Pension Benefit Guaranty Corporation

88-6

April 1, 1988

REFERENCE:
[*1] 4235 - Transfers Pursuant to Change in Bargaining Representative
4235(a) - Applicability
4235(b) - Notice Requirements; Appeal

OPINION:

We write in response to your request that the Pension Benefit Guaranty Corporation ("PBGC") advise you as to what benefit liabilities are to be transferred under section 4235 of the Employee Retirement Income Security Act of 1974 ("ERISA") upon a change in the collective bargaining representative of a group of employees. Specifically, you ask whether the transfer should include the benefits of "participants who are active-vested, pensioners and inactive-vested" or only the "active-vested" participants.

Section 4235(a) provides that where an employer withdraws from a multiemployer pension plan (the "old plan") because of a certified change of collective bargaining representative, --

if participants of the old plan who are employed by the employer will, as a result of that change, participate in another multiemployer plan (. . . the "new plan"), the old plan shall transfer assets and liabilities to the new plan in accordance with [section 4235].

Section 4235(b)(2) provides that --

[t]he plan sponsor of the old plan shall . . . notify the employer of . . [*2] . the old plan's intent to transfer to the new plan the nonforfeitable benefits of the employees who are no longer working in covered service under the old plan as a result of the change of bargaining representative. . . .

Both of these provisions refer only to active employees. Section 4235 contains no other provisions describing the participants for whom benefits are to be transferred. Accordingly, it is the opinion of the PBGC that section 4235 contemplates the transfer of benefit liabilities only for participants who are active employees.

This interpretation is supported by a policy consideration as well. Because inactive and retired participants do not in general have a voice in a change of collective bargaining representative, it is inappropriate to include them in a transfer that does not afford them the protections of section 4231 of ERISA, which, among other things, requires that affected participants' accrued benefits not be reduced as a result of a transfer. Section 4231 applies to a transfer that would otherwise fall within the purview of section 4235 only if the plan sponsors of the old and new plans so agree under section 4235(f)(1).

If you have any further questions [*3] about this matter, you may call Deborah C. Murphy of my office at 202-778-8820.

Gary M. Ford
General Counsel