

Pension Benefit Guaranty Corporation

76-89

April 14, 1975

REFERENCE:

[\*1] 4062(e). Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants  
4063 Liability of Substantial Employer for Withdrawal  
4064 Liability of Employers in Multiple Employer & Multiemployer Plans  
4065 Annual Report

OPINION:

This is in response to your request for a ruling regarding the effect under Title IV of the Employee Retirement Income Security Act of 1974 (the Act) of the pending sale of three commonly located divisions of \* \* \* (the Company). This response is based upon all submissions made to the Pension Benefit Guaranty Corporation (the PBGC on behalf of the Company). The Company maintains two plans, the \* \* \* Plan, and the \* \* \* Company Retirement Plan for Salaried Employees, each of which will experience a reduction in the number of participants as a result of the sale. The facility being sold accounted for greater than 20% of the active participants in each plan.

As we understand the facts, substantially all of the Company employees at the facility, who were participants under the \* \* \* Plan, will become employees of the Buyer of the three divisions, \* \* \* now known as \* \* \* (the Buyer). The Buyer is adopting a substantially [\*2] identical plan for all of these former \* \* \* employees and is continuing the operations at the facility. Plan assets allocable to the participants of the sold facility will be transferred to the plan continued by the Buyer.

As to the \* \* \* Retirement Plan for Salaried Employees, more than 20% of the total number of its active participants will no longer be the active participants under the plan as a consequence of the sale. The Buyer is adopting a similar plan for these employees and substantially all of them will be employed by the Buyer, who is continuing operation of the facility.

Assuming that each plan is covered by Section 4021 of the Act, the following are the Title IV consequences: (1) As to the \* \* \* Plan there occur reportable events under Sections 4043(b)(3) and (b)(8) of the Act, due, respectively, to the reduction of greater than 20% of the active participants and the transfer of assets from the \* \* \* Plan to the \* \* \* Plan. (2) As to the \* \* \* Plan, there occurs a reportable event under Section 4043(b)(3) of the Act, due to the reduction of greater than 20% of the active participants.

Each of the above events must be reported to the Pension Benefit Guaranty Corporation [\*3] (the PBGC) within 30 days after the plan administrator knows or has reason to know of its occurrence.

In response to your specific requests:

(1) The provisions of Section 4062(e), 4063, 4064 and 4065 do not apply as a result of this sale, with respect to the \* \* \* Plan or the \* \* \* Retirement Plan for Salaried Employees.

(2) As to both plans the reportable events must be timely announced to the PBGC at which time the Division of Plan Review within the PBGC must evaluate the overall effect on the plans. However, the information presently available to this office (which appears to be complete) does not indicate a need or basis for terminating the plans.

We hope this is of assistance.

Henry Rose  
General Counsel