

Pension Benefit Guaranty Corporation

77-130

February 10, 1977

REFERENCE:

[*1] 3(16) Definitions. Administrator
4001(a)(1) Definitions. Administrator
4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

OPINION:

This will acknowledge receipt of your letter of * * * and the document submitted pursuant to § 4041 of the Employee Retirement Income Security Act of 1974 (the "Act"). The Pension Benefit Guaranty Corporation (the "PBGC") has been advised by the union trustees of * * * (the "Plan") that, in their view, the aforementioned document does not constitute a valid notice of intent to terminate the Plan.

As we understand the situation, a resolution authorizing the termination of the Plan was adopted at a meeting of the Board of Trustees on * * * At the time the resolution was adopted, only the four trustees representing management were in attendance at the meeting. On * * *, a notice of intent to terminate the Plan executed by the four management trustees was filed with the PBGC.

For such a document to constitute a valid notice of intent to terminate a defined benefit pension plan, it must be submitted by the "plan administrator" of the plan, as defined in § 3(16) and 4001(a)(1) of the Act. The present Plan appears to be a plan [*2] jointly maintained by the * * * Consequently, the Board of Trustees established under the terms of the Plan is the plan administrator within the meaning of the above-cited sections of the Act.

It is not clear to us, however, that the decision of the four management trustees to file a notice of intent to terminate the Plan constituted action by the Plan's Board of Trustees. The copy of the document submitted with the notice as item 10, the plan document, does not make specific provision for the establishment of a Board of Trustees or for any quorum necessary for the Board to act. The copy of the last collective bargaining agreement, submitted as item 14, does state in paragraph 43(b) that the the Plan shall be ". . . administered jointly and equally by the COMPANY and representatives of the UNION." In view of this requirement, which we believe is also a requirement of the Plan, we are tentatively of the view that the action of the management trustees taken in the absence of the union trustees does not constitute action by the Plan administrator. It therefore appears to us that the notice submitted does not constitute a valid notice of intent to terminate pursuant to § 4041 of the [*3] Act.

Before reaching a final decision on this question, however, we offer the opportunity for you to submit any statement you care to make regarding the matter above discussed. Please inform this Office within ten days whether you wish to submit such a statement. We shall similarly offer the union trustees an opportunity to submit a statement.

In addition, we request clarification with respect to the accuracy of item 10, the plan document, submitted in conjunction with the notice of intent to terminate the Plan. The union trustees have submitted to us a copy of the Plan document which appears to be a complete and accurate copy of the document, and which differs materially from item 10 of your submission. Page one of the union trustees' submission is headed, * * * This page contains, inter alia, a provision establishing a Board of Trustees consisting of an equal number of management and union representatives. Page one of your item 10 is headed, * * * and contains no provision regarding the establishment of a Board of Trustees. Please advise us whether your item 10 is accurate and complete.

* * * of this Office has been assigned to handle this matter. You may contact him in [*4] writing at the above address, or by telephone at * * *

Henry Rose
General Counsel