

Pension Benefit Guaranty Corporation

87-4

February 26, 1987

REFERENCE:

[\*1] 4041(a)(3) Termination by Plan Administrator  
(SEPPAA) - Violation of Collective Bargaining Agreement

OPINION:

This is in response to your request that the Pension Benefit Guaranty Corporation (PBGC) suspend the termination of the plan named above because ". . . the collective bargaining agreement between the \* \* \* and \* \* \* provides that the \* \* \* Pension Plan shall continue in full force and effect. The Union construes this language to mean that the \* \* \* Pension Plan will continue to be effective and applicable during the term of the collective bargaining agreement which does not expire until \* \* \* October 31, 1987."

According to Section 4041(a)(3) of the Employee Retirement Income Security Act, as amended by the Single-Employer Pension Plan Amendments Act of 1986 (ERISA) --

[the PBGC] shall not proceed with a termination of a plan under this section if the termination would violate the terms and conditions of an existing collective bargaining agreement.

The PBGC believes that the question of whether a particular termination violates the terms and conditions of a particular collective bargaining agreement should be decided in accordance with applicable labor-management relations law [\*2] and practice. Therefore, in order for the PBGC to suspend a termination pursuant to section 4041(a)(3) of ERISA, the PBGC must be advised timely and in writing that a formal challenge has been initiated asserting that the termination violates an existing collective bargaining agreement. A formal challenge would include the commencement of any procedure specified in the collective bargaining agreement for resolving disputes under the agreement; the filing of a charge with the National Labor Relations Board alleging an unfair labor practice under section 8 of the National Labor Relations Act; or the commencement of an action under section 301 of the National Labor Relations Act in a court of competent jurisdiction. Your letter does not indicate that a formal challenge has been initiated asserting that termination of the \* \* \* Plan would violate an existing collective bargaining agreement.

In the case of a standard termination, evidence that such a formal challenge has been initiated must be received by the PBGC before the expiration of the 60-day period that ERISA section 4041(b)(2)(C) provides for the PBGC to review the standard termination. This 60-day review period begins on [\*3] the date on which the PBGC receives a complete standard termination notice for the plan. The PBGC has not received a complete standard termination notice for the plan named above as of the date of this letter.

In the case of a distress termination, evidence that a formal challenge has been initiated must be received by the PBGC before the PBGC makes the determinations relating to sufficiency or insufficiency in accordance with ERISA section 4041(c)(3)(A). As of the date of this letter, the PBGC has not received notice of a proposed distress termination and so has not made these determinations.

John H. Falsey  
Acting General Counsel