

Pension Benefit Guaranty Corporation

83-20

September 2, 1983

REFERENCE:

[*1] 4205(a)(2) Partial Withdrawals. Partial Cessation
4205(b) Partial Withdrawals. Cessation of Contributions

OPINION:

This responds to your letter requesting the opinion of the Pension Benefit Guaranty Corporation concerning partial withdrawals from a multiemployer pension plan under Section 4205(b)(2)(A)(i) of ERISA. Specifically, you wish to know whether a partial withdrawal occurs when an employer which operates two terminals in a metropolitan area, each under a separate collective bargaining agreement requiring contributions to the same multiemployer plan, closes one but continues to perform the work of the closed terminal through the remaining metropolitan terminal and through other outlying terminals of the employer.

Under the multiemployer provisions of ERISA the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan, and the amount of any liability resulting therefrom, lies with the plan sponsor. The Act further provides that any disputes between a plan sponsor and an employer on these issues are to be resolved first through arbitration and then, if necessary, in the courts. Thus it would be inappropriate for the PBGC [*2] to interject itself in such a determination by issuing an opinion on the application of the law to a particular transaction. However, PBGC will continue its practice of answering general interpretive questions regarding the Act.

Section 4205(a)(2) provides that there is a partial withdrawal by an employer when there is a partial cessation of the employer's contribution obligation. Section 4205(b)(2)(A)(i) provides that there is a partial cessation of the employer's contribution obligation from a multiemployer plan when--

[an] employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan but continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such work to another location. . . .

Thus a partial cessation occurs under this provision when contributions cease under a collective bargaining agreement and either of two circumstances occurs: the employer (1) continues to perform the same type of work within the agreement's jurisdiction; [*3] or (2) transfers the same work to another location.

It is the PBGC's view that for this provision to apply the work that the employer continues to perform must be work for which contributions are not required under the plan. This view is supported by the contemporaneous explanation by Congressman Thompson, the floor manager of the multiemployer amendments, given on the date the amendments passed the House of Representatives.

Examples of these two situations are where an employer bargains out of making contributions to a plan that the employer was previously required to make under a collective bargaining agreement that is otherwise in effect with respect to other requirements, or where an employer's collective bargaining obligation has ceased altogether but the employer continues to perform work of the same type which was previously covered by the agreement and for which contributions were required without the obligation to contribute to that plan, or where work that was undertaken at one geographic location for which contributions to a plan were made is transferred by the employer to another of his plants at a different geographic location where contributions to a plan for the work [*4] performed are no required.

It is important to emphasize and to understand that in no case do these rules impose liability on an employer for merely ceasing or terminating an operation; rather, they address only situations where work of the same type is continued by the employer but for which contributions to a plan which were required are no longer required. [House Floor Explanation (Congressional Record p. H7900, August 26, 1980)]

Thus, in the situation you pose, when an employer closes one terminal and shifts the work of that terminal to other

terminals which are covered by other collective bargaining agreements under which contributions are made to the plan, there is no partial cessation of the employer's contribution obligation under Section 4205(b)(2)(A)(i) on account of the shift. If, however, any of the work is shifted to a location where contributions are not required to the plan, then a partial cessation of the employer's contribution obligation will occur.

Further, when the employer performs other work for which contributions are not made under the plan within the jurisdiction of the collective bargaining agreement of the closed terminal a partial cessation of the [*5] employer's contribution obligation will occur if the work is of the same type as the work performed at the closed terminal. As noted above, disputes over such questions as what constitutes the jurisdiction of any specific collective bargaining agreement or what constitutes work of the same type are to be resolved through the statutory dispute resolution process.

I hope this has been of assistance. If you have further questions on this matter, please contact * * * of my staff of this address or at (202) 254-4873.

Mitchell L. Strickler
Acting General Counsel