



Your June [ ] 2006 letter appealed the reduction in your benefit. You said "It is my understanding that PBGC has unilaterally removed the 'Plan Early Retirement Benefit Provision' retroactively, which has led to a re-calculation of my pension benefits. I object to this action. I have relied on the effect of this provision for the past three (3) years in planning my retirement and making business decisions."

You asserted that PBGC's determination is in violation of Section 16.14 of your original collectively bargained employment contract. Section 16.14 provides:

Retirement Due to Plant Closing - Should the company elect to permanently close the plant during the term of this contract, an employee under the age of fifty-five (55) whose last day worked is within ninety (90) days of such closing and whose employment is terminated as a result of such closing, may retire and receive a pension benefit figured as if he were age fifty-five (55) based on his years and months of credited service at the date of such closing, provided he has thirty (30) or more full years of credited service at the date of such closing.

You also asserted that the "shutdown" provision was "valid and accepted by the Bankruptcy Court and subsequently accepted and applied by the PBGC in 2003." You stated that you believe "it is a violation of due process, my contract rights and the Bankruptcy Court's Chapter Eleven proceedings for the PBGC, three years after-the-fact, to reduce my benefits for 'early commencement' and causing me substantial financial harm." You asked that the Appeals Board honor the original agreement and not reduce your benefits.

### Background

Carr Lowrey Glass Company was founded in 1889. By the 1990's, Carr Lowrey was experiencing financial difficulties. In 1998, the Company was acquired by three unrelated companies. The new owners tried repeatedly and unsuccessfully to find a buyer for Carr Lowrey and were faced with continuing operating losses. A final search for a buyer of Carr Lowrey assets failed in May of 2003, after which the shareholders ceased their support of the Company. On May 29, 2003, Carr Lowrey publicly announced that it was ceasing all operations and terminating virtually all of its workers on June 6, 2003. On July 10, 2003, Carr Lowrey filed a liquidating Chapter 7 bankruptcy petition.

The Plan was established effective October 1, 1989. As of June 6, 2003, the Plan had estimated assets of \$5,326,400 and estimated total benefit liabilities of \$14,944,500. It was underfunded by \$9,618,100 for all benefits and by \$9,310,800 for those benefits that PBGC guarantees under Title IV of the Employee Retirement Income Security Act ("ERISA"), the law that governs PBGC. Included in these amounts were unpaid minimum funding contributions totaling \$2,909,544.

The PBGC initiated termination of the Plan to protect the interests of the Plan participants because the Plan had not met the minimum funding standards, because the Plan would be unable to pay benefits when due, and because of the Plan's imminent abandonment following the Company's liquidation. ERISA Section 4042(a) specifically permits PBGC to seek termination of a pension plan under the conditions described above.

Furthermore, Section 4048(a)(3) of ERISA provides that, when PBGC terminates a pension plan, the date of plan termination is "the date established by the [PBGC] and agreed to by the plan administrator." Having decided to terminate the Plan, PBGC and the Plan administrator agreed on September 24, 2003 that June 6, 2003 would be the date of Plan termination. The agreement between PBGC and Carr Lowrey stated that the Company ceased operations and began to liquidate its assets on June 6, 2003, and, accordingly, "Plan participants' expectations that the Plan would continue ceased as of that date." The Appeals Board has no authority to change an established plan termination date.

#### Discussion

As noted above, when the Plan terminated, its assets were not sufficient to provide all benefits PBGC guarantees under Title IV of ERISA. Because of legal limitations under ERISA and PBGC regulations, the benefits PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

The Plan provides that Normal Retirement occurs at age 65. It also provides that a participant may receive an Early Retirement benefit if he terminates employment after attaining age 55 and earning at least 10 years of service. Such an Early Retirement benefit is unreduced if, at the time of retirement, the participant is age 60 or has earned at least 30 full years of Benefit Service.

Additionally, as you note in your appeal, the Plan has a special provision concerning entitlement to Early Retirement benefits upon plant shutdown. Section 1.13 of the Plan document provides:

in the event that the permanent closing of a plant by the Employer results in the termination of Employment of a Participant who is employed at such plant, then such Participant shall be entitled to an Early Retirement Benefit, provided that at the time of such plant closing the Participant has thirty (30) or more years of Benefit Service. In order to receive the benefit of the preceding sentence, a Participant must have actually worked at the plant within ninety (90) days of its permanent closing. Further, the employee termination must be due to the upcoming plant closing.

Section 16.14 of the collective bargaining agreement, which is quoted on page 2, contains similar language. The effect of these provisions is that a participant with 30 years of service may retire and receive an unreduced benefit before age 55, provided that his employment is terminated as a result of a plant shutdown.

You retired and were placed in pay status by the former Plan administrator, Carr Lowrey, effective July [ ], 2003, shortly after the Company announced its plans to shut down operations on June 6, 2003. The records maintained by Carr Lowrey show that June 6, 2003 was the last day you worked for the Company. When you retired, you were age 52 years and [ ] months and had earned 33. years of credited service. Therefore, in accordance with the terms of the Plan and the collective bargaining agreement, the prior Plan administrator treated you as if you were age 55 and, thus, entitled to a shutdown benefit (unreduced early retirement benefit), which the prior Plan administrator determined to be \$541.44 per month in the form of a Joint and 100% Survivor Annuity. This benefit amount includes the offset for the benefit you earned, and which is payable, under the Anchor Hocking Service Retirement Plan.

When PBGC became trustee of the Plan, as with all other trusted plans, PBGC had to collect and audit the data and records it needed to determine the Plan benefits it can legally pay. Since this process can be complex and time-consuming, PBGC continued to pay you and the other retirees of the Plan the benefit amounts the prior Plan administrator had calculated as estimated benefits until PBGC could complete its review of the Plan and determine the benefits payable under ERISA and PBGC regulations (see PBGC's letter dated December 16, 2003).

For a benefit to be guaranteed, PBGC regulations generally require that a participant satisfy the conditions of the pension plan necessary to establish the right to receive the benefit before the plan's termination date. 29 Code of Federal Regulations ("CFR") Part 4022.4(a). Furthermore, PBGC has consistently held, based on this regulation, that when entitlement to a benefit is based on a plant shutdown, the shutdown must have occurred *before* the date of plan termination if PBGC is to guarantee the benefit.

In this case, the shutdown date and the plan termination date are precisely the same. Because Carr Lowrey's shutdown did not occur before the Plan's termination date, shutdown benefits under the Plan are not guaranteed by PBGC and, thus, PBGC is unable to pay you a shutdown benefit. We recognize that this may cause a hardship to you, but the rules regarding entitlement to guaranteed benefits are established by a PBGC regulation and the Appeals Board does not have the authority to change them.

We note that, under Plan Section 3.4, participants who are at least age 55 when they terminate employment and who have at least 30 years of credited service may receive an unreduced early retirement benefit, even if there is no plant shutdown. Although you had more than 30 years of credited service, both the termination of your employment and the termination

of the Plan occurred before you attained age 55. Because you did not meet the conditions for an unreduced early retirement benefit provided under Section 3.4 of the Plan before the Plan's termination date, PBGC is unable to pay you that type of benefit.

The benefit to which you are entitled is determined under Article 5, "Termination of Employment," Section 5.2, "Early Deferred Pension Benefits." This Section provides that if the participant's benefit commences prior to the participant's normal retirement date (age 65), the accrued benefit is reduced by one-half of one percent ( $\frac{1}{2}\%$ ) for each full month by which the commencement date precedes the normal retirement date. Since your pension benefit began before age 65, PBGC correctly determined that your accrued Plan benefit must be reduced in accordance with the Early Deferred Pension provision. We also note that, for the age reduction before age 55, PBGC used its own actuarial factors, because the Plan's factors stopped at age 55. For this reason, the reduction based on the benefits you received before age 55 is less than the one-half of one percent ( $\frac{1}{2}\%$ ) reduction starting at age 55.

The former Plan administrator started your pension payments at age 52 and  months. In situations such as this, where a participant is put into pay status before he is entitled to a benefit, PBGC's policies allow the participant to choose between two options: (1) to remain in pay status, but to receive an actuarially reduced benefit; or (2) to come out of pay status until he or she is eligible to reenter pay status (55 is the earliest age you would be eligible). PBGC's benefit determination is based on the first option; through an oversight, PBGC did not offer you the second. Therefore, we are changing PBGC's determination to allow you an opportunity to select the second option.

### Decision

Having applied the terms of the Plan, the provisions of ERISA and PBGC regulations to the facts in this case, we found no basis for changing PBGC's May 16, 2006 determination that you are not entitled to an unreduced early retirement benefit under the Plan. This is the Agency's final decision regarding this matter and you may, if you wish, seek court review of this decision.

However, because, you are currently receiving an early retirement benefit to which you are not entitled, i.e., a shutdown or unreduced early retirement benefit, in accordance with PBGC policy, you may choose one of the following options:

- (1) Continue receiving monthly payments at the reduced amount stated in PBGC's May 16, 2006 determination.

or

- (2) Stop receiving payments and reapply for benefits with a starting date later than July , 2003.

We will forward a copy of this letter to PBGC's Benefits Administration and Payment Department ("BAPD"), the office responsible for determining and paying PBGC benefits. BAPD will contact you directly regarding the details of this election process, the amount of your benefit and the recoument of any benefit overpayments you received.

If you need additional information, please call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to a BAPD representative assigned to the Plan.

Sincerely,

A handwritten signature in cursive script that reads "Sherline M. Brickus". The signature is written in black ink and has a long, sweeping horizontal line extending to the right.

Sherline M. Brickus  
Member, Appeals Board