

Pension Benefit Guaranty Corporation

82-2

January 27, 1982

REFERENCE:

[\*1] 4203 Complete Withdrawal  
4205(b) Partial Withdrawals. Cessation of Contributions  
4218 Withdrawal - No occurrence  
4218(2) Withdrawal - Suspension of Contributions

OPINION:

This is in response to your inquiry concerning whether certain events which may occur as a result of collective bargaining between an employer and a union would constitute a withdrawal from the multiemployer plan in which the employer participates under the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA").

Specifically, your letter presents three questions, concerning negotiations between a union and an employer involving a national multiemployer agreement ("Agreement"). First, you ask whether there is a complete or partial withdrawal when, as the result of some form of renegotiated Agreement, existing employees (or perhaps employees over a specified age or with greater seniority) continue to be covered by the Plan and future employees (or employees under a specified age or with lesser seniority) will be covered by a new individual pension plan. As part of that question, you indicate that the employer would continue to have an obligation to [\*2] contribute to the Plan, and that there would be no resulting 70% contribution decline (as defined in ERISA section 4205(b)(1)) nor any partial cessation of the obligation to contribute to the Plan (as defined in ERISA section 4205(b)(2)(A)).

Second, you ask whether there is, for the purposes of ERISA section 4218(2), any difference between a dispute that results from a breakdown in negotiations seeking to revise an Agreement and a dispute that results from a cancellation or termination of an Agreement. Finally, assuming negotiations concerning the Agreement reach impasse, you ask whether an employer's suspension of contributions as a result of such impasse would constitute a complete or partial withdrawal under ERISA section 4203(a) and 4205, respectively.

Under ERISA the plan sponsor has the responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan and the amount of any liability arising therefrom. ERISA further provides that any dispute between a plan sponsor and an employer on these issues is to be resolved first through arbitration and then, if necessary, in the courts. Given this scheme for enforcement of ERISA, it would [\*3] be inappropriate for the PBGC to give its opinion on the application of the law to a particular transaction. The PBGC will, however, continue its practice of issuing general interpretations of the law.

With respect to your first question, a change such as your letter suggests in employee coverage would not generally constitute a complete withdrawal under section 4203 of ERISA. Whether a partial withdrawal results will depend on the specific impact of the transaction and the subsequent level of the employer's participation in the plan.

With respect to your remaining questions, ERISA section 4218 provides in relevant part:

"Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from the plan solely because --

\* \* \*

(2) an employer suspends contributions under the plan during a labor dispute involving its employees."

Thus, an employer that temporarily ceases contributions during a labor dispute involving its employees will not have a withdrawal. However, it should be noted that, as one of the sponsors of the Multiemployer Act pointed out --

". . . if the facts and circumstances of a particular situation indicate that contributions [\*4] have ceased permanently -- for example, all employees covered under the plan have been permanently replaced or the facility has been closed --

the fact that the cessation of any contribution obligation was precipitated by a labor dispute does not mean that no withdrawal has taken place" (126 Cong. Rec. H7898, Aug. 26, 1980) (remarks of Rep. Thompson)).

If you have any further questions concerning this matter, please contact \* \* \* of this office, at 202-254-6476.

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