



SECTION: Wind Up

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- PBA, 1990 ss. 81(1)

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If an employer that already has a pension plan for its employees establishes a new plan and ceases to make contributions to the original plan, can the employer wind up the original plan?

The Divisional Court ruled, in a decision released on March 18, 1992 respecting the Otis Elevator Company pension plan, that the establishment of a successor pension plan does not preclude the wind up of the original plan. However, subsection 81(1) creates a legal fiction that the original plan continues to exist, thus providing further protection to the members of the former plan. Even though wound up, it is for all purposes to be treated as a continuing plan. Consequently, affected members may be provided with their wind up benefits from the original plan, but should the employer seek a surplus refund from the original plan, the Commission will deal with the application as a surplus withdrawal from an ongoing plan.

The decision of the Divisional Court can be found as Appendix "D" in the Commission decision indexed as XDEC-26.