

Pension Benefit Guaranty Corporation

76-98

August 4, 1976

REFERENCE:

[*1] 4041(g) Termination by Plan Administrator. Appointment of Trustee
4042(f) Termination by PBGC. Jurisdiction & Powers of Termination Court (Stays of Actions)

OPINION:

On May 12, 1976, the Pension Benefit Guaranty Corporation (the "PBGC") moved for entry of an Order dismissing the PBGC's petition in the above-entitled case without prejudice, on the condition that the PBGC serve as trustee of the above-named Pension Plan pursuant to 29 U.S.C. § 1341(g), with authority to limit the payment of benefits under the Plan to the level at which benefits would be guaranteed by the PBGC if a May 30, 1975 Plan termination date had been established. On July 29, 1976 you granted the PBGC's motion. Enclosed is a proposed Order that would continue PBGC's trusteeship pending resolution of the termination date question.

In the Memorandum that it filed herein on July 15, the Corporation argues that a trusteeship under 29 U.S.C. § 1341(g) is only authorized if a proper notice has been filed with the PBGC pursuant to 29 U.S.C. § 1341(a). This contention was reiterated at the July 29 hearing. In the PBGC's view, a notice of intent to terminate is not a necessary prerequisite to appointment of a trustee. Section [*2] 1341(g) specifically states:

Notwithstanding any other provision of this title, a plan administrator or the corporation may petition the appropriate court for the appointment of a trustee in accordance with the provisions of section 4042 if the interests of the participants and beneficiaries would be better served by the appointment of the trustee. (Emphasis added.)

This provision was invoked as authority for appointment of a trustee without a prior termination notice in Civil Action * * * a situation similar to the one at bar. In that case the plan administrator was unable to function, and an outside trusteeship was necessary to protect the interests of the participants while questions relating to the pension plan's possible termination were clarified. Enclosed is a copy of the Petition and the Order in that case.

* * * contends that if the PBGC is appointed trustee under § 1341(g), this Court would retain exclusive jurisdiction over the Plan under 29 U.S.C. § 1342(f). The PBGC concurs. However, we do not agree with * * * further contention, that arbitration under the collective bargaining agreement is automatically precluded because the Plan is [*3] subject to the Court's continuing jurisdiction. It is obviously within this Court's jurisdiction to enter judgment in Civil Action No. * * * deciding whether or not arbitration is appropriate.

For all of these reasons, the PBGC respectfully requests that this Court enter an Order in the form attached hereto, * * * continuing PBGC's trusteeship under 29 U.S.C. § 1341(g) until the termination questions are resolved.

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Office of the General Counsel