

Pension Benefit Guaranty Corporation

81-6

April 1, 1981

REFERENCE:

4048 Date of Termination

OPINION:

This is in response to your letter to * * * of this Office. You asked what methods were available to the United Steelworkers of America (the "Union") to challenge the agreement between the Pension Benefit Guaranty Corporation (the "PBGC") and * * * Company setting the termination date of the * * * Company Pension Plan for Hourly Rated Employees (the "Plan"). The PBGC Regulation on Administrative Review of Agency Decisions, 29 C.F.R. § 2618, does not provide for review of an agreement between the PBGC and a plan administrator regarding a plan termination date. The PBGC will review informally, upon request, determinations that are not subject to 29 C.F.R. § 2618, when the PBGC determines that such a review is appropriate.

The Plan was terminated as of October 24, 1979, pursuant to an agreement between the PBGC and the * * * Company (the "Company"). The decision to use October 24, 1979, as the date of plan termination was based upon the terms of the Plan and case law. The first sentence of Article 10.3 of the Plan provides for termination of the Plan by the Company at any time, subject to the consent [*2] of the Union. The second sentence of Article 10.3 states that in the event of "dissolution, merger, consolidation or reorganization of the Company," the Plan will terminate. Thus, according to the terms of the Plan, there are two ways it could terminate: 1) at the option of the Company with Union consent; or 2) automatically in the case of dissolution, merger, consolidation or reorganization. When the assets of the Company were assigned for the benefit of creditors on October 24, 1979, this constituted a dissolution and the Plan terminated by its own terms on that date.

This determination is consistent with PBGC v. Heppenstall Company, No. 79-2224 (3d Cir. 1980), in which the Court said that a plan termination date is acceptable if 1) plan participants had no justifiable expectation of additional accrual of benefits under the plan after the proposed termination date; and 2) plan participants had reasonable notice that the plan was terminating.

In this case, the plan participants had no justifiable exception of benefit accrual and had constructive notice of plan termination perhaps as early as August 31, 1979, when the company ceased operations, but certainly no later than [*3] October 24, 1979, the date the assets of the Company were assigned for the benefit of creditors. Thus, the October 24, 1979, termination date satisfies the criteria set out in the Heppenstall decision.

I hope this answers your inquiry. If we can be of further assistance please let us know.

Henry Rose
General Counsel