

Pension Benefit Guaranty Corporation

79-1

January 17, 1979

REFERENCE:

[*1] 4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974 and September 2, 1974

OPINION:

This letter refers to your request that the Pension Benefit Guaranty Corporation (the "PBGC") reconsider its September 29, 1977, determination that the * * * Division of * * * Pension Plan for Hourly Employees at * * * (the "Plan") terminated prior to July 1, 1974, and that, consequently the Plan is not subject to the PBGC's guarantee of basic benefits. As part of this reconsideration the PBGC has reviewed the case file in this matter, including the information submitted by you and * * * and the entire Arbitration Opinion and Award.

As a result of its review, the PBGC has determined that the Plan terminated prior to July 1, 1974. We have considered your documentation that 3 employees worked from July 1, 1974 through November 30, 1974 and that these employees continued to accrue benefits to their date of termination as set forth in the Arbitration Award.

However, other facts indicate that the plan terminated before July 1, 1974. On December 14, 1972 the Board of Directors * * * (the "Company") adopted a resolution discontinuing all operations [*2] of the * * * Division as soon as possible. We have been advised that the same date was indicated on the Internal Revenue Service Application for Determination as the date of termination of the Plan. Employment terminations were announced by the Company on December 29, 1972. The number of active employees decreased from 572 in November 1972 to 44 in November 1973, at which time the complete plant and foundry were sold at auction. Seventeen employees remained in December 1973 to guard and maintain the plant, and prepare and ship the equipment which was sold. This number decreased to 3 by May 1974 and these 3 were terminated in November 1974. The last contribution by the Company to the Plan was made in June 1973 and was for the year 1972.

Accordingly, in view of the facts and circumstances herein, we reaffirm the conclusion that for the purposes of Title IV the Plan ceased to be an on-going plan prior to July 1, 1974. In any event, there appears to be no basis for concluding that the plan terminated between July 1 and September 2, 1974. Under these circumstances, we are precluded from guaranteeing benefits under Section 4082 (b) of ERISA.

Henry Rose
General Counsel