

Pension Benefit Guaranty Corporation

82-21

July 27, 1982

REFERENCE:

[*1] 4203 Complete Withdrawal
4218(2) Withdrawal - Suspension of Contributions

OPINION:

This responds to your inquiry concerning whether certain types of labor disputes involving an employer's employees would constitute a withdrawal from a multiemployer plan in which the employer participates under the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 ("ERISA"). Your letter cites three types of labor disputes: a strike or a lockout as a result of a strike against another employer; an "offensive" lockout by an employer after an impasse; and an illegal strike by the union with employees being discharged or permanently replaced.

Under ERISA the plan sponsor has the responsibility for determining whether any particular action constitutes a withdrawal from a multiemployer plan and the amount by any liability arising therefrom. ERISA further provides that any dispute between a plan sponsor and an employer on these issues is to be resolved first through arbitration and then, if necessary, in the courts. Given this scheme for enforcement of ERISA, it would be inappropriate for the PBGC to give its opinion on the application of the law [*2] to a particular transaction. The PBGC will, however, continue its practice of issuing general interpretations of the law.

Under ERISA section 4203(a) a complete withdrawal occurs when an employer:

- (1) permanently ceases to have an obligation to contribute under the plan, or
- (2) permanently ceases all covered operations under the plan. [Emphasis added.]

On the other hand, ERISA section 4218 provides in relevant part:

Notwithstanding any other provision of this part, an employer shall not be considered to have withdrawn from a plan solely because --

- (2) an employer suspends contributions under the plan during a labor dispute involving the employees.

Section 4203 and 4218 indicate that the cessation with respect to the plan must be permanent for a withdrawal to occur.

In explaining sections 4218, one of the sponsors of the Multiemployer Act pointed out --

". . . if the facts and circumstances of a particular situation indicate that contributions have ceased permanently -- for example, all employees covered under the plan have been permanently replaced or the facility has been closed -- the fact that the cessation of any contribution obligation was precipitated by [*3] a labor dispute does not mean that no withdrawal has taken place." [126 Cong. Rec. H7898, Aug. 26, 1980; remarks of Rep. Thompson.]

I hope that this letter is of assistance to you.

Henry Rose
General Counsel