

Pension Benefit Guaranty Corporation

85-14

May 28, 1985

REFERENCE:

[*1] 4203 Complete Withdrawal
4212(a) Obligation to Contribute - Definitions

OPINION:

This responds to your letter regarding the "joint employer doctrine" under the National Labor Relations Act ("NLRA") as it may apply under Title IV of ERISA. Specifically, you ask whether a company that is not a signatory to an agreement under which contributions are required to be made to a multiemployer pension plan, but is a "joint employer" for purposes of the NLRA with such a company, can be liable for a complete or a partial withdrawal under Section 4201 of ERISA.

The company whose liability is at issue ("your client") leases its employees from a firm that specializes in employee leasing (the "leasing firm"). The leasing firm is a signatory to a collective bargaining agreement pursuant to which it contributes to a multiemployer pension plan (the "Plan"). Your client has neither signed the agreement nor contributed to the Plan. There is no corporate affiliation or common ownership between the two companies. However, you state that your client exercises such close supervision and control over the day-to-day working conditions of the leased employees that in your opinion your client is a joint employer [*2] for purposes of the NLRA. Further, you represent for purposes of your inquiry to the PBGC that, as a joint employer, your client is bound under labor law by any collective bargaining agreement covering the leased employees, and therefore may, like the leasing firm, be obligated to contribute to the Plan. You ask whether your client would be liable under the withdrawal liability provisions of Title IV of ERISA if, because of changes in business conditions, your client terminates the leasing arrangement.

Under Title IV an employer is liable for a withdrawal from a multiemployer plan when it permanently ceases to have an obligation to contribute or permanently ceases all covered operations under the plan. Section 4203 of ERISA. Section 4212(a) of ERISA defines "obligation to contribute" as an obligation arising under one or more collective bargaining agreements or as a result of a duty under applicable labor-management relations law.

You have represented that your client is an employer (joint employer) which may have an obligation under the NLRA to contribute to the Plan. If such an obligation were found to exist, your client would be subject to Title IV's withdrawal liability [*3] provisions. Thus, a permanent cessation of its obligation to contribute would constitute a withdrawal from the Plan, and its liability would be calculated in accordance with Section 4201 of ERISA. Please note, however, that the amount of an employer's liability is based on its allocable share of unfunded vested benefits determined under Section 4211 of ERISA. This amount is generally proportional to contributions required to be made by the employer. Consequently, if no contributions were required to be made by the employer, there would ordinarily be no liability.

You have also stated that the termination of your client's leasing arrangement may result in the leasing company laying off its employees, resulting in a complete or partial withdrawal by the leasing company. You ask whether this will affect the potential liability of your client. You have represented, however, that your client is not a trade or business which is under common control with the leasing firm within the meaning of Section 4001(b) of ERISA. Thus, your client and the leasing firm would not constitute a single employer and their obligations and liabilities under Title IV would be determined separately. [*4]

Of course, the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan and the identity of the liable employer lies with the plan sponsor. ERISA further provides that any disputes between a plan sponsor and an employer on these issues are to be resolved by arbitration subject to review in the courts.

I hope this response is of assistance. If you have further questions concerning this matter, please contact * * * of my staff at the above address or at (202) 254-4873.

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General Counsel