UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

Case No. 1:96-CV-2240

CLEVELAND INDIANS BASEBALL CO., PLAINTIFF

v.

UNITED STATES OF AMERICA, DEFENDANT

[Filed: Jan. 25, 1999]

MEMORANDUM & OPINION

By this action, the plaintiff, Cleveland Indians Baseball Company (the Indians), seeks a refund from the United States of taxes paid pursuant to the Federal Insurance Contribution Act (FICA) and the Federal Unemployment Tax Act (FUTA). Before the Court are the parties' Cross-Motions for Summary Judgment on Stipulated Facts. For the reasons briefly set forth below, the Indians' motion is GRANTED, the Government motion is DENIED and judgment is entered in favor of plaintiffs for a total of $97,202.20, plus interest.

I.

The FICA and FUTA taxes at issue were paid by the Indians in April 1994 and January 1995, respectively. The taxes were premised on payments made by the Indians in 1994 to certain of its former players, specifically eight players who were employed by the Indians in 1986 and fifteen players employed by the plaintiff in 1987[1] The money for these payments came from a fund created pursuant to a settlement between the Union and twenty-six Major League Baseball Clubs after an initial arbitration decision finding that the Clubs had violated the collective bargaining agreement between them.[2]

The Indians share of the settlement fund (which totaled $280 million) was $610,00.00 for the 1986 season and $1,457,848.00 for the 1987 season. The Indians received its share of the fund in 1994 and proceeded to disburse those funds to its effected [sic] players in that same year. Because it was unsure of the tax treatment to be afforded these funds, the Indians paid FICA and FUTA taxes on the total funds disbursed as if the funds represented wages paid for services rendered *and* paid those taxes premised upon the tax obligation which

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[1] Of these fifteen, one was not actually employed by the Indians in 1987. Because he was no longer in baseball in 1994, he was "deemed" an employee of the last team to employ him-the Indians.

[2] Specifically, the arbitration panel found that the Clubs breached Article XVIII(H) of the bargaining agreement, which prohibits the Clubs from taking concerted action to interfere with the free agency rights of their players. The arbitrators concluded that the Clubs violated this provision of the bargaining agreement by their conduct at the close of the 1985 and 1986 playing seasons, thereby affecting the market and artificially depressing salaries of would-be free agents in the subsequent seasons.

would have been applicable in the year in which the funds were actually received by the players, 1994. The Indians subsequently filed this action seeking reimbursement of all sums paid to the United States.

II.

The Indians initially contended that it was entitled to a full refund for the following reasons:

> 1. A portion of the funds paid to the Indians and disbursed to its former players ($629,000.00) constituted non-taxable interest;
>
> 2. The remaining portion of the funds (approximately $2,000,000.00) were non-taxable payments because they represented damages for a wrongful breach of the bargaining agreement, not wages for services performed; and
>
> 3. Even if the payments constituted wages for services rendered (and not interest or damages), they should have been taxed at the 1986 and 1987 tax rate, respectively, requiring reimbursement of all payments, because the FICA and FUTA obligations of the effected [sic] players had been satisfied previously for those tax years.

The government initially disputed all three points, arguing that the payments were all for wages and that FICA and FUTA taxes must be paid in the year in which wages actually are received, not the year in which they were earned or came due.

The parties eventually settled two of their disputes, though not the primary one. Thus, the parties agreed that $629,000.00 of the payments made by the Indians

out of the settlement fund constituted interest payments to which FICA and FUTA were inapplicable, requiring a reimbursement of at least $13,071.10 of the taxes paid in 1994. The parties also agreed that all remaining sums *did* constitute back-pay wage payments, reflecting monies that would have been earned in 1986 and/or 1987 but for the Clubs' joint breach of the bargaining agreement. The remaining issue, on which the parties continue to disagree, is the question of to which tax year those wages are attributable for FICA and FUTA purposes.

Interestingly, however, this remaining area of dispute is really a disagreement over what the law ought to be; the parties do not seriously dispute what the law is-at least in this Circuit. Thus, the Indians cite to and rely upon the Sixth Circuit's decision in *Bowman v. United States*, 824 F.2d 528 (6th Cir.1987) (Merritt, Martin and Brown), where the panel unanimously concluded that, "[A] settlement for back wages should not be allocated to the period when the employer finally pays but 'should be allocated to the periods when the regular wages were not paid as usual.'" *Id.* At 530, quoting *Social Security Bd. v. Neirotko*, 327 U.S. 358, 370 (1946). Based on this authority, which the Indians contend is eminently sound, the Indians assert that this Court has no choice but to (1) follow *Bowman*, (2) allocate the wages paid in 1994 to 1986 and 1987-years in which the maximum FICA and FUTA taxes had already been paid, and (3) enter judgment in the Indians favor for a full refund of all taxes paid in connection with the disbursement of settlement funds in 1994.

The government's response to *Bowman* is pointedly honest. The government concedes that *Bowman* is fac-

tually "indistinguishable from this case" and that, "under the facts in this case, the Court appears bound to follow the decision in *Bowman*." (Gov't Brief at 4-5). The government contends, however, that the *Bowman* decision was wrongly decided" and that, presumably, it will be able to convince the Sixth Circuit of that fact on appeal. Thus, the government explains in detail in its brief to this Court why it believes Congress intended FICA and FUTA obligations to apply in, or, in the language of *Bowman*, to be allocated to, the tax years in which wages actually are disbursed by the employer. The government notes that it must engage in this exercise, despite its earlier concessions regarding this Court's apparent lack of options in the face of *Bowman*, "to preserve the record for appeal." (Gov't. Brief at 5).

Apparently not fully content with the prospect of an appeal from the record as it stands, moreover, the government goes on to ask this Court to "consider" its arguments regarding the wisdom of *Bowman* and "issue a decision which reflects what this Court would do if it were given the privilege of a clean slate upon which to draw its decision." (Gov't. Brief at 5). While this Court, of course, has considered all of the government's arguments, and has examined all authority cited by both parties, it is disinclined to issue what is essentially an advisory opinion, particularly in the face of a clear, unanimous directive from a distinguished Sixth Circuit panel.

Accordingly, this Court will follow the course proposed by the Indians and dictated by *Bowman*. The government will be free on appeal to point out that many of the arguments presented here were not (apparently) presented to the *Bowman* panel and that at

least one court has disagreed with *Bowman* since that decision was issued, instead applying the allocation the government urges here. Judgment will be entered in favor of the Indians and the United States ordered to refund the $97,202.20 in FICA and FUTA taxes paid in connection with the 1994 settlement disbursements, plus interest from the dates on which such payments were made, at the rate dictated by Internal Revenue Code Sections 6621 and 6622.[3]

IT IS SO ORDERED.

/s/ KATHLEEN M. O'MALLEY
KATHLEEN M. O'MALLEY
United States District Judge

[3] This total encompasses both the taxes paid on the interest portion of the disbursements and the taxes paid on the back-pay or wage portion thereof.

APPENDIX C

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ORDER

For the reasons set forth in the Memorandum and Opinion issued in conjunction with this Order, judgment is hereby entered in favor of plaintiff, the Cleveland Indians Baseball Company, and against defendant, the United States of America for refunds of (1) FICA taxes in the amount of $96,250.20, plus interest from April 30, 1994 at the rate dictated by I.R.C. §§ 6621 and 6622 and (2) $952.00 in FUTA taxes, plus interest from January 31, 1995 at the rate fixed by I.R.C. §§ 6621 and 6622.

Based on this judgment, the case is hereby dismissed.

IT IS SO ORDERED.

/s/ KATHLEEN M. O'MALLEY
KATHLEEN M. O'MALLEY
United States District Judge