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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PENSION BENEFIT GUARANTY CORPORATION,

Plaintiff,

No. C 10-00898 WHA

v.

ADMINISTRATIVE COMMITTEE FOR THE NEW
UNITED MOTOR MANUFACTURING, INC./UAW
HOURLY DEFINED BENEFIT PLAN, SAVINGS
AND RETIREMENT COMMITTEE, and NEW
UNITED MOTOR MANUFACTURING, INC., each
as administrator of the New United Motor
Manufacturing Inc./UAW Hourly Defined Benefit Plan,

**ORDER DENYING
MOTION TO
INTERVENE**

Defendants.

INTRODUCTION

In this federal enforcement action where the parties have settled, a labor union seeks to intervene as a party defendant under Rule 24(b). All existing parties oppose the intervention. For the reasons stated below, the motion to intervene is **DENIED**.

STATEMENT

Plaintiff Pension Benefit Guaranty Corporation (“PBGC”) initiated this suit against defendant New United Motor Manufacturing, Inc. (“NUMMI”) on March 3, 2010. Plaintiff is a wholly owned United States government corporation established under 29 U.S.C. 1302(a). The PBGC administers a pension plan termination insurance program created by Title IV of

1 ERISA. NUMMI is a joint corporation between Toyota Motor Corporation and General Motors
2 Corporation.

3 On June 1, 2009, GMC filed for Chapter 11 bankruptcy. That month, GMC terminated
4 its contract to produce GMC vehicles at the NUMMI plant. In August, Toyota announced that
5 it would terminate its remaining production contracts at the NUMMI plant as of April 1, 2010.
6 In response, the NUMMI plant began winding down its operations. NUMMI, however, failed to
7 file for a standard termination of the pension plan and failed to communicate to PBGC what
8 arrangements they were making for the pension plan. In response, PGBC filed suit. PBGC is
9 authorized by 29 U.S.C. 1342 to commence proceedings to involuntarily terminate a plan they
10 determine will be unable to pay benefits when due or that will increase the loss to PBGC if the
11 plan is not terminated sooner rather than later. PBGC determined that NUMMI's plan qualified
12 under the statute. It set a termination date of March 3, 2010, and filed this suit to begin the
13 termination process.

14 On May 3, 2010, plaintiff moved for summary judgment to involuntarily terminate the
15 pension plan and become the statutory trustee of the plan. After this motion, defendant and
16 plaintiff began working together to come to the best resolution for the termination plan.
17 The parties have signed a settlement which calls for the "standard termination" of the plan by
18 NUMMI. A standard termination is a process in which the company that is ceasing operations,
19 not the PBGC, allocates funds to cover the payment of pension benefits to employees.
20 The change to a standard termination was made because NUMMI proved to PBGC their ability
21 to fund the termination of the pension plan.

22 On June 21, 2010, the International Union, United Automobile, Aerospace and
23 Agricultural Implement Workers of America ("UAW") filed a motion to intervene under
24 Rule 24(b). Although the collective bargaining agreement between defendants and UAW had
25 been terminated, UAW sought to intervene as a defendant to protect the interests of its members
26 who are still participants of the plan. Because the parties have decided to settle on a standard
27 rather than involuntary termination of the plan under ERISA, they jointly filed a stipulation of
28 dismissal on June 28, 2010. On July 1, 2010, plaintiff withdrew its motion for summary

1 judgment, and each party separately filed an opposition to UAW’s motion for intervention.
2 UAW seeks to intervene to have a say in how the settlement is structured and to maintain the
3 litigation until it is satisfied.

4 **ANALYSIS**

5 In the short life of this action, the original and only parties have settled by agreeing upon
6 a “standard termination” under 29 U.S.C. 1341. The original complaint and motion for summary
7 judgement in this action sought an involuntary termination by plaintiff. This would have set the
8 termination date on March 3, 2010. UAW moved to intervene because it felt that the termination
9 date being set on March 3 would harm its members who are plan participants. The parties
10 moved to dismiss the case and are attempting to complete a standard termination under which
11 the termination date would be set by statute. UAW has not indicated any problem with the
12 termination date if it will be calculated under a standard termination. It still seeks to intervene in
13 case defendant is unable to pay, and the date reverts back to the earlier March 3 determination.*
14 The parties have now settled and the reversion to a March 3 termination date is no longer a
15 possibility.

16 ERISA establishes two separate types of court proceedings. The first allows the PBGC
17 to bring enforcement actions and terminations such as the original action in this complaint.
18 The action was brought under 29 U.S.C. 1342 to commence proceedings to terminate
19 defendant’s pension plan because PBGC determined that the plan would be unable to pay
20 benefits when due and that the possible long-run loss to PBGC with respect to the plan would
21 increase unreasonably if the plan were not terminated.

22 A second action allows a party like UAW to petition for judicial review of PBGC’s
23 agency action. 29 U.S.C. 1303(f)(1) provides:

24 [A]ny person . . . adversely affected by any action of the
25 corporation with respect to a plan in which such a person has an
26 interest or who is an employee organization representing such a
27 participant or beneficiary so adversely affected for purposes of
28 collective bargaining with respect to such a plan, may bring an

* As specified by the settlement of the parties, the standard termination would follow statutory regulations. After notice was given to plan participants, 60 days would ensue before the termination could take effect. The March 3 termination date has been removed from the settlement terms.

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action against the corporation for appropriate equitable relief in the appropriate court.

These are two separate actions. UAW can presumably invoke the second form of action to seek judicial review of the agency action. UAW, though, is not trying to do that. Rather, it is trying to intervene as a party in the first form of action. The problem is that once UAW has intervened, it has all rights as a party. It can be heard on every aspect of the proceedings. This would give UAW the power to appeal and even hold up the efficient resolution of the termination. In fact, this appears to be the case as the parties have settled and have jointly filed to dismiss this action. Congress gave the authority to PBGC, not to the union, to bring these types of enforcement actions and to settle them in terms that are fair and just. These decisions by the PBGC are reviewable at the behest of UAW, if at all, only under 29 U.S.C. 1303(f)(1). The Court is concerned that allowing intervention in enforcement actions would frustrate the scheme of the statute and allow those on the sidelines to control litigation Congress wanted the PBGC to control.

1. RULE 24: PERMISSIVE INTERVENTION.

Under Rule 24(b), “A court may grant permissive intervention where the applicant for intervention shows (1) independent grounds for jurisdiction; (2) the motion is timely; (3) the applicant’s claim or defense, and the main action have a question of fact in common.” *Southern California Edison Co. v. Lynch*, 307 F.3d 794, 803 (9th Cir. 2002) (internal citation omitted). Furthermore, whether the intervention will unduly delay or prejudice the adjudication of the original parties’ rights under Rule 24(b)(3) must be considered. The district court maintains discretion to deny permissive intervention even when these threshold requirements are met.

The motion by UAW was timely and made before the parties sought to dismiss the involuntary termination. UAW has specified that their interest in defending the action would arise if defendant NUMMI defaulted on their obligations under the proposed settlement because the termination date would have reverted back to March 3. The terms of the final settlement have written this possibility out of the termination. If UAW has other concerns with the settlement, it will have recourse under 29 U.S.C. 1303(f)(1).

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Congress has specifically provided a mode of judicial review for UAW to follow. Therefore it is unnecessary for UAW to join here as a party. Once a party is allowed to intervene in the proceedings, to repeat, it has the right to participate in every aspect of the action including settlements and appeal. UAW would have the power to hold up the prompt settlement of the termination and prompt resolution of the enforcement action. This would interfere with PBGC's ability to effectively manage and terminate the plan in the most beneficial manner. This ability was granted to PBGC by Congress and the intervention would likely delay the adjudication of the original parties' rights under Rule 24(b)(3).

CONCLUSION

For the reasons stated above, UAW's motion to intervene is **DENIED**.

IT IS SO ORDERED.

Dated: July 9, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE