court’s decision and its potential ramifications [here](#). While the Supreme Court reviewed out-of-state and federal case law discussed by the parties on the enforceability of no-poach provisions and noted the federal government’s recent efforts to curb no-poach use, it focused its analysis and ruling on the balancing test set forth in the Restatement (Second) of Contracts. Under that test, the Court reasoned that while there was a legitimate interest for the no-hire provision in the first instance, on balance here, the restraint was both overly broad and harmful to the public. Therefore, although the outcome represents a victory for Beemac after a long road of litigation, the impact of this decision on future no-poach/no-hire cases remains unclear.

Background

The case concerned a preliminary injunction to enforce a no-hire provision that Pittsburgh Logistics Company (PLS) sought to impose against certain shipping companies, Beemac Trucking LLC and Beemac Logistics LLC (Beemac collectively). Through the no-hire provision, Beemac agreed that during the one year contract and for a period of two years following the contract’s termination, it would not “directly or indirectly, hire, solicit for employment, induce or attempt to induce any employees of PLS or any of its Affiliates to leave their employment with PLS or any Affiliate for any reason.” But while the contract was in force, Beemac hired four former PLS employees, causing PLS to seek a preliminary injunction. The trial court denied the preliminary injunction request because it found the no-hire provision was void as a matter of public policy and therefore, PLS could not meet its burden to show a likelihood of success on the merits. An *en banc* panel of the Superior Court convened after one of its panels affirmed the trial court decision. In exercising a highly deferential standard of review as to the grant or denial of preliminary injunctions, the court affirmed that the no-hire provision was an unenforceable restraint on trade, finding that it violated public policy because it allowed PLS to restrain employees without providing the employees with consideration. In reaching its decision, the Superior Court noted there was no Pennsylvania law on point, and it relied entirely on out-of-state or federal decisions.

The Supreme Court granted allowance of PLS’s appeal to consider whether “contractual no-hire provisions which are part of a services contract between sophisticated business entities [are] enforceable” under Pennsylvania law.

Supreme Court Opinion

The Supreme Court acknowledged that “Pennsylvania common law has treated restrictive covenants as restraints of trade that are void as against public policy unless they are ancillary to an otherwise valid contract.” If the restraint is ancillary, the Court employs a balancing test to determine if the provision is reasonable, and the Restatement (Second) of Contracts provides the test for evaluating the reasonableness of the provision. Specifically, the Restatement provides:

(1) A promise to refrain from competition that imposes a restraint that is ancillary to an otherwise valid transaction or relationship is unreasonably in restraint of trade if

(a) the restraint is greater than is needed to protect the promisee’s legitimate interest, or

(b) the promisee’s need is outweighed by the hardship to the promisor and the likely injury to the public.

—Restatement (Second) of Contracts § 188(1)

Applying the Restatement test, the Court found that the no-hire provision was an unreasonable restraint on trade because two commercial businesses used the provision to limit competition in the labor market “ancillary to the principal purposes of the shipping contract between PLS and Beemac.” The Court recognized PLS’ legitimate interest in preventing its business partner from poaching its employees. However, the no-hire provision was “greater than needed to protect PLS’s interest and create[d] a probability of harm to the public.” The provision was overbroad because it precluded Beemac from hiring, soliciting, or inducing PLS employees for the one-year term of the contract plus an additional two years regardless of whether the PLS employee had worked with Beemac during the contract. Under the Restatement, the Court’s overbroad finding should have been enough to void the provision.

Nevertheless, the Court went on to find the no-hire provision created a likelihood of harm to the public in both a specific and general way. First, “the no-hire provision impairs the employment opportunities and job mobility of PLS employees” not party to the contract without their knowledge or consent. Under the facts of the case, this represented “real” rather than “hypothetical” harm because PLS sought the preliminary injunction to prevent Beemac from employing former PLS employees who had already taken a position with Beemac. Second, the Court found that the provision generally undermined free competition in the labor market, creating a likelihood of harm to the general public. The Court’s analysis did not explicitly weigh Beemac’s hardship and the public harm against PLS’ legitimate need except in a conclusory fashion in a statement at the end of the opinion.

Takeaways

The opinion is notable because it represents the first Pennsylvania case to weigh in on the enforceability of a no-hire provision between two commercial businesses. The true import of the decision, however, will come only with time. One could argue, based on this decision, that **any** ancillary no-hire provision that impairs employment opportunity and mobility is unenforceable under Pennsylvania law. At the same time, the analysis used by the Court indicates that every restraint on trade is subject to the balancing test under the Restatement and therefore, the outcome is based on the facts of each case. One wonders if the legal outcome would have been different had the no-hire provision been effective only for the life of the service contract and only applied to PLS employees who worked directly with Beemac. The precedential value of the Court’s analysis regarding harm to the public is also

questionable. While the Court found harm to the public in the record, it weighed *that* harm against PLS' legitimate interest — an express requirement under the Restatement — only in a conclusory manner. This is significant because any no-hire or no-poach provision can be said to harm employee mobility in some regard. That is the purpose of the provision. On the other hand, one could argue that the Court's public harm analysis is merely *dicta* because the Court had already determined that the restraint was overly broad. Put another way, once the Court found the provision as overbroad, it did not need to also find that it harmed the public to be unenforceable. In the end, the Court's analysis here (while short) could have a significant impact on how employers in Pennsylvania use no-hire provisions in their commercial contracts.

Troutman Pepper Business Litigation Practice Group litigators A. Christopher Young, Jan P. Levine, Robyn R. English-Mezzino and Christopher J. Moran help clients analyze and solve their most emergent and complex problems through negotiation, arbitration, and litigation.

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