

Pension Benefit Guaranty Corporation

78-19

August 9, 1978

REFERENCE:

[*1] 4048 Date of Termination

OPINION:

Pursuant to your request the Pension Benefit Guaranty Corporation (the "PBGC") has reviewed its determination that the Retirement Plan for Employees of * * * (the "Plan") terminated on September 12, 1977. The PBGC reaffirms its prior determination.

In your letter requesting reconsideration you cited Article X of the Plan which grants the * * * (the "Company") authority to terminate the Plan at any time. We note, however, that Article XI of the Plan establishes a procedure for terminating the Plan. It states that "the Plan shall be discontinued upon written notice by the Employer" both to the participants and the insurer upon the Plan's termination. You stated that the participants were notified on September 1, 1977. Furthermore, the Board of Directors' resolution dated August 31, 1977 indicates that the insurer was notified subsequent to adoption of the resolution. Accordingly, an earlier termination date would violate the terms of the Company's Plan document.

You also referred to Section 401(b) of the Internal Revenue Code (the "Code") as authority for the establishment of an earlier termination date. You stated that Section 401(b) empowered the Company [*2] to retroactively terminate the Plan. The provisions of the Code do not control the PBGC's administration of Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1301 et seq. (Supp. V 1975) ("ERISA"). In any event, we see no inconsistency between Code provisions, and the administration of Title IV in this area. Section 401(b) was intended to allow the administrator of an ongoing plan to amend the plan within a given period, to qualify for a particular tax year. It does not authorize retroactive terminations. Moreover, pursuant to Treas. Reg. § 1.411(d)-2(c), the Treasury Department defers to the PBGC in establishing termination dates for plans subject to Title IV of ERISA. Section 1.411(d)-2(c) provides that the date of termination of such plans shall be the date determined under Section 4048 of ERISA, 29 U.S.C. § 1348.

You stated that the Company took no action prior to August 31, 1977, to terminate participant benefit and vesting accruals. The Company passed a resolution dated August 31, 1977, purporting to terminate the Plan effective November 30, 1976. The PBGC received notice of such termination on August 31, 1977, and the participants [*3] received notice dated September 1, 1977. We do not consider the fact that the last contribution was made on June 15, 1976, for the Plan year ending November 30, 1976, material to our determination in this case.

Based on the foregoing, the PBGC reaffirms its prior determination that the Plan terminated on September 12, 1977. If you wish to make additional submissions regarding this * * * matter you may write * * * at the above address or call * * * at * * *

Henry Rose
General Counsel