

to regard PMA as his or her employer, and may have little awareness of who is his or her actual employer.”

### Special Withdrawal Liability Rules

When approving the amended special withdrawal liability rule, PBGC gave the following synopsis of the original special rule.

Under the special rules, a complete withdrawal occurs if an employer who makes contributions to the Plan for longshore work permanently ceases to have an obligation to make contributions to the Plan, and: (1) Continues to perform work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States, (2) resumes such work at any time during the Plan Year in which the contribution obligation ceased through the end of the fifth succeeding Plan Year without renewing the contribution obligation, (3) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained, or (4) ceases to have an obligation to contribute in connection with the withdrawal of every employer from the Plan or substantially all of the employers within the meaning of section 4219(c)(1)(D) of ERISA. A partial withdrawal occurs if an employer incurs a partial withdrawal within the meaning of section 4205 of ERISA and, in addition, at any time from the date of the partial withdrawal through the succeeding five Plan Years: (1) Performs work of the type for which contributions to the Plan are currently or were previously required at any Pacific Coast port in the United States without having an obligation to contribute to the Plan for such work, or (2) sells or otherwise transfers a substantial portion of its business or assets to another person that performs longshore work without having an obligation to make contributions to the Plan under the collective bargaining agreements under which the Plan is maintained.

The special withdrawal liability rules were subject to the Plan's satisfying certain funding requirements. In 1998, PBGC approved the Plan's request to modify the funding requirements in connection with an amendment adopted by the PMA and the ILWU. The funding requirement, as amended in 1998, is as follows:

PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability

rules, as set forth herein. PBGC grants approval under the condition that such approval will expire, and the Plan's special withdrawal liability rules will be void as of the first day of the Plan Year following a Plan Year for which the Plan is not at least eighty-five percent (85%) funded, and during said following Plan Year the Contributions are less than the least of (a) total administrative cost and benefits for said following Plan Year or (b) the amount required to increase the Funding Percentage to eighty-five percent (85%) for said following Plan Year or (c) the maximum tax-deductible contribution to the Plan. The Plan has agreed to certify to these conditions annually. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required.

### The 2002 Collective Bargaining Agreement

After protracted disagreements and work stoppages, the PMA and ILWU solicited and obtained the assistance of the Chairman of the Federal Mediation and Conciliation Service in an effort to reach a new labor agreement. With his assistance, the parties reached a six-year labor contract that allows for cost savings due to improvements in technology. The new labor contract provided for a gradual increase in Plan benefits from \$95 per month per year of service (for a maximum of 35 years of service) to \$150 per month per year of service. The entire labor contract (and not just the increase in pension benefits) is contingent on PBGC approval of the pending request. The application represents that the labor agreement must be renegotiated from scratch in the event PBGC denies the request.

### The Proposed Amendment

The Plan has requested approval of several amendments to the existing rule. In particular, the Plan seeks to:

(1) Revise certain actuarial assumptions (relating to mortality, disability, marital status, and expected retirement dates) in order to reflect emerging actuarial experience. The Plan does not propose to change other assumptions used for the annual actuarial certification to PBGC.

(2) modify, on a temporary basis, the 85% funding requirement instituted in 1998. The Plan requests that this requirement be lowered to 65% through the end of the plan year ending June 30, 2008. The percentage would then increase by 3% per plan year until it again reaches 85%.

(3) modify, on a temporary basis, the Plan's 80% funding requirement instituted in 1984. That requirement

provides for additional contributions as of plan valuation date if the Plan's funded status is projected to fall below 80% in the 5th year following the valuation date. The Plan requests that this requirement be lowered to 65% through the end of the plan year ending June 30, 2008. The percentage funded status requirement would then increase by 3% per plan year until it again reaches 80%.

The Plan acknowledges that the benefit increases promised under the 2002 collective bargaining agreement, combined with “the disappointing stock market performance in the past few years” will be likely to cause the Plan to fall below the 85% funding requirement set in the 1998 agreement with the PBGC. This would evidently require substantial contribution increases over the next several years, and these costs would reduce investment needed, among other things, to reduce shipping costs and thereby improve the long-term funding base of the Plan. The PMA and the ILWU jointly posit that this “temporary reduction” in the 85% funding requirement “will help the West Coast ports to obtain long-term benefits that will long outlast the six-year term of the collective bargaining agreement”.

The Plan also maintains that experience from 1984 through the present confirms the accuracy of the PBGC determination that the West Coast shipping industry shares the salient characteristics of a construction plan. In the words of the application:

So long as the work of ILWU members is necessary for the movement of all types of cargo, the contribution base of the Plan rests upon the amount of cargo shipped. The amount of cargo shipped through West Coast ports is independent of the existence of any particular longshore employer.

In addition, like the construction industry, the work is local, performed at the port of embarkation or debarkation. An employer cannot withdraw from the Plan while continuing to perform longshore work at West Coast ports, because longshore work along the entire West Coast for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Given that the entire West Coast is one bargaining unit, it is not possible for cargo to be loaded or unloaded at any point on the coast without contributions being paid to the Plan. Thus, as a practical matter, it is not realistic to expect noncontributory, covered work. Nonetheless, if a former contributing employer were to compete against the Plan's other employers in this way, thereby diminishing the Plan's