

Pension Benefit Guaranty Corporation

87-5

July 19, 1987

REFERENCE:

[*1] 4203(a) Complete Withdrawal General. Definition of Complete Withdrawal
4203(b)(2) Definition of Withdrawal from Construction Industry Plan
4212(a) Obligation to Contribute - Definitions

OPINION:

This letter responds to your recent request for an opinion concerning withdrawal from a construction industry pension plan.

In your letter, you wrote that you represent a large retailer who normally uses general contractors to build new stores and to handle major renovations of existing stores. The contractors are usually signatories to collective bargaining agreements and pursuant thereto make contributions to a multiemployer pension plan. You also indicated that your client directly hires individuals from a union hiring hall to do final "fixturing" and to complete other minor work. When this occurs, your client signs existing bargaining agreements with the union involved. Usually the agreements expire by mutual consent at the end of a particular job, but if a union refuses to agree to such a limitation, your client signs a normal agreement without limitations, but later repudiates the agreement.

In answering your letter we are assuming that the pension plans to which your client contributes [*2] are construction industry plans, even though you do not explicitly state that to be the case. Under section 4203(b)(2) of the Employee Retirement Income Security Act, as amended (ERISA), a withdrawal from a construction industry plan occurs only if the employer (1) ceases to have an obligation to contribute under the plan and (2) continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required by it, or resumes such work within 5 years after the cessation of the obligation to contribute without also renewing the obligation. The obligation to contribute ceases when the relevant collective bargaining (or related) agreement no longer applies to the employer, whether by the actions of the signatory parties or otherwise. This determination must be made on the basis of the facts of a particular case. If after being obligated to contribute to a construction industry plan, an employer ceases to perform covered work in the collective bargaining jurisdiction for whatever reason, no withdrawal has occurred. A withdrawal occurs only if the employer performs such work without being obligated to contribute.

You [*3] should be aware that determinations concerning whether a withdrawal has occurred and the amount of any liability are, in the first instance, the responsibility of the plan sponsor, not the PBGC. See section 4202 of ERISA. If a dispute arises concerning a plan's determination, the dispute is to be resolved through arbitration and, if necessary, the courts. See sections 4219 and 4221 of ERISA.

I hope this letter has been of assistance. If you have further questions, please contact Philip Hertz of my staff at the above address or at (202) 778-8821.

Gary M. Ford
General Counsel