

Pension Benefit Guaranty Corporation

87-3

February 3, 1987

REFERENCE:

[*1] 4217 Applicability of MPPAA to Certain Pre-1980 Withdrawals
4217(a)(2) Applicability of MPPAA to Certain Pre-1980 Withdrawals
Work Performed at a Facility

OPINION:

This responds to your request for the opinion of the Pension Benefit Guaranty Corporation ("PBGC") on the application of Section 4217(a)(2) of the Employee Retirement Income Security Act, as amended ("ERISA"). Specifically, you ask whether the sale and subsequent independent operation of one department of an employer require that department to be treated as a separate facility under Section 4217(a)(2).

As you represent the facts, an employer ("the selling employer") operated three departments for which it was obligated to contribute to a multiemployer plan ("the plan"). In 1976, the selling employer sold one department, known as the * * * Department. The * * * Department was functionally integrated with the other two departments before the sale, but was operated as a separate facility by the purchaser. Later, when the selling employer was contemplating selling the rest of its covered operations, it asked the plan to compute its withdrawal liability. (The plan uses a modified version of the direct attribution method to compute [*2] unfunded vested benefits allocable to an employer.) In making its computation, the plan included the assets and liabilities attributable to all the covered work performed at the * * * Department before the sale. The selling employer objected to the plan's computation of withdrawal liability, asserting that all liabilities attributable to the * * * Department must be excluded from the computation on the ground that the * * * Department constituted a separate facility for which there was a permanent cessation of the obligation to contribute before September 26, 1980.

Section 4217 of ERISA provides, in pertinent part, as follows:

(a) For the purpose of determining the amount of unfunded vested benefits allocable to an employer for a partial or complete withdrawal from a plan which occurs after September 25, 1980, and for the purpose of determining whether there has been a partial withdrawal after such date, the amount of contributions, and the number of contribution base units, of such employer properly allocable --

(2) to work performed at a facility at which all covered operations permanently ceased before September 26, 1980, or for which there was a permanent cessation of the [*3] obligation to contribute before that date, * * * shall not be taken into account.

29 U.S.C. § 1397(a)(2).

This statutory wording clearly indicates that the relief of Section 4217(a)(2) is conditioned on the cessation of the covered operations or the obligation to contribute with respect to an employer's facility. In this case, if the * * * Department was not a facility, but only a part of a larger facility, * * * Section 4217(a)(2) offers no relief. It is the PBGC's opinion that, as a matter of law, the determination of whether the Department was a facility within the meaning of Section 4217(a)(2) should be based solely on the facts and circumstances relating to the selling employer's covered operations. The sale and subsequent operation of the * * * Department by the purchaser have no relationship to these covered operations, and thus those facts are not pertinent to deciding if the * * * Department was a facility of the selling employer within the meaning of Section 4217(a)(2).

Of course, the initial responsibility for reviewing the facts and circumstances relating to the seller's claim that the Department was a separate facility lies with the plan sponsor. ERISA further [*4] provides that any dispute between a plan sponsor and an employer is to be resolved by arbitration, subject to review in the courts.

If you have further questions, please contact the attorney handling this matter, John Foster, of the PBGC's Corporate

Policy and Regulations Department. His telephone number is 202-778-8850.

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