

Pension Benefit Guaranty Corporation

86-17

August 13, 1986

REFERENCE:

[*1] 4205(b)(2)(A) Partial Withdrawals. Definition of Partial Cessation

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation regarding the interpretation of section 4205(b)(2)(A)(i) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA).

In the situation you describe, a retail food chain operated a warehouse serving its stores in a defined geographical area. You represent that the warehouse functions were performed by employees of the food chain under a collective bargaining agreement pertaining only to that warehouse, which called for contributions to a multiemployer pension plan.

You state that the chain closed the warehouse in 1981. At that time the chain terminated the employees and ceased performing the warehousing functions they previously performed at that warehouse. According to your letter, the chain then entered into separate contracts with a produce wholesaler and a grocery wholesaler, both of which are unrelated to the chain in any way. Under these contracts, the wholesalers receive goods from vendors, warehouse them and respond to orders from the [*2] stores of the chain by selecting, assembling and delivering the goods to the stores. The wholesalers bill the chain for the goods delivered to the store.

You also represent that the wholesalers operate commercial wholesaling businesses and serve customers other than the chain involved in this case. All of the warehousing functions are performed by the wholesalers using their own employees and their own equipment. You indicate that the chain has no control over how or where the wholesalers operate. Finally, you represent that the chain operates another warehouse, serving its stores in a different geographic location. The employees in the chain's other warehouse operate under a collective bargaining agreement that calls for contributions to the multiemployer pension plan in question.

You ask whether an employer that permanently ceases covered work under one of its collective bargaining agreements and instead contracts to buy the service or product from an independent third party "transfers such work to another location" within the meaning of section 4205(b)(2)(A)(i) of ERISA.

Section 4205(a)(2) of ERISA provides that there is a partial withdrawal by an employer when there is [*3] a partial cessation of the employer's contribution obligation. Section 4205(b)(2)(A)(i) provides that there is a partial cessation of the employer's contribution obligation to a multiemployer plan when --

an 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 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

Thus a partial cessation occurs under this provision when contributions cease under a collective bargaining agreement and either of two circumstances occurs: (1) the employer continues to perform the same type of work within the agreement's jurisdiction; or (2) he transfers the same work to another location.

You note that Congressman Thompson, the floor manager of MPPAA, explained the application of section 4205(b)(2)(A)(i). In a statement on the day MPPAA passed the House of Representatives, Congressman Thompson stated:

It is important to emphasize and to understand that [*4] in no case do these rules impose liability on an employer for merely ceasing or terminating an operation; rather, they address only situations where work of the same type is continued by the employer but for which contributions to a plan which were required are no longer required. Congressional Record, p. H 7900, August 26, 1980. (Emphasis added).

It is our opinion that the language of the statute, interpreted in light of this legislative history, indicates Congress's intent to limit section 4205(b)(2)(A)(i) to situations in which the same employer continues to perform work in the jurisdiction of the collective bargaining agreement or transfers the same type of work to another one of its own locations. An employer that permanently ceases covered work under one of its collective bargaining agreements and instead contracts to buy the service or product from an independent third party therefore does not "transfer such work to another location" within the meaning of section 4205(b)(2)(A)(i) of ERISA.

I hope this has been of assistance. If you have further questions please contact the attorney handling this matter, Steven Rothenberg, of the Corporate Policy and Regulations Department. [*5] His telephone number is (202) 956-5050.

Edward R. Mackiewicz
General Counsel