

Pension Benefit Guaranty Corporation

82-35

November 15, 1982

REFERENCE:

[*1] 4202(a)(2) Determination & Collection of Liability
4206 Adjustment for Partial Withdrawal
4211(c) Withdrawal Liability - Allocation by Amendment

OPINION:

This responds to your request for our interpretation of the partial withdrawal liability provisions under Title IV of the Employee Retirement Income Security Act of 1974 as amended ("ERISA"). Specifically you ask whether a partial withdrawal occurs under Section 4205(a)(2) of ERISA, 29 U.S.C. § 1385(a)(2) when an employer sells some of its facilities, covered under a collective bargaining agreement, but continues to perform work at other facilities covered by the same agreement under which contributions are required to a multiemployer pension plan.

An employer partially withdraws from a plan under Section 4205(a)(2) when there is "a partial cessation of the employer's contribution obligation." Such partial cessation is defined in paragraph (2) of Section 4205(b). Paragraph (2)(A)(i) provides that there is a partial cessation when --

the 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 [*2] 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[.]

For this rule to apply, an employer must cease to have an obligation to contribute for all operations covered by that collective bargaining agreement; otherwise the employer has not permanently ceased to have an obligation to contribute under the collective bargaining agreement and has not withdrawn.

Paragraph (2)(A)(ii) provides that there is a partial cessation when --

an employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but continues to perform work at the facility of the type for which the obligation to contribute ceased.

If the selling employer does not continue to perform at one or more of the same facilities for which contributions were previously required to the plan, this rule does not apply.

Your second question concerns how a plan would calculate withdrawal liability for a complete withdrawal under the "rolling 5" rule of Section 4211(c)(3) of ERISA [*3] if the employer had previously partially withdrawn prior to the adoption of this rule. Section 4206(b)(1) of ERISA provides that in the event of a subsequent withdrawal, any withdrawal liability "shall be reduced by the amount of any partial withdrawal liability" previously assessed. Thus, the plan sponsor, in the event of a subsequent withdrawal, must first calculate the withdrawal liability under the allocation method then in force, and then reduce that amount by the amount of partial withdrawal liability previously assessed.

Section 4206(b)(2) of ERISA authorizes the PBGC to issue regulations providing for adjustments to this calculation accounting for, inter alia, "factors for which it determine adjustment to be appropriate, so that the liability . . . properly reflects the employer's share of liability with respect to the plan." Such regulations have not yet been issued.

I hope this has been of assistance.

Henry Rose
General Counsel