

Pension Benefit Guaranty Corporation

81-33

September 22, 1981

REFERENCE:

[\*1] 4203 Complete Withdrawal

OPINION:

This is in response to your letter requesting an opinion concerning the application of the special withdrawal liability rule for the building and construction industry under the Employee Retirement Income Security Act, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA"). Specifically, you have asked whether certain activities of the \* \* \* and the \* \* \* are eligible for this rule.

Under section 4203 of ERISA, a construction industry employer incurs withdrawal liability only when it is no longer obligated to contribute under the plan, and "continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required, or resumes such work in that area within five years after the date on which the obligation to contribute under the plan ceases. In addition, the section 4203 construction industry provision applies only if "substantially all the employees with respect to whom an employer has an obligation to contribute under the plan work in the building and construction industry, and the plan primarily covers employees in the building and construction industry."

ERISA [\*2] 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. No. 96-869, Part I 76 (April 2, 1980).

Accordingly, if the activities of \* \* \* or \* \* \* are encompassed by the term "building and construction industry" under Taft-Hartley Act, then they would be similarly treated under ERISA.

We hope this information will be useful to you. Should further questions arise, please contact us.

Henry Rose  
General Counsel