

Pension Benefit Guaranty Corporation

82-32

October 28, 1982

REFERENCE:

[*1] 4221 Resolution of Disputes

OPINION:

This responds to your letter requesting our opinion concerning arbitration over withdrawal liability as required by Section 4221 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended by the Multiemployer Pension Plan Amendments Act of 1980 Pub. L. 96-364, 94 STAT. 1208 (September 26, 1980) ("Multiemployer Act"). Specifically you wish to know what procedure to follow, in the absence of a PBGC regulation on the subject, when the parties to a dispute do not agree on the selection of an arbitrator.

Under Section 4221 of ERISA arbitration of withdrawal liability disputes is to be conducted in accordance with fair and equitable procedures to be promulgated by the PBGC. While PBGC is working on such a regulation, there is no need to await its publication. In the interim, multiemployer plan sponsors and employers may use any reasonable procedures, such as those established by the American Arbitration Association and the Federal Mediation and Conciliation Service. See Section 405(a) of the Multiemployer Act, 94 STAT. 1303.

Section 4221(b)(3) provides that arbitration proceedings be conducted in the same manner and subject [*2] to the same limitations as an arbitration proceeding carried out under title 9, United States Code. Therefore, if the parties are unable to agree on the naming of an arbitrator or to fair and equitable arbitration procedures they may apply to the court for appropriate relief.

I hope this has been of assistance.

Henry Rose
General Counsel