Pension Benefit Guaranty Corporation

86-2

January 31, 1986

REFERENCE:
[*1] 4217 Applicability of MPPAA to Certain Pre-1980 Withdrawals
4402 Action Taken before Regulations Prescribed

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation regarding the meaning of the term "facility" as used in section 4217 of the Employee Retirement Income Security Act, as amended (ERISA), and whether a multiemployer pension plan has authority to adopt its own definition of that term. ERISA contains no definition of "facility".

In the situation you describe, a national chain (the "Company") operated over 50 retail stores in the * * *, area prior to the enactment of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA). All but two of these stores were closed before September 26, 1980, the date of enactment of MPPAA. Your specific question is whether these stores constituted "facilities" within the meaning of section 4217 of ERISA.

You represent that each store was located at a discrete geographical location and was operated as a separate profit center and managed by a separate store manager. Each store was self-contained, meaning that it carried a full complement of food and related items typically found in a full-line supermarket. [*2]

You further represent that certain of the Company's employees at these stores were represented by local unions of the * * * International Association, now know as the * * * Union (the "Union") under three collective bargaining agreements. The Company made contributions to the * * * Union and Food Employers Pension Plan of * * * (the "Plan") in a lump sum representing the total amount due from the Company to the Plan during the relevant period. The plan document defines the term "facility" as "all store locations covered by a single collective bargaining agreement."

Section 4217 of ERISA provides, in pertinent part, as follows:

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable--

(2) to work performed at a facility at which all covered operations permanently ceased before September 25, 1980, or for which there was a permanent cessation of the [*3] obligation to contribute before that date,

shall not be taken into account. [29 U.S.C. § 1397(a)(2).]

In Opinion Letter 82-33 (October 28, 1983), the PBGC reviewed the question of whether section 4217 of ERISA applies to the closing of a single retail food store or only to the closing of a group of stores in a defined geographical area. The General Counsel concluded that the term "facility" in section 4217 of ERISA, in the context of the retail food industry, ordinarily means a single store. We hereby affirm that opinion. This interpretation is based on generally accepted economic terminology under which "facility" means a discrete economic unit of an employer. It is also consistent with the long-standing definition of the term "establishment" used in the Standard Industrial Classification Manual. Finally, as noted in Opinion Letter 82-33, this interpretation is consistent with the definition of "facility" that Congress considered promulgating with respect to the partial withdrawal rules. (See H.R. Rep. No. 869, Part II, 96th Cong., 2nd Sess. 18 (1980).) As you have noted, this definition and the accompanying explanatory text were dropped from the final version of MPPAA. [*4] This Congressional expression of the meaning of the term "facility" is therefore not dispositive of the issue. It was referenced in Opinion Letter 82-33 merely to demonstrate that the interpretation set forth in that letter was in accord with the commonly used meaning of "facility".

Opinion Letter 82-33 did not expressly address a plan's authority to adopt its own definition of the term "facility". It is out opinion that Congress did not grant plans the authority to adopt their own definitions of "facility." In earlier

versions of MPPAA, Congress permitted (or required) plans to define "facility." Since the bill that was ultimately enacted did not contain such a provision, we conclude that Congress decided against allowing plans to adopt their own definitions of "facility." This conclusion is supported by the fact that in other sections of ERISA, e.g., section 4219(c)(5)(B), Congress did expressly give plans the authority to provide their own definitions of specified terms.

We recognize, of course, that there are many undefined terms in ERISA and that in the absence of PBGC interpretations of those terms, plans might need to construct their own definitions in order to implement [*5] the law. This is permissible provided those definitions are reasonable. However, once the PBGC has issued its interpretation of a statutory term (as we did with respect to "facility" on October 28, 1982) plans are precluded from adopting their own definitions unless that power is specifically conferred by ERISA or by the PBGC. Moreover, where plans adopt definitions of statutory terms in contradiction to the PBGC's interpretations, the PBGC, in appropriate cases, will seek to intervene or file an amicus brief in a court proceeding to uphold its interpretation.

I hope this has been of assistance. If you have further questions please contact the attorney handling this matter, Steven Rothenberg, of the Corporate Policy and Regulations Department. His telephone number is (202) 956-5050.

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General Counsel