

Pension Benefit Guaranty Corporation

84-9

December 27, 1984

REFERENCE:

[*1] 4001(b) Definitions. Employer and Controlled Group
4203 Complete Withdrawal
4203(a) Definition of Complete Withdrawal
4211 Withdrawal Liability

OPINION:

This responds to your request for the PBGC's opinion concerning the meaning of "employer" as that term is used in Title IV of ERISA with respect to withdrawals from multiemployer pension plans. You note that in the garment industry a contractor is generally the common law employer of employees covered under the pension plan while a jobber or manufacturer, who contracts with the contractor for work to be performed, often has the obligation under its collective bargaining agreement to contribute to the pension plan based on such work. You wish to know which of these under the circumstances you describe is the employer for purposes of Title IV's withdrawal liability provisions.

Section 4203(a) of ERISA provides that a withdrawal from a multiemployer plan occurs when an employer: (1) permanently ceases to have an obligation to contribute or (2) permanently ceases covered operations under a plan. Title IV does not define "employer" for purposes of assessing withdrawal liability. However, Section 3(5) of Title I provides that employer "means [*2] any person acting directly as an employer or indirectly in the interests of an employer, in relation to an employee benefit plan. . ." (emphasis supplied). In our view this is an appropriate definition for determining whether a business is liable under Title IV under the circumstances you describe. * Thus, a jobber or manufacturer that has an obligation to contribute has withdrawn from a plan when its obligation ceases or it ceases covered operations. If a withdrawal should occur, the amount of the jobber/manufacturer's allocable share of unfunded vested benefits would be determined under Section 4211 based on the contributions it was required to make to the plan.

* Title I definitions are limited "[f]or purposes of this title"; thus, they are not necessarily applicable to Title IV. See *Nachman v. PBGC*, 446 U.S. 359, 370 and n.14 (1980). However, in the absence of an express Title IV definition or regulatory guidance by PBGC, guidance may be sought in Title I where it does not conflict with the purposes of Title IV.

Likewise a contractor which has an obligation to contribute will be liable if it ceases to have such an obligation or ceases covered operations. [*3] This will be true even though one or more jobber/manufacturers also have an obligation to contribute on behalf of the contractor's employees and even though the jobber/manufacturers generally make such contributions. The amount of the contractor's liability, however, is based on the contributions it was actually required to make. Thus, in a case where the jobber/manufacturers made all contributions and the contractor was required to make none, the contractor's allocable share under Section 4211, and thus its withdrawal liability, would be zero.

I hope this has been of assistance. If you have further questions, please contact *** of my staff at the above address or at (202) 254-4873.

Henry Rose
General Counsel