

Pension Benefit Guaranty Corporation

82-9

March 26, 1982

REFERENCE:

[*1] 4203(b) Complete Withdrawal. Building & Construction Industry Exemption
4203(f) Complete Withdrawal. Special Withdrawal Liability Rules
4208(d) Reduction of Partial Withdrawal Liability. Building & Construction Industry Exemption

OPINION:

Your letter, on behalf of the plan sponsor, concerning the application of Section 4203(b), 4208(d) and 4203(f) of the Employee Retirement Income Security Act (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act"), 29 U.S.C. §§ 1383(b), 1388(d), 1383(f), to the * * * Pension Plan ("Plan") has been referred to us by the Department of Labor. You request a determination that the plan is a plan for the building and construction industry within the meaning of §§ 4203(b) and 4208(d) for purposes of determining the occurrence of a "withdrawal" from the Plan. In the alternative, you request that the Plan be permitted to adopt withdrawal liability rules similar to the rules for building and construction industry plans pursuant to § 4203(f).

Under the Multiemployer Act, the plan sponsor has the initial responsibility to decide such questions consistent with his fiduciary responsibilities. Any disputes between the [*2] plan sponsor and a withdrawing employer are to be resolved through statutory review, arbitration and, if necessary, court proceedings. PBGC will ordinarily avoid interjecting itself in such proceedings by issuing an opinion on the application of the law to a particular set of facts. PBGC will, however, continue to provide guidance on general interpretative questions regarding the Act.

In this regard, with respect to your question regarding the meaning of "building and instruction industry" ERISA does not specifically define those activities that are included within the term "building and construction industry". The House report on the Multiemployer Act does indicate that, in applying this special rule, the term should be "given the same meaning as has developed in administration of the Taft-Hartley Act," H.R. Rept 96-869 (Part I) (House Educ. & Labor Comm.), p. 76 (April 2, 1980). See also, Summary & Analysis of S. 1076 (Senate Labor Comm.), p. 14 (April, 1980). Accordingly, if the activities of the contributing employers in the * * * Plan are encompassed by the term "building and construction industry" under the Taft-Hartley Act, then they would be similarly treated [*3] under ERISA.

With respect to your second request, ERISA § 4203(f), 29 U.S.C. § 4203(f), authorizes PBGC to prescribe regulations under which plans in industries other than construction or entertainment may adopt special withdrawal rules similar to those in §§ 4203(b) and 4208(d). PBGC will issue a regulation in this area in the future.

I trust this will help you.

Henry Rose
General Counsel