

Pension Benefit Guaranty Corporation

76-45

March 30, 1976

REFERENCE:

[*1] 4041(b) Termination by Plan Administrator. Notice of Sufficiency
4043(b)(2) Reportable Events. Amendment Decreasing Benefits

OPINION:

This is in response to your request for a ruling on a proposed amendment to the * * * General Pension Plan (the "Pension Plan"). The proposed amendment offers an election of benefits to hourly employees of * * * who were participants in the * * * Company Hourly Employees' Profit Sharing Plan and Trust (the "Profit Sharing Plan") and who were employed by * * * as members of * * *. The eligible hourly employees were covered under the Profit Sharing Plan until 1970 when coverage under the Pension Plan was extended to them. The Pension Plan granted benefits for continuous service by the hourly employees with * * * prior to 1970.

Under the amendment, eligible employees may elect to receive a distribution of the current value of their frozen account balances in the Profit Sharing Plan in lieu of any benefits under the Pension Plan. The proposed amendment states that "under no circumstances will any such Hourly Employee be entitled to receive such distribution unless the Company has first received . . . approval of the Pension Benefit Guaranty Corporation (the [*2] "PBGC") or written notice from the PBGC that such approval is not required under the provisions of the Employee Retirement Income Security Act of 1974."

If the benefit payable with respect to any participant under the Profit Sharing Plan has a lesser value than the benefit payable under the Pension Plan, the adoption of the proposed amendment would be a reportable event of the type described in § 4043(b)(2) of the Employee Retirement Income Security Act of 1974 (the "Act").

Section 4043(b)(2) states "[f]or purposes of this section a reportable event occurs when an amendment of the plan is adopted if, under the amendment, the benefit payable with respect to any participant may be decreased."

Section 4043 of the Act requires the plan administrator to notify the Pension Benefit Guaranty Corporation (the "PBGC") within 30 days after he knows or has reason to know of the occurrence of a reportable event described in § 4043(b) of the Act.

Although the adoption of the proposed amendment must be reported to this Corporation, approval of the proposed amendment by the PBGC is not required under the Act. However, the proposed amendment may reduce the Pension Plan's liability to pay benefits. [*3] If the Pension Plan terminates, to value plan liabilities pursuant to § 4041(b) of the Act, PBGC would be required to determine whether the amendment was legally valid. For this reason, the Corporation if requested, will issue a ruling on whether it would treat the proposed amendment to the Pension Plan as valid upon the Pension Plan's termination.

I suggest that you seek a ruling on the proposed amendment from the Department of Labor and the Internal Revenue Service, which administers Titles I and II of the Act respectively, since provisions in those titles n1 may prohibit the proposed amendment.

n1 Act § 204(d); Act § 206(d)(1); Internal Revenue Code ("IRC") § 401(a)(13), established by Act § 1021(c); Act § 204(g); Act § 302(c)(8); IRC § 411(d)(6), established by Act § 1012(a); IRC § 412(c)(8), established by Act § 1013(a).

If I can answer any further questions, please feel free to contact me.

Charles Skopic
Deputy Executive Director