

Pension Benefit Guaranty Corporation

78-15

June 2, 1978

REFERENCE:

[\*1] 4041 Termination by Plan Administrator

OPINION:

As you are aware, this case arose as a result of the cessation of contributions by the \* \* \*, to the \* \* \* Regional Pension Fund ("Fund"). The issue in this case is whether the Fund was a single "plan" or a group of separate "plans" as of May 31, 1975. For the reasons set forth below, I have concluded that the Fund was a single "plan" on May 31, 1975. Consequently, the cessation of contributions by \* \* \* did not cause the termination of a plan.

The PBGC had previously announced to the trustees of the Fund that the Fund was a group of separate plans. \* \* \* requested that the PBGC reconsider its determination. Thereafter, a Reconsideration Panel was appointed. As indicated by my letter of May 12, 1978, my decision has been based on materials developed during the initial decisionmaking process and deliberations of the Reconsideration Panel; the recommendations of the Reconsideration Panel and of Henry Rose, General Counsel; and materials submitted in response to my letter of May 12, 1978.

Several provisions of the written instrument under which the Fund operated indicate that the Fund was a single plan:

1. Article II, section 2, conditions [\*2] the acceptance of a new group of employees on a determination that extending Fund coverage to the group "will not adversely affect the actuarial soundness of the Fund."

2. Article II, section 4, allows the Trustees of the Fund to impose special conditions on the acceptance of a new employee group as necessary "to preserve the actuarial soundness of the Fund and to preserve an equitable relationship between the basis of contributions of all Contributing employers and the benefits provided for all Covered Employees."

3. Article IV, section 2 (f) gives the Trustees the right to "impose any penalty on the crediting of past service to the employees of employers who become contributing employers after the effective date that they deem necessary in order to preserve the actuarial soundness of the Fund." \*

\* Article VI, section 3 is also significant. That provision gives employees who participated in the plan before a specified date a preference in the allocation of the Fund assets upon termination of the Fund, but does not distinguish between employee groups that began participation after that specified date.

The only provision which restricts the availability of Fund assets is [\*3] Article II, section 6. It states that, when an employer ceases to make contributions to the Fund, the "Fund will be liable for benefits to Employees of that Employer only to the extent that benefits can be provided by contributions made by that Employer." However, that provision has been applied only in case of an employer's withdrawal.

The manner in which the Fund operated also indicates that the Fund is a single plan. The following material was submitted by the Fund:

"The assets we received were not allocated by store or units." (Letter, dated August 9, 1976, from \* \* \* associate of \* \* \* to \* \* \* PBGC Case Officer).

"Although it may be a fact that the Fund's accountants did not include any allocation of Fund assets to individual participating employers until the report for the year ending September 30, 1975, the accounting report did include the contributions made by each participating employer." (Affidavit of \* \* \* Fund consultant, dated September 30, 1977).

"Pursuant to receipt of a copy of correspondence from \* \* \*, the Plan's consultant, to \* \* \* a former Trustee of the Plan, in December of 1974 and subsequent telephone conversations with \* \* \*. Affiant performed an [\*4] allocation based on each employer's Plan. This allocation was performed in 1975. . . . Prior to the allocation performed by Affiant, the Fund Administrator would perform an allocation for each terminated employer." (Affidavit of \* \* \* dated May 17, 1978).

The relevant evidence, including the plan terms and the submissions cited above, indicates that, on an ongoing basis, the assets held by the Fund trustees were available to pay the benefits of all employees covered under the Fund.

The Fund actuaries' allocation of Fund assets among the employee groups (on which the Fund determined benefit levels) was based on annual review of the ratio of contributions made for the different employee groups during the year. This ratio was applied to the Fund's assets, after subtracting, inter alia, the present value of retirees' benefits. (Letters, dated August 9 and September 7, 1976, from \* \* \* Fund actuary, to \* \* \* PBGC case officer). Under this asset allocation system, an employer, who paid in 15% of the current year's contributions, was credited with 15% of the applicable portion of the Fund's assets, whether or not that allocation of assets actually bore any reasonable relationship [\*5] to that employer's cumulative contributions for his employee group and investment returns, less benefits paid to his employee group.

My conclusion in this case is based upon a weighing of all the facts and circumstances relevant to the status of the Fund at the time \* \* \* ceased making contributions. In this regard, the provisions of the Fund document and the manner in which the Fund was operated on an ongoing basis constitute the factual context for my decision. In order to form a judgment as to the application of this material to the relevant provisions of Title IV of ERISA, it is necessary to consider the overall effect of plan provisions and practices. It is my conclusion that under any tenable interpretation of the statute, the Fund had the characteristics of a single plan as of May 31, 1975, and consequently no termination occurred on account of \* \* \* cessation of contributions.

Matthew M. Lind  
Executive Director