

The characteristics of the west coast longshore industry that supported approval of special withdrawal liability rules in 1984 and 1998 apparently continue to apply today. Specifically, work covered under the Plan is dependent on the comings and goings of ocean-going vessels at west coast ports. The work must be performed at the port of embarkation or debarkation. Thus, the work will continue to be covered by the Plan unless future shipping is diverted to Canadian, Mexican or Central American ports.

In addition, an employer in this industry cannot withdraw from the Plan while continuing to perform longshore work at Pacific ports: longshore work along the entire west coast of the United States for all ocean-going dry cargo work is covered under collective bargaining agreements that require contributions to the Plan. Because the entire coast is one bargaining unit, and all ports through which ocean-going dry cargo is shipped are completely organized by the ILWU, it is not feasible to load or unload cargo unless contributions being paid to the Plan. Moreover, a former employer who did resume operations on a noncontributory basis would incur withdrawal liability.

2. What Is the Exposure and Risk of Loss to PBGC and Participants?

Exposure. The bargaining parties have increased benefits for active workers by over 50%, from \$95 a month for each year of service to \$150 per month. For a participant who retires with 33 years of service (as is typical) the annual benefit rises from \$37,620 to \$59,400. Thus, benefit liabilities will rise substantially. It should also be noted that Congress raised the PBGC guarantee for multiemployer plans in 2001: the guaranteed benefit for a participant with 33 years of service has risen from \$6435 to \$13,365. It follows that PBGC's exposure has increased.

Risk of loss. When the PBGC considered this question in 1998, the record indicated that the Plan presented a low risk of loss to PBGC guaranty funds. The agency expressed this view because actuarial reports for the period from July 1991 through July 1996:

* * * show a stable Plan population, an increase in annual contributions (\$71.1 million to \$99.7 million), and an increase in Plan assets (\$747 million to \$1.329 billion). Plan income has also consistently exceeded benefit payouts. The Plan and the covered industry have unique characteristics that suggest that the Plan's contribution base is likely to remain stable. Contributions to the Plan are made with respect to all west coast dry cargo. * * * Consequently, the Plan's contribution base is secure and the departure of one employer from the Plan is not likely

to have an adverse effect on the contribution base so long as the level of shipping does not decline.

As noted in the tables (*supra*) the risk of loss has increased due to the funding pressure that the Plan will encounter due to a combination of (1) reduced contributions³; and (2) increased benefit costs spread across a fixed or declining number of employees.

Conclusion. The Plan should continue to resemble a construction plan so long as virtually all foreign-flag shipping flows into and out of west coast ports, and so long as U.S. labor relations law continues to treat the ILWU as the exclusive bargaining representative of all west coast dockworkers. However, if either condition should change, the Plan's contribution base would be at risk. In addition, the Plan will be less robust than it was in 1998, and the economic pressures that plan funding will place on contributing employers (and, indirectly, the workforce) will increase dramatically after 2009—which is exactly the point when the Plan falls to its lowest level of funding. In view of the foregoing, approval of the amendment should be conditioned, for each of the plan years commencing from July 2003 through July 2012, upon the Plan's compliance with the enhanced reporting, disclosure and certification requirements.

Wherefore, the following amendments are approved to the enumerated sections of the ILWU-PMA Pension Agreement:

In paragraph 4.4042(c)(iv), the "Accelerated Funding Schedule" shall be 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 80% in the plan year commencing July 1, 2012, remaining at 80% for all years thereafter;

In paragraph 4.4042(c)(vi), the table is amended to state a Funding Percentage of 65% for each plan year commencing from July 2002 through July 2007; and rising by three percent each year thereafter until it reaches 83% in the plan year commencing July 1, 2013, and then increasing to 85% for the plan year commencing July 1, 2014, and all subsequent years;

Paragraph 4.402(c)(v) may be amended to allow for revisions of certain actuarial assumptions as set forth in the experience study and recommendation of the plan actuary in January 2003, but such revised

³ If the "contributions must equal benefit payments" provision of the 1984 amendment had been retained, this Plan would have received an additional \$639 million in contributions between 1997 and 2003.

assumptions may apply only to plan years commencing after June 30, 2002; *provided, however,*

That the foregoing amendments are approved subject to the following reporting requirements;

(1) The Plan shall provide PBGC with copies of all actuarial valuation reports, as well as drafts of such reports, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA;

(2) The Plan shall provide PBGC with copies of all independent auditor's reports and financial statements, as well as drafts thereof, within 5 business days after the reports or drafts are received by any of the Plan, its trustees, the ILWU or the PMA; and

(3) The annual actuarial certification heretofore filed by the Plan with PBGC shall, for all plan years that commence after July 1, 2003, be filed with PBGC no later than 90 days after the close of the plan year (unless this period is extended by PBGC for good cause shown), and this certification shall state whether the contributions received by the Plan are at least equal to the amounts listed under column 4 (headed "Code Funding") of Table 3 of this Notice of Approval.

Based on the facts of this case and the representations and statements made in connection with the request for approval, PBGC has determined that the Plan Amendment modifying special withdrawal liability rules (1) will apply only to an industry that has characteristics that would make the use of special withdrawal liability rules appropriate, and (2) will not pose a significant risk to the insurance system. Therefore, PBGC hereby grants the Plan's request for approval of a plan amendment modifying special withdrawal liability rules, as set forth herein. The Plan must agree to certify annually its compliance with the conditions set forth at 49 FR 6043 and 63 FR 27774, as modified by this Notice of Approval, with such certification to be filed within the deadlines established in this Notice of Approval. Should the Plan wish to again amend these rules at any time, PBGC approval of the amendment will be required. In the absence of extraordinary circumstances, the PBGC will not approve any amendments with retroactive effect.

Issued at Washington, DC, on this 31st day of July, 2003.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

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