

Pension Benefit Guaranty Corporation

82-4

February 10, 1982

REFERENCE:

4218(1)(A) Withdrawal - Change of Business Structure

OPINION:

We have received your letter in which you asked the Pension Benefit Guaranty Corporation ("PBGC") to rule on several issues arising under the provisions of the Multiemployer Pension Plan Amendments Act of 1980 (the "Act") as they apply to the transactions described in your letter and certain provisions which you propose to include in the sales agreement between the parties involved in those transactions. (Section references hereinafter are to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended by the Act).

It is clear under the Act that 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. Given this scheme for enforcement of the Act, [\*2] it would be inappropriate for the PBGC to interject itself in such a determination by issuing an opinion on the application of the law to these particular transactions. The PBGC, however, will continue its practice of answering legal questions regarding the Act.

In that regard we point out that the sale by a parent corporation of the stock of a subsidiary corporation presents a question of statutory interpretation that we feel is appropriate to address. The legislative history to the Act contains the following example which indicates that there is no withdrawal liability solely as a result of a sale by a parent of stock of a subsidiary which was obligated to contribute to a multiemployer plan and continues such contributions after the sale:

"The bill treats an employer as withdrawing from a multiemployer plan when the employer (1) permanently ceases to have an obligation to contribute under the plan, or (2) permanently ceases all covered operations under the plan. A withdrawal does not occur, however, where an employer ceases to exist merely by reason of a change in form or structure, as long as the employer is replaced by a successor employer and there is no interruption [\*3] in the successor employer's contributions to the plan or obligation to contribute under the plan. A group of trades or businesses under common control is treated as a single employer. For example, if P Corporation owns 100 percent of the stock of S Corporation, a subsidiary that has an obligation to contribute to a multiemployer plan on behalf of its employees, the controlled group consisting of P and S would be considered an employer with an obligation to contribute to the plan. If P sells all of its interest in S to an unrelated party, the controlled group consisting of P and S would cease to exist. However, if S continues to have an obligation to contribute to the plan, no withdrawal would be considered to have taken place merely because of the change in ownership of S." 126 Cong. Rec. S10,115 (daily ed. July 29, 1980) and H.R. Rep. No. 96-869, Part II, 96th Cong., 2nd Sess. 162 (1980), reprinted in [1980] U.S. CODE CONG. & AD NEWS 3005-6. (emphasis supplied).

This example is an obvious reference to section 4218(1)(A) of ERISA which provides that an employer shall not be considered to have withdrawn from a plan solely because the employer ceases to exist by reason of "a [\*4] change in corporate structure described in section 4062(d)" as long as no interruption in employer contributions or obligations to contribute under the plan occurs. Thus Congress clearly intended that a sale of stock of a subsidiary corporation is such a change in form or structure and that under section 4218 a withdrawal from a multiemployer plan does not occur when a parent sells that stock of a subsidiary corporation that contributes to a multiemployer plan and such contributions continue after the sale.

If you have any questions or wish to discuss these matters further, please contact \* \* \* of this office at (202) 254-4895.

Henry Rose  
General Counsel

