

Pension Benefit Guaranty Corporation

75-85

September 11, 1975

REFERENCE:

[*1] 3(35) Definitions. Defined Benefit Plan
4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4043(b)(3) Reportable Events. Decrease in Participants

OPINION:

This letter is to confirm the information given you by * * * in her previous phone conversation with you concerning the points raised in your letter of June 6, 1975.

As you have been advised, the PBGC does take the position that both of the above-captioned plans are defined benefit plans. We base this decision on the language of § 3 of both plans, which provides, in pertinent part, that employees shall be eligible for benefits "allocated as and to the extent mathematically calculated from time to time by an actuary . . . (A copy of the actuarial allocation is hereto attached marked 'Exhibit A' and by specific reference made a part hereof . . .) which based upon the payments provided for in Section 9 made by the Company into the Fund can be provided . . ." n1

n1 The quoted language is taken from § 3 of the Voluntary Plan but it is essentially the same as the language of § 3 of the Union Plan.

Exhibit A to each plan sets forth the formula, including dollar amounts, for computing each type of benefit payable under the plans. [*2] A typical provision of Exhibit A is that found in the October 2, 1968 Exhibit A to the Voluntary Plan which provides that: "(t)he amount of Normal Retirement benefits payable to a retired Employee in accordance with Section 3.1 shall be \$3.00 per month multiplied by the number of years of Credited Service as defined in Section 4."

Thus, under both plans the benefits payable are computed in accordance with specified formulae, which is the essence of a defined benefit plan. The fact that the dollar amounts to be used in the formulae may vary from time to time does not change the basic nature of the plan; it is still one which provides for a defined benefit.

It is also our determination that both the Union Plan and Voluntary Plan provide basic benefits, as that term is defined under § 4022(a) of the Act (such as a normal retirement benefit and a disability benefit). We are including herewith for your information a copy of the Corporation's proposed regulations defining basic benefits. (We expect that the final regulations will be published in the Federal Register within the next week.) We cannot, however, determine as yet the extent to which each participant's basic benefits will [*3] be guaranteed by this Corporation pursuant to the limitations set forth in § 4022(b) of the Act.

As noted above, we understand that under both plans the benefit levels may fluctuate, but this of course is not uncommon under defined benefit plans. While a reduction in benefits does not necessarily result in a plan termination, it is a reportable event pursuant to § 4043(b) (2) of the ACT and this Corporation must be notified of any such benefit reductions. In the event of a termination of either the Union Plan or the Voluntary Plan, the maximum benefit level which would be guaranteed by this Corporation would be the benefit level in effect at the date of termination.

Finally, it is our opinion that the Act requires this Corporation to guarantee the payment of all underfunded basic benefits under a covered pension plan upon the termination of such plan. Further, we believe that waiver of their rights by participants would generally be inconsistent with the public policy expressed in the Act.

Henry Rose
General Counsel