

Pension Benefit Guaranty Corporation

76-87

June 25, 1976

REFERENCE:

[\*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

OPINION:

In our conference on May 17 and in your subsequent letter to me, you pointed out that the General Counsel of the National Labor Relations Board (the "NLRB") has issued a complaint charging that the \* \* \* Company violated the National Labor Relations Act by unilaterally terminating the above-named Pension Plan, and that the matter is also the subject of pending arbitration under a collective agreement. The Plan was terminated in compliance with Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), and you have expressed concern that the employer might assert that by meeting its responsibilities under ERISA, the employer has been discharged from any obligations it might have with respect to the Pension Plan under the collective agreement or under the National Labor Relations Act.

In this case, the Pension Benefit Guaranty Corporation (the "PBGC") determined that the employer was the administrator of the Pension Plan within the meaning of Sections 4001(a)(1) and 3(16) of ERISA, and was therefore the proper party to file the notice of intent to terminate the Plan that is required [\*2] by Section 4041(a) of ERISA. It has been the PBGC's policy to accept termination notices that are valid under Title IV of ERISA in the face of a claim that plan termination might breach a collective agreement (or other contract), leaving the resolution of the labor dispute to the appropriate forum. In the PBGC's view, Title IV of ERISA does not preclude the assertion of those contractual or statutory remedies that were available to unions and employers prior to the enactment of ERISA.

In accepting the termination notice covering the above-named Pension Plan, the PBGC informed the employer that its ruling related only to the validity of the notice under Title IV of ERISA. The PBGC's action cannot and should not be construed as a ruling on any of the labor law questions raised in connection with the termination. As you know, the PBGC has taken the position that if the proper labor-relations tribunal orders a resumption of contributions to a pension plan that has terminated under Title IV of ERISA, the PBGC will attempt to accommodate that decree to the extent feasible. If it is not possible to revive the plan, the parties would have to look to alternative remedies, such as [\*3] damages.

You have suggested that the PBGC inform the General Counsel of the NLRB of the PBGC's views on the relationship between Title IV of ERISA and the National Labor Relations Act. Whether or not we decide to institute general discussions with the NLRB, the PBGC ordinarily would not comment on a specific case pending before the Board unless a formal request were made by a party to the proceeding or by the Board. As I understand it, the employer in the instant case has not yet raised the ERISA questions, so any intercession by the PBGC at this stage would be premature. If the PBGC is asked to respond to a suggestion that compliance with Title IV of ERISA constitutes a defense to an unfair labor practice charge or to a grievance under a collective bargaining agreement, our position would be as stated in this letter.

We appreciate your concern, and hope this discussion has been of some assistance.

Henry Rose  
General Counsel