

# In the United States Bankruptcy Court

## for the Northern District of Iowa

### Western Division

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VIRGIL L. RIEDEMANN and  
PATRICIA RIEDEMANN

Bankruptcy No. X89-00401S

*Debtor(s).*

Chapter 7

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DONALD H. MOLSTAD Trustee

Adversary No. X89-0103S

*Plaintiff(s)*

vs.

THE CITY OF CHEROKEE

*Defendant(s)*

vs.

VIRGIL L. RIEDEMANN

*Intervenor.*

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### MEMORANDUM OF DECISION

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Trustee-plaintiff Donald H. Molstad seeks the turnover of debtor Virgil L. Riedemann's accumulated vacation pay from Riedemann's employer, the City of Cherokee, Iowa. Riedemann has intervened. Trial was held on January 25, 1990 in Sioux City, Iowa. The court now issues this memorandum of decision which includes findings of fact and conclusions of law as required by Bankr. R. 7052. This is a core proceeding under 28 U.S.C. 157(b)(2)(E).

### FINDINGS OF FACT

Debtor Virgil L. Riedemann (RIEDEMANN) is employed as a police officer by the City of Cherokee, Iowa. The parties stipulate that at all times material to this action, Riedemann was and has remained employed in this capacity. All parties further stipulate that as of March 23, 1989, the day he filed his bankruptcy petition, Riedemann had accrued a total of 193.75 hours of vacation time. The gross value of these vacation hours, if paid in one lump sum in 1990, is \$2,005.62, (Defendant's Exhibit A.) If Riedemann's withholding amounts or percentages are applied to this amount, he would receive \$1,368.01.

Accrual of Riedemann's vacation time is governed by a labor agreement between the City of Cherokee and the Cherokee, Iowa Policemen's Association. This agreement states:

#### ARTICLE XIII VACATIONS

13.1

- 0 - 1 year of service . . . . . 6 days
- 2 - 6 years of service. . . . . 12 days
- 7 - 14 years of service . . . . . 18 days
- Over 15 years of service . . . 24 days

- 13.2 Vacations are based on the EMPLOYEE's anniversary date of employment.
- 13.3 Vacations shall be earned on an accrual basis based on the vacation schedule.
- 13.4 Vacation may be taken any time after it is accrued. An employee may accumulate vacation not to exceed a maximum of twice the amount of vacation an employee is entitled to earn. If an employee accrues more than twice his annual allocation the days will be lost unless specific arrangements are recommended by the Chief of Police and approved by the City Administrator.
- 13.5 If an EMPLOYEE leaves City employment, he will get paid for any accrued vacation time earned up to that point.

Defendant's Exhibit B at 5-6.

Although Article XIII does not specifically prevent an employee from obtaining accrued vacation pay without taking days off, Gilbert G. Bramicker, Jr., the City Administrator of Cherokee, testified that Article XIII has consistently been interpreted by the city as requiring an employee to take vacation time in order to receive vacation pay. Article VII of the contract supports this interpretation by requiring that "compensation shall not be paid more than once for the same hours under any provisions of the AGREEMENT." Because the city budgets precisely 52 weeks of pay for each employee, the city does not have budgeted funds to pay an employee lump sum vacation time in addition to 52 weeks of work-time. The employees of the city police department must either take days off in order to use accrued vacation or forfeit vacation time in excess of the amount permitted in Article XIII, Section 13.4. Riedemann may currently accumulate up to 36 days of vacation time; at the time he filed for bankruptcy his accrued vacation time was approximately 24 days.

## DISCUSSION

The trustee contends that although accrued vacation pay was not considered property of the estate under the Bankruptcy Act, the scope of 11 U.S.C. § 541 is far broader and should be interpreted to include accrued vacation time just as it includes accrued wages. Defendants contend that the debtor's accrued vacation time effectively amounts to future wages, and therefore there is no current property right to which the debtor or the trustee is entitled.

Prior to the adoption of the Bankruptcy Code in 1978, the Supreme Court in Lines-v., Frederick, 400 U.S. 18, 91 S.Ct. 113, 27 L.Ed.2d 124 (1970), held that a debtor's earned but unpaid vacation pay was not property of the bankruptcy estate under § 70a(5) of the Bankruptcy Act. Lines v. Frederick, 400 U.S. at 20. Section 70a(5) has since been replaced by 11 U.S.C. § 541 of the Bankruptcy Code. Section 541(a)(1) is broader in scope than its Bankruptcy Act counterpart and includes many kinds of tangible and intangible property, including forms of property formerly specified in § 70a. H.R.Rep. No. 595, 95 Cong., 1st Sess., 367 (1977). In adopting § 541(a)(1), legislative history states that Congress intended to overrule the Supreme Court's holding in Lines v. Frederick. H.R.Rep. No. 95-595 at 368.

Only two Code cases have addressed the effect of § 541(a)(1) on accrued vacation pay; both cases agree that accrued vacation pay is now considered property of the estate. Bernstein v. Richardson, 34

B.R. 611, 612 (Bankr. D. Colo. 1983); Leech v. Nichols (Matter of Nichols), 4 B.R. 711, 714 (Bankr. E.D. Mich. 1980) (dicta).

At the time of the filing of his bankruptcy case, Riedemann had an employment contract with the City of Cherokee, the terms of which were governed by an executory contract between the City and the Cherokee, Iowa Policemen's Association. Riedemann's contract with the city was a personal services contract which could not be assumed by the trustee. 11 U.S.C. § 365(c)(1)(A). Riedemann's rights under the contract which were payable at the time of bankruptcy are property of the estate pursuant to 11 U.S.C. § 541 (a)(1). Had Riedemann quit his job as a policeman prior to the filing of the bankruptcy petition, the trustee would be entitled to his severance pay, which under the contract would include accrued, but unused vacation and holiday pay. (Exhibit B, Article XXII at page 9 Article XIII, § 13.5 at page 6.)

The question before the court is whether under the circumstances existing at the time of filing, the trustee is entitled to Riedemann's accrued vacation pay, either now or in the future, and if so, from what source and in what amount.

Despite the holding in Bernstein v. Richardson, 34 B.R. 611 (Bankr. S.D. N.Y. 1983), the undersigned does not believe Riedemann's accrued vacation pay is property of the estate. It is excluded from the estate as debtor's personal earnings from postpetition services by 11 U.S.C. § 541 (a)(6) .

First it should be said that this court views the terms "accrued," "earned," and vacation pay" as somewhat general. These must be defined on a case-by-case basis in the context of the contract in which they appear. The contract between the city and the association with regard to vacation uses these general terms. It was not drafted with the niceties of bankruptcy in mind. The essence of the contract, however, is that upon the completion of a full year's work, each of the city's policemen are entitled in the succeeding year to a paid vacation. The amount of the vacation depends on the number of years each employee has worked for the city (Exhibit B, paragraph 13.1). This method of providing employees time off and compensating them for it is inextricably bound up with the post-petition employment of the debtor. Each policeman is required as part of his contract with the city to take time off from his job. The city has agreed, however, to pay him for these vacations from work. The paid vacation has become a fundamental employee benefit in our society. Riedemann's vacations will be post-bankruptcy, and the compensation for them will be post-bankruptcy compensation which is not part of the estate. The fact that the amount of postpetition paid vacation is determined by the employee's prepetition years of completed service does not make his postpetition vacation pre-petition earnings.

An additional factor leading to the court's decision is brought out through the testimony of the city administrator. Because of the city's budget and the vacation policy, the city would not be able to pay the trustee for Riedemann's vacation time and still permit Riedemann to work for the time period paid. In addition to causing the city budgetary difficulties, it would violate Article VII of the collective bargaining agreement which prohibits pyramiding of hours. The result would be to force Riedemann to be off work for any vacation pay period paid to the trustee.

Finally, if Riedemann should quit his employment post- petition, his "accrued" vacation pay would not be payable to the trustee under this contract. If he quits post-petition, then the contractual severance pay (which includes accrued vacation pay) would be based upon post-petition vacation which he did not take prior to his resignation. In short, absent Riedemann's resignation prior to

bankruptcy, there is nothing in his employment contract relating to post-petition pay or post-petition vacation time to which the trustee is entitled.

### **CONCLUSIONS OF LAW**

The debtor's rights under his employment contract to take paid vacation after March 23, 1989 is not property of his bankruptcy estate. The trustee is not entitled to turnover of "accrued vacation pay" pursuant to 11 U.S.C. § 542.

### **ORDER**

IT IS ORDERED that the plaintiff's complaint be dismissed. Judgment shall enter accordingly.

SO ORDERED ON THIS 2nd DAY OF FEBRUARY, 1990.

William L. Edmonds  
Chief Bankruptcy Judge