Significant Index No. 0412.07-00

200306039

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

NOV. 15, 2002

T:EP:RA:T:A2

In re:

This letter constitutes notice that your request of October 26, 2001, under section 412(c)(8) of the Internal Revenue Code (the "Code") and section 302(c)(8) of the Employee Retirement Income Security Act of 1974 (ERISA), for approval to retroactively reduce the accrued benefits of plan participants for the above- named defined benefit pension plan, has been denied.

Facts

is a labor organization whose membership is comprised of various local unions in the state of affiliated with the the "International Union"). The constituent local unions are also sponsoring employers of the Plan.

(the "Plan") is a multiple employer defined benefit pension plan. The Plan was originally adopted on January 1, 1954. The original sponsor of the Plan was the That entity ceased to exist when it was merged into the effective September 1, 2000.

The Plan covers the full-time officers and business agents of the participating local unions affiliated with the The Plan provides a fixed dollar benefit for each year of credited service. The Plan's year begins February 1. The Plan does not have any accumulated funding deficiency. According to information provided, and as further described below, the Plan has been terminated pursuant to court order, and the assets of the Plan are insufficient to satisfy all of the liabilities of the Plan.

The requested that the following proposed amendment to the Plan be approved:

> "Notwithstanding any other provision of this Plan, the accrued benefits provided herein may be reduced on a pro-rata basis in the event that the Plan is terminated pursuant to court order and the assets, at the time of termination, are insufficient to satisfy all accrued benefits."

In our letter dated June 3, 2002, you were informed of our tentative adverse position on your request. Your conference-of-right was held on November 13, 2002. At the conference, we reaffirmed our adverse position and you stated that you would not submit any additional information following the conference. The current 90-day period (as extended) under section 412(c)(8) of the Code expires November 17, 2002. Consequently, this ruling letter is being issued with your consent before the 21-day period following the conference in order to avoid further extending the 90-day period.

Applicable Law

Section 411(d)(6) of the Code and section 204(g) of ERISA prohibit a plan amendment, except for an amendment described in section 412(c)(8) of the Code, that has the effect of reducing a participant's accrued benefit under the plan.

Section 412(c)(8) of the Code and section 302(c)(8) of ERISA provide that any amendment applying to a plan year which:

(A) is adopted after the close of such plan year but no later than 2 1/2 months after the close of the plan year,

(B) does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment applies, and

(C) does not reduce the accrued benefit of any participant determined as of the time of adoption except to the extent required by the circumstances,

shall, at the election of the plan administrator, be deemed to have been made on the first day of such plan year. No such amendment shall take effect unless the plan administrator files a notice with the Secretary of Labor notifying him of such amendment and the Secretary of Labor has approved such amendment, or within 90 days after the date on which the notice was filed, failed to disapprove of such amendment.

Reorganization Plan No. 4 which became effective December 31, 1978, transferred the authority of the Secretary of Labor under section 412(c)(8) of the Code and section 302(c)(8) of ERISA to the Secretary of the Treasury.

Section 412(c)(8) of the Code and section 302(c)(8) of ERISA also provide that no amendment which reduces the accrued benefits of plan participants shall be approved unless it is determined that (1) such amendment is necessary because of substantial business hardship as determined under Code section 412(d)(2), and (2) a waiver of the minimum funding standard is unavailable or inadequate.

Section 412(d)(2) of the Code provides that the factors taken into account in determining substantial business hardship shall include (but shall not be limited to) whether or not:

(A) the employer is operating at an economic loss,

(B) there is substantial unemployment or underemployment in the trade or business or in the industry concerned,

(C) the sales and profits of the industry concerned are declining, and

(D) it is reasonable to expect that the plan will be continued only if the waiver is granted.

Analysis

The first three factors that were considered in determining whether or not the employer experienced substantial business hardship were whether or not (1) the employer is operating at an economic loss, (2) there is substantial unemployment or underemployment in the industry concerned, and (3) the sales and profits of the industry concerned are declining. In your letter dated May 30, 2002, you stated that these three factors were not applicable as the local unions are not operating at an economic loss, or experiencing substantial unemployment or underemployment, and the notion of "sales and profits" is not relevant to the local unions which do not operate for profit.

The fourth factor that was considered in determining whether or not the employer experienced substantial business hardship was whether or not it is reasonable to expect that the plan will be continued only if the reduction in accrued benefits is granted. We have found that it is not reasonable to expect that the plan will be continued only if this reduction in accrued benefits is granted.

In 1989, the United States Government and the International Union entered into a Consent Decree in *United States v. International Brotherhood of Teamsters*, 88 Civ. 486, to monitor and regulate the activities of the International Union and its affiliated organizations. In May 2000, the the entity established pursuant to the Consent Decree, recommended to the President of the that the be placed in trusteeship. Among the recommendations was that an additional per capita tax that had been paid into the Plan by the no longer be collected from affiliated local unions. The further recommended that $ collected under this per capita tax between 1994 and 1999 be refunded to the local unions by the Plan.

On May 10, 2001, entered into an agreement with the in which it agreed to terminate the Plan and eliminate the existing portion of the per capita tax structure from which contributions to the Plan were derived. This agreement was approved by the United States District Court for the and entered as an Order on June 12, 2001. The fact that the Plan has terminated clearly indicates it is not reasonable to expect the Plan to continue if the reduction in accrued benefits is granted.

In addition to failing to meet the four statutory factors mentioned above, the pro-rata provision of the proposed amendment would effectively reduce the accrued benefits of participants below the accrued benefits determined as of February 1, 2001, which would not satisfy the requirement of section 412(c)(8)(B).

Conclusion

Based upon our consideration of the statutory factors, the request for approval to reduce the accrued benefits of plan participants in accordance with the above-described proposed amendment is hereby denied. We have sent a copy of this letter to the Area Manager in and to the authorized representatives listed on the power of attorney (Form 2848) on file with this office.

If you have any questions concerning this matter, please contact

Sincerely,

Paul T. Shultz, Director
Employee Plans, Rulings and Agreements