



Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

May 17, 2006



Re: Case 194601, Northwestern Steel & Wire
Co. Pension Plan B ("Salaried Plan")

Dear :

The Appeals Board has reviewed your appeal of the PBGC's August 23, 2004 determination of your benefit under the Salaried Plan. In your appeal, you request a recalculation of your Salaried Plan benefit without applying a phase-in reduction of your Rule-of-65 shutdown benefit. For the reasons stated below, we deny your appeal.

Background

The Northwestern Steel & Wire Company ("Company") maintained two defined benefit pension plans. The Salaried Plan covered non-union workers, while Plan A ("Hourly Plan")(collectively, the "Plans") covered union workers.

The Pension Plans Prior to 1988

The Rule-of-65 ("R65") early retirement benefit was included in both the Salaried and Hourly Plans effective in 1980. Both plans provided an unreduced early retirement benefit to employees meeting

certain age and service requirements, if (1) the employee was disabled, or (2) the Company and the employee agreed that the employee's retirement was mutually beneficial for the employee and the Company. See Exhibits 1A, 1B. Additionally, under the Hourly Plan an employee could qualify for the R65 benefit if the employee was laid off following a plant shutdown with no prospect of future long-term employment with the Company. See Exhibit 1B.

Treasury Regulation 1.411(d)-4

In 1988, the Treasury Department issued a regulation, generally effective for plan years beginning on or after January 1, 1989, prohibiting plans from conditioning the availability of a benefit, such as early retirement, on the employer's consent. Treas. Reg. §§ 1.411 (d)-4, Q-4 through Q-9. Under this regulation, a plan sponsor was required to amend any such plan provisions to reflect one of the following options: (1) eliminate the consent requirement, (2) eliminate the benefit conditioned on the consent, or (3) condition the availability of the benefit on objective criteria set forth in the plan. Id.¹

Subsequent Plan Amendments

To comply with the 1988 Treasury Regulation, in December 1994, the Company restated the Hourly and Salaried Plans, effective August 16, 1988. The restated plan document removed the provision allowing participants to receive the R65 benefit with the Company's consent. Following these changes, the Hourly Plan continued to provide a R65

¹ Subsequent Treasury Department notices extended the time limits for adopting such amendments until the mid-1990s.

shutdown benefit. See Exhibits 3A, 3B. However, the Company did not amend the Salaried Plan to allow for the R65 benefit in the event of a plant shutdown until November 1998. See Exhibit 4, Second Amendment of Pension Plan B of Northwestern Steel & Wire Co.

PBGC's Phase-In of R65 Benefits in the Salaried Plan

On August 28, 2001, PBGC terminated and trusteeed both the Salaried and Hourly Plans. PBGC guarantees the pension benefits under each Plan, subject to certain limitations imposed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461 (2000 & Sup. III, 2003) ("ERISA").

One of those limitations requires PBGC to "phase in," or pay only a percentage of, benefit increases added to a plan within five years of its termination. 29 U.S.C. § 4022(b). This "phase-in" is equal to the greater of twenty percent of the increase in the monthly benefit, or \$20.00 per month, for each full year the plan amendment was in effect before plan termination. 29 U.S.C. § 4022(b)(7). In this case, the Salaried Plan was amended in November 1998 to include plant shutdown as a qualifying event for the R65 early retirement benefit. Because the Salaried Plan terminated in August 2001, the amendment was in effect more than two years, but less than three years, before termination. As a result, ERISA requires PBGC to phase in such a benefit increase by the greater of 40% or \$40. 29 U.S.C. § 4022(b)(7).

Benefit Determination and Appeal

In its August 23, 2004 determination letter, PBGC informed you that you are entitled to a monthly payment of \$771.77. PBGC's Benefit

Statement indicated that your R65 shutdown benefit was subject to a 40%/\$40 phase-in. See Exhibit 5, Benefit Statement. On October 1, 2004, you appealed the benefit determination, contending the R65 shutdown benefit under the Salaried Plan should not be phased-in. In addition, you ask why you did not receive an Additional Money Benefit when younger participants with less service received this benefit. See Exhibit 6.

Discussion

Additional Monthly Benefit

As you note in your appeal, the benefit statements for some Plan participants indicate that they receive an “Additional Monthly Benefit from 4022(c).” Under ERISA § 4022(c), PBGC allocates certain additional funds based on its experience in recovering on claims against plan sponsors.

In the Salaried Plan, the Section 4022(c) amount was fully exhausted in the process of partially covering benefits that were provided under the terms of the 1988 Plan, but that were not guaranteed by PBGC or funded out of the Plan’s assets. Line (6) of your PBGC Benefit Statement shows that your monthly benefit under the 1988 Plan (the pre-1998 Plan) was \$606.56 (as adjusted to make it directly comparable to the type of benefit provided under the 1998 Plan). Your guaranteed monthly benefit was \$771.77.

Since your guaranteed monthly benefit (\$771.77) exceeded your adjusted 1988 Plan benefit (\$606.56), you were not eligible for an Additional Monthly Benefit under Section 4022(c) of ERISA. As we

discussed in an April 2006 telephone conversation, it was possible for a Plan participant who was younger than you and who had less service than you did to become eligible for an Additional Monthly Benefit. In particular, a Plan participant with significantly higher average monthly earnings than your own could have become entitled to a 1988 Plan benefit that exceeded PBGC's guaranteed benefit limitations. If you require further explanation regarding this issue, please feel free to call me directly at (800) 326-4090 (Ext. 3739).

Reading the R65 Shutdown Benefit Provision into the Salaried Plan Prior to 1998

In your appeal, you argue that even though the Salaried Plan did not provide the R65 benefit in the event of a plant shutdown until November 1998, PBGC should nonetheless calculate R65 benefits under the Salaried Plan in the same manner as the Hourly Plan, since it was the employees' understanding and the Company's long-standing policy, that the plans were identical. ERISA, however, requires that all pension plan documents be in writing² in order to ensure that "every employee may, upon examining the plan documents, determine exactly what his rights and obligations are under the plan." H.R. REP. NO. 1280, *reprinted in* 1974 U.S.C.C.A.N. 4639, 5038, 5077-78.

PBGC must discharge its duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this

² 29 U.S.C. § 1102(a)(1) (2005).

title [Title I] and title IV.” 29 U.S.C. § 1104(a)(1)(D) (2005). Here, the R65 provision in the Salaried Plan, both prior to and after the 1998 amendment, is consistent with Title I and Title IV of ERISA, so the Salaried Plan documents are controlling with respect to the R65 provision. As the trustee of the Salaried Plan, PBGC is authorized “to pay benefits under the plan” in accordance with Title IV of ERISA. 29 U.S.C. § 1342(d)(1)(B)(i). Consequently, PBGC must pay benefits according to the Salaried Plan’s written terms, subject to limitations in ERISA.

While there are limited circumstances in which PBGC may look beyond the written plan documents to determine a participant’s benefit, such as when a plan provision is ambiguous³, such circumstances do not exist in this case. See Epright v. Envtl. Res. Mgmt., Inc. Health & Welfare Plan, 81 F.3d. 335, 340 (3d Cir. 1996) (noting that extrinsic evidence is only to be used when there is an ambiguity in the plan’s terms). Here, the terms of the Salaried Plan are clear and the R65 provision is not ambiguous; therefore, PBGC will not look to extrinsic evidence.⁴ Under the 1988 restatement of the Salaried Plan, plant

³ “An ambiguity exists when the terms or words of a pension plan are subject to more than one reasonable interpretation.” McDaniels v. The Chevron Corp., 203 F.3d 1099, 1110 (9th Cir. 2000).

⁴ Your appeal referred to communications from a former Company official as evidence of the Company’s understanding that the plans were identical and the Company’s intention to provide the R65 shutdown benefit to all employees whether hourly or salaried. As noted above, there are limited circumstances in which PBGC may look beyond the written plan documents to determine a participant’s benefit, such as when a plan provision is ambiguous. The Salaried Plan is not ambiguous on the R65 benefits. Therefore, PBGC cannot take this extrinsic evidence into account to determine a participant’s benefit.

shutdown is clearly not a qualifying circumstance for the R65 benefit. See Exhibit 3A. Moreover, the Salaried Plan's 1988 Summary Plan Description, which describes the plan provisions in plain language, also does not include plant shutdown as a qualifying event. See Exhibit 2. It was not until ten years later, as a result of the 1998 amendment, that plant shutdown was added as an eligible event for the R65 benefit under the Salaried Plan. Consequently, your benefit was properly calculated under the terms of the Salaried Plan.

Decision

For the reasons stated above, the Board denies your appeal. You may, if you wish, seek court review of this decision. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Roger Cushing

Roger Cushing

Appeals Board Member

Enclosures

Exhibit 1A – Salaried Plan SPD 1980 Rule-of-65 Provision

Exhibit 1B – Hourly Plan SPD 1980 Rule-of-65 Provision

Exhibit 2 – Salaried Plan SPD 1988 Rule-of-65 Provision

Exhibit 3A – Salaried Plan Rule-of-65 Provision Effective 8/16/88

Exhibit 3B - Hourly Plan Rule-of-65 Provision Effective 8/16/88

Exhibit 4 – Second Amendment of Salaried Plan

Exhibit 5 – Benefit Statement

Exhibit 6 – Benefit Appeal