Pension Benefit Guaranty Corporation

85-1

January 4, 1985

REFERENCE:
[*1] 4219(c) Notice & Collection of Withdrawal Liability - Payment

OPINION:

This responds to your request for advice concerning three ambiguities or flaws you believe you have identified in the procedures for computing withdrawal liability payments set forth in Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (the "Multiemployer Act" or "Act"), 29 U.S.C. § § 1381-1461 (1982).

Your first question concerns the amortization period for payments for withdrawal liability which is defined in Section 4219(c)(1)(A). Your concern is that the Multiemployer Act fails to define the deferment period between the date an employer withdraws and the date on which the employer's first payment is presumed to be made, for purposes of computing the amortization schedule. The Act provides: "the period of years necessary to amortize the amount [of withdrawal liability] in level annual payments . . . [shall be] calculated as if the first payment were made on the first day of the plan year following the plan year in which the withdrawal occurs . . . . Actual payment shall commence in accordance with paragraph (2)." [*2] 29 U.S.C. § 1399(c)(1)(A)(i) (1982) (emphasis added). Paragraph 2 of subsection 4219(c) states: "withdrawal liability shall be payable in accordance with the schedule set forth by the plan sponsor under subsection (b)(1) beginning no later than 60 days after the date of the demand . . . ." 29 U.S.C. § 1399(c)(2) (1982) (emphasis added). And subsection (b)(1) makes clear that the demand and the schedule for payments shall be issued to the employer "[a]s soon as practicable after . . . withdrawal . . . ." 29 U.S.C. § 1399(b)(1) (1982) (emphasis added).

Your second question concerns the meaning of the phrase "equal installments" in Section 4219(c)(3) of ERISA, 29 U.S.C. § 1399(c)(3) (1982). You have correctly noted that the same paragraph permits a plan to adopt rules governing the frequency of level payments in the schedule issued to the withdrawing employer. We have concluded that if a plan adopts such rules, the plan is authorized to include an appropriate interest factor. Payments made more or less frequently than on a quarterly basis would therefore have a present value equivalent to the value of the amount specified in Section 4219(c)(1)(C) of ERISA, 29 U.S.C. § 1399(c)(1)(C) [*3] (1982), as if paid on the quarterly basis specified in 29 U.S.C. § 1399(c)(3). However, the plain meaning of 29 U.S.C. § 1399(c)(3) requires that payments made in quarterly installments should be one fourth of the amount of the annual payment under 29 U.S.C. § 1399(c)(1)(C), without adjustment for "present value."

For example, if an employer's annual payment of withdrawal liability computed under 29 U.S.C. § 1399(c)(1)(C) were $12,000, payment of that amount in four equal quarterly installments pursuant to 29 U.S.C. § 1399(c)(3) would require quarterly payments of $3,000. However, if plan rules provided for equal monthly payments rather than quarterly, the monthly payments would be adjusted by an appropriate interest factor. Since the payments would be more frequent than quarterly, the amount of each monthly payment would be reduced by an appropriate interest factor. Instead of paying exactly $1,000 each month for three months to yield a quarterly payment of $3,000, the employer would pay somewhat less than $1,000 each month so that the present value of the stream of monthly payments is equal to the present value of a stream of quarterly payments of $3,000 each. [*4]

Similarly, to the extent the employer made payments less frequently than on a quarterly basis, the amount of each individual payment would be increased by an appropriate interest factor.

Your third question concerns the meaning of the term "facility" in Sections 4205(b)(2)(A)(ii) and 4217(a)(2) of ERISA, 29 U.S.C. § § 1385(b)(2)(A)(ii), 1397(a)(2) (1982). We have previously issued opinion letters concerning the meaning of that term in Section 4205(b)(2)(A)(ii) of ERISA (Opinion Letter No. 82-22, August 3, 1982), and of that term in Section 4217(a)(2) of ERISA (Opinion Letter No. 82-33, October 28, 1982). Copies of these opinion letters are enclosed for your reference. We observed in both opinion letters that 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, and that such a determination would be subject to arbitration.

I hope this information is of assistance to you. If you have any further questions, please telephone * * * of this office on (202) 254-3010, or write to him at the above address.

Henry Rose [*5]
General Counsel