

Pension Benefit Guaranty Corporation

82-17

May 26, 1982

REFERENCE:

4062(d) Liability of Employer in Single Employer Plans. Corporate Reorganizations  
4204 Sale of Assets  
4212(c) Obligation to Contribute - Liability

OPINION:

We have received your letter in which you asked the Pension Benefit Guaranty Corporation ("PBGC") to give advice on an issue arising under the provisions of the Multiemployer Pension Plan Amendments Act of 1980 (the "Act") as they apply to the transactions described in your letter. (Section references \* \* \* hereinafter are to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 et seq., as amended by the Act).

It is clear under the Act that the initial responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan, and the amount of any liability resulting therefrom, lies with the plan sponsor. The Act further provides that any disputes between a plan sponsor and an employer on these issues are to be resolved first through arbitration and then, if necessary, in the courts. Given this scheme for enforcement of the Act, it would be inappropriate for the PBGC [\*2] to interject itself in such a determination by issuing an opinion on the application of the law to particular transactions. The PBGC, however, will continue its practice of answering general interpretive questions regarding the Act.

The applicability of the sale of assets provisions of the Act to the sale of the stock of a corporation presents such a general interpretive question. Section 4204, the sale of assets provision, applies only when there is a complete or partial withdrawal of an employer. The legislative history to the Act contains the following excerpt which indicates that there is no withdrawal of an employer solely as a result of a sale of stock of a corporation which was obligated to contribute to a multiemployer plan and which continues such contributions after the sale:

"The bill treats an employer as withdrawing from a multiemployer plan when the employer (1) permanently ceases to have an obligation to contribute under the plan, or (2) permanently ceases all covered operations under the plan. A withdrawal does not occur, however, where an employer ceases to exist merely by reason of a change in form or structure, as long as the employer is replaced by [\*3] a successor employer and there is no interruption in the successor employer's contributions to the plan or obligation to contribute under the plan". 126 Cong. Rec. S10, 115 (daily ed. July 29, 1980) and H.R. Rep. No. 96-869, Part II, 96th Cong., 2nd Sess. 162 [1980], reprinted in [1980] U.S. CODE CONG. & AD NEWS 3005-6. (emphasis \* \* \* supplied).

This excerpt has reference to Section 4218(1)(A) of ERISA which provides that an employer shall not be considered to have withdrawn from a plan solely because the employer ceases to exist by reason of "a change in corporate structure described in section 4062(d)" as long as no interruption in employer contributions or obligations to contribute under the plan occurs. Thus, Congress indicated that a sale of stock of a corporation is such a change in form or structure and that under Section 4218 a withdrawal from a multiemployer plan does not occur when the stock of a corporation that contributes to a multiemployer plan is sold and such contributions continue after the sale. Therefore, if Section 4218 applies and an employer is not considered to have withdrawn from a plan because of a change in corporation structure described in Section 4062(d), [\*4] then Section 4204, the sale of assets provision, does not apply.

Under the facts of the case you describe, the purchase of all the stock of \* \* \* by \* \* \* \* \* is a change in corporate structure described in Section 4062(d). Therefore, there is no withdrawal and Section 4204, the sale of assets provision, does not apply.

Note that under Section 4212(c), if a principal purpose of any transaction is to evade or avoid liability under Part I of Subtitle E of Title IV of ERISA, that part shall be applied (and liability shall be determined and collected) without regard to such transaction.

Please note that we are not expressing an opinion as to the consequences of the subsequent closing of the \* \* \*

terminal by \* \* \*. The plan sponsor must determine whether this action is a complete or partial withdrawal and if so, the consequences of such a withdrawal. If you have any questions or wish to do discuss the matter further, please contact \* \* \* of this office at (202) 254-3010.

Henry Rose  
General Counsel