

Pension Benefit Guaranty Corporation

87-8

August 14, 1987

REFERENCE:

[*1] 4203(a) Complete Withdrawal. Definition of Complete Withdrawal
4212(a) Obligation to Contribute - Definitions

OPINION:

This is in response to your recent letter and telephone call requesting the views of the Pension Benefit Guaranty Corporation (the "PBGC") on whether a complete or partial withdrawal under Sections 4203 and 4205 of ERISA took place in connection with a situation which has been occurring in the * * * industry.

Specifically, you write:

Company A and Company B and others are parties to a multi-employer pension plan established with Union C under a collective bargaining agreement which requires both A and B and the employers to hire members of Union C from the same hiring halls. Employer A is in financial difficulty but does not want to go out of business or cannot sell the company. Employer A enters into a contract with Employer B under which employer B will perform the work generated by employer A using employees from Union C. Employer B pays the wages and makes the required pension fund contributions for employees engaged in Company A generated business as well as Company B generated business. As a result, no manhours or pension contributions are lost. At all times [*2] Company A remains a party to the collective bargaining agreement and the multi-employer pension plan.

You have asked whether a withdrawal would occur when Employer A contracts out the work to Employer B.

Under ERISA, the initial responsibility for determining whether any particular action constitutes a withdrawal from a multi-employer plan, the amount of any liability resulting therefrom, and the identity of the liable employer lies with the plan sponsor. ERISA further provides that any disputes between a plan and an employer on these issues are to be resolved first through arbitration, subject to review by the courts. Given this scheme for enforcement of ERISA, the PBGC prefers not to interject itself in such determinations by issuing an opinion on the application of the law to particular transactions. The PBGC, however, will continue its practice of answering general interpretative questions regarding the Act.

Generally Section 4203(a) of ERISA provides that a complete withdrawal from a multiemployer plan occurs when an employer: (1) permanently ceases to have an obligation to contribute or (2) permanently ceases covered operations under a plan. Section 4212(a) of ERISA defines [*3] "obligation to contribute" as an obligation arising under one or more collective bargaining agreements or as a result of a duty under applicable labor-management relations law. It is the multiemployer plan's responsibility to apply these sections to particular fact situations, such as the one posited in your letter, and to determine whether a complete withdrawal or partial withdrawal (See ERISA Section 4205) has occurred.

In making any determination, you should be aware that there are some exceptions to the withdrawal liability criteria of Sections 4203 and 4205. For example, under Section 4204(a)(1) of ERISA, a complete or partial withdrawal of an employer does not occur solely because, as a result of a bona-fide, arm's length sale of assets to an unrelated party, the seller ceases covered operations or ceases to have an obligation to contribute for such operations. For your information we also refer you to Opinion Letters 85-14 and 86-10 (copies enclosed), which address certain situations involving so-called joint employers.

I hope this response is helpful. If you have any further questions, please feel free to call William Jackson of my staff at (202) 778-8850.

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