

Pension Benefit Guaranty Corporation

82-27

October 12, 1982

REFERENCE:

[*1] 4219(c)(5) Notice & Collection of Withdrawal Liability - Default
4221 Resolution of Disputes

OPINION:

This responds to your inquiry whether, under the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act"), Pub. L. No. 96-364 (1980), "acceleration of future installments" of withdrawal liability can occur "if any installment is not paid before completion of the administrative process through arbitration."

The Multiemployer Act does not explicitly use the term "acceleration." Instead, Section 4219(c)(5) of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Act, provides in pertinent part as follows:

In the event of a default, a plan sponsor may require immediate payment of the outstanding amount of an employer's withdrawal liability, plus accrued interest on the total outstanding liability from the due date of the first payment which was not timely made. [29 U.S.C. § 1399(c)(5) (Supp. IV 1980) (emphasis added).]

Here, we address only the definition of the term "default" which is set forth in Section 4219(c)(5)(A) of ERISA, 29 U.S.C. § 1399(c)(5)(A).

Section 4221(a)(1) of ERISA, 29 U.S.C. § 1401(a)(1) (Supp. IV [*2] 1980), requires that disputes over withdrawal liability, between a withdrawn employer and a pension plan, shall be resolved through arbitration.

Section 4221(b)(1) of ERISA, 29 U.S.C. § 1401(b)(1), provides:

If no arbitration proceeding has been initiated pursuant to subsection (a), the amounts demanded by the plan sponsor shall be due and owing on the schedule set forth by the plan sponsor. The plan sponsor may bring an action in a State or Federal court of competent jurisdiction for collection. [Emphasis added.] Additionally, the second sentence in 29 U.S.C. § 1401(d) implies that if arbitration is pursued, an employer will be treated as being delinquent in the making of a contribution under the plan only if the employer fails to make timely payment in accordance with the arbitrator's final decision. Finally, the legislative history of the arbitration provision specifically states that acceleration does not result from the failure to make payments before arbitration is concluded:

Pending the resolution of the dispute, the employer is required to pay withdrawal liability as originally determined by the plan, but the failure to pay an installment before the arbitration [*3] is concluded would not accelerate the payment of future installments.

Joint Explanation of the Senate Committee on Finance and the Senate Committee on Labor and Human Resources, Congressional Record, July 29, 1980, at S10120 (emphasis added).

Although the considerations noted above are most directly applicable to nonpayment of withdrawal liability during the period after arbitration is requested, such considerations support a similar result with respect to nonpayment of withdrawal liability during the period before arbitration is requested.

In sum, assuming an employer pursues its statutory right to arbitration in good faith, the employer is not subject to a demand for immediate payment of the entire amount of withdrawal liability, for failure to make withdrawal liability payments during both the period before arbitration is requested and the period between the request for arbitration and the arbitrator's final decision. During either period, however, interest will accrue on late payments from the due date until the date on which payment is made. See 29 U.S.C. § 1399(c)(3).

If you have any further questions, please telephone * * * of this office on (202) 254-4895 or write [*4] to him at the above address.

Henry Rose
General Counsel