

Pension Benefit Guaranty Corporation

82-33

October 28, 1982

REFERENCE:

[*1] 4217 Applicability of MPPAA to Certain Pre-1980 Withdrawals

OPINION:

This responds to your request for a written opinion from the Pension Benefit Guaranty Corporation (the "PBGC") regarding the meaning of the term "facility" as used in Section 4217 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Act.

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 April 28, 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 April 29, 1980, or for which there was a permanent cessation of the obligation to contribute before that date,

shall not be taken into account. [29 U.S.C. § 1397(a)(2).]

You have outlined an example in which a national food store chain maintained *** retail food stores in a particular metropolitan [*2] area, closed *** of these stores prior to April 29, 1980, and closed the remaining stores in 1982. You have requested our opinion how employer contributions to a multiemployer pension plan, allocable to work performed at the *** stores which closed prior to April 29, 1980, would be treated under Section 4217.

Under the Multiemployer Act 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 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 question whether Section 4217 of ERISA applies to the closing of a single store, or only to the closing of a group of stores in a defined geographical [*3] area, is such a general interpretive question. It is our opinion that the term "facility" in Section 4217 of ERISA, in the context of the retail food industry, ordinarily means a single store. Thus, a single retail food store which is permanently closed ordinarily would be "a facility at which all covered operations permanently ceased," within the meaning of Section 4217(a)(2) of ERISA, regardless of whether all of the retail food stores operated by a national chain in a given city were closed. However, there may be circumstances in which the plan sponsor may determine that a shift of operations from one location to another constitutes a continuation of operations at a facility. A dispute over such a determination would, as mentioned above, be subject to arbitration.

This general interpretation of the term "facility" is consistent with an explanation in the legislative history of the meaning of the term for purposes of the partial withdrawal rule. In its report on a bill (H.R. 3904) which eventually became the Multiemployer Act, the Ways and Means Committee of the House of Representatives stated that "[f]or purposes of partial withdrawal rules . . . the term means an economic [*4] unit, generally at a single physical location, where business is conducted or industrial operations are performed." H.R. Rep. No. 869, Part II, 96th Cong., 2d Sess. 18 (1980), reprinted in [1980] U.S. Code Cong. and Ad News 3007.

I hope this information is of assistance to you. If you have any further questions, please telephone *** of this office on (202) 254-4895, or write to him at the above address.

Henry Rose
General Counsel