

Pension Benefit Guaranty Corporation

87-2

January 28, 1987

REFERENCE:

[*1] 4204 Sale of Assets

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation ("the PBGC") on the application of Section 4204 of the Employee Retirement Income Security Act, as amended ("ERISA" or "the Act"). Specifically, you ask whether ERISA Section 4204 applies when a manufacturer and distributor ("the seller") partially or completely ceases participation in a multiemployer plan by selling its distribution rights to local distribution companies ("the purchasers") and assigning to the purchasers leases for vehicles used in delivery of the seller's product.

Under ERISA Section 4204, a complete or partial withdrawal does not occur as a result of a bona fide, arm's-length sale of assets to an unrelated party if (1) the purchaser has an obligation to contribute for substantially the same number of contribution base units for which the seller had an obligation to contribute; (2) the purchaser provides a bond or establishes an escrow for five plan years following the sale; and (3) the contract for the sale provides that the seller is secondarily liable to the plan if the purchaser withdraws during those five plan years and fails to pay its withdrawal [*2] liability.

Anything of value, including distribution rights and leases, may be an asset within the meaning of ERISA Section 4204. In the situation you describe, it appears that the distribution rights and leases are an integral part of the purchasers' performance of the work that gave rise to the seller's obligation to contribute to the plan and the purchasers will be obligated to contribute with respect to such work. In such a case, the PBGC's opinion is that the sale of these assets would constitute a sale of assets within the meaning of Section 4204, and that section would apply to the transaction if the other requirements of that section are met.

The PBGC has not independently verified the facts set forth in your letter and does not opine whether the distribution arrangement constitutes a sale. ERISA provides that the determination of factual questions arising under ERISA Sections 4201-4219 is, in the first instance, the responsibility of the plan sponsor. The Act further provides that an employer's dispute of the plan sponsor's determination is to be resolved first through arbitration, subject to review in the courts.

If you have further questions, please contact the attorney [*3] handling this matter, John Foster, of the PBGC's Corporate Policy and Regulations Department. His telephone number is 202-778-8850.

John H. Falsey
Acting General Counsel