



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

JUL 28 2005

Re: [redacted] Case 194313,
Plainwell, Inc., Ret. Pl. for Hrly. Emp. (the "Plan")

Dear [redacted]

We have reviewed your appeal of PBGC's May 10, 2004 determination that your client [redacted] is not entitled to an unreduced early retirement benefit under the Plan. For the reasons stated below, we are denying your appeal.

Benefit Determination and Appeal

PBGC's determination stated that [redacted] is entitled to an \$801.70 monthly benefit, instead of the \$973.00 estimated monthly benefit he was receiving. PBGC's Benefit Statement indicated that [redacted] benefit was subject to an early retirement reduction factor of 0.82. In a July 19, 2004 follow-up letter, PBGC explained that since [redacted] "did not reach age 62 before terminating employment, an early retirement factor should have been applied to his benefit."

PBGC's Benefit Statement also stated: "Since the benefit increase effective under the March 6, 1998 restatement and adopted on April 16, 2001 was in effect for less than one full year prior to the date of plan termination, no part of this increase is guaranteed."

In your July 29, 2004 appeal, you contended your client was entitled to an unreduced early retirement benefit because he had attained age 62 as of his March 1, 2002 retirement date. You stated he was covered by a September 17, 1999 collective bargaining agreement ("Agreement") which provides that "Employees who qualify for early retirement may retire at age 62 without their pension being reduced."

Applicable Law

When the Plan terminated on September 13, 2001, it did not have sufficient assets to pay benefits guaranteed by PBGC under Title IV of the Employee Retirement Income Security Act ("ERISA"). Section 4022(a) of ERISA provides that, subject to certain limitations contained in subsection (b), PBGC shall guarantee the payment of all nonforfeitable benefits under a covered plan which terminates. Section 4022(b)(1) of ERISA requires that any benefit increase ". . . resulting from a plan amendment which was made, or became effective, whichever is later, within 60 months before the date on which the plan terminates . . ." shall be phased-in, pursuant to Section 4022(b)(7) of ERISA, at the greater of 20% or \$20 per month for each 12 month period ". . . following the date on which the amendment is made or first became effective (whichever is later) . . .".

Phase-in of Benefit Increases

The Plan was amended and restated in a document effective March 6, 1998 and adopted April 16, 2001 (the "1998 Plan"). The Agreement which you submitted was both effective and adopted on September 17, 1999. The Plan terminated on September 13, 2001.

The Agreement provided the same benefit increases as the 1998 Plan. For phase-in purposes, a benefit increase is considered to be "in effect" as of the later of its effective date and its adoption date.

PBGC determined that [redacted] was entitled to the \$26.00 benefit rate which became effective for employees retiring on or after January 1, 2001. This benefit rate, however, was in effect for less than one full year prior to the Plan's September 13, 2001 termination date. Thus, no part of this benefit increase was guaranteed.

The Agreement provided a \$24.00 benefit rate which became effective for employees retiring on or after January 1, 2000. Since the Agreement was adopted on September 17, 1999, the \$24.00 benefit rate was in effect for more than one full year prior to Plan termination. The \$24 benefit rate, however, would only provide [redacted] with a \$797.71 monthly benefit [{"(\$1,051.25 + (6 yrs x \$24)) x 0.82 Early Retirement Factor x 0.8139 Form Factor}], which is less than his \$801.24 monthly benefit (Line(11) on Benefit Statement) under the pre-3/6/1998 Plan.

In conclusion, the Board has noted that the benefit rates provided under the 1998 Plan were actually adopted on September 17, 1999, rather than April 16, 2001. This, however, does not increase [redacted] guaranteed Plan benefit, because the \$26.00 benefit rate did not go into effect until January 1, 2001.

Early Retirement Reduction under the 1998 Plan

Section 2.02 of the 1998 Plan (excerpts enclosed) states that an Active Participant shall become an Inactive Participant on the earliest of the following four dates:

- (a) The date on which he ceases to be an Eligible Employee (or on his Retirement Date if he ceases to be an Eligible Employee within one (1) month of his Retirement Date).
- (b) The effective date of complete termination of the Plan.
- (c) The date he incurs an Accrual Break in service.
- (d) The date on which he becomes covered under any other separate non-governmental pension or profit-sharing plan (other than a defined contribution plan) to which the Company contributes.

PBGC's records indicate that [redacted] terminated employment on September 10, 2001. Thus, under Section 2.02(a), he became an Inactive Participant on September 10, 2001. Therefore, he became an Inactive Participant prior to his March 1, 2002 retirement date.

Section 5.02 ("Vested Benefits") provides that a "Participant who becomes an Inactive Participant before retirement or death will be entitled to" a deferred vested benefit to begin on his Normal, Early, or Late Retirement Date. (Under Section 2.03, an Inactive Participant who is not entitled to a deferred vested benefit ceases to be a Participant.)

Section 5.02(b) describes the deferred vested benefit payable at an Inactive Participant's Early Retirement Date:

- (b) A deferred monthly retirement benefit on the Normal Form to begin on his Early Retirement Date. The deferred retirement benefit shall be equal to the amount under (a) above [the amount payable at Normal Retirement Date] multiplied [reduced] by 0.5% for each complete month his

Early Retirement Date precedes his Normal Retirement Date [the first day of the month on or immediately following attainment of age 65].

Thus, Section 5.02(b) does not provide an unreduced early retirement benefit.

Under Section 4.04 of the 1998 Plan, an Active Participant can become entitled to an unreduced early retirement benefit as stated below:

An Active Participant's retirement benefit on his Early Retirement Date shall be equal to his Accrued Benefit on such specified date, reduced by 0.5% for each complete month his Early Retirement Date precedes his Normal Retirement Date. However, if the Active Participant has attained age 62 on his Early Retirement Date, such reduction factor above shall not be applied.

Section 4.04, however, does not apply to [redacted] because he did not attain age 62 as an Active Participant.

Plan Practice

PBGC's actuaries concluded it was the Plan's practice prior to Plan termination to pay unreduced early retirement benefits only to Active Participants who had attained age 62 as of their early retirement dates. The Board reviewed and agreed with this conclusion.

Further Discussion

The Plan terminated on September 13, 2001, and PBGC trusteesd the Plan on June 28, 2002. [redacted] received a benefit estimate dated November 28, 2001. This benefit estimate indicates that [redacted] would become entitled to an unreduced early retirement benefit as of a Benefit Commencement Date of March 1, 2002 (the first of the month following his attainment of age 62). This estimate, however, is inconsistent with the Plan document and Plan practice, because [redacted] did not commence early retirement after attaining age 62 as an Active Participant.

You enclosed with your appeal an excerpt from Section 9 of the Agreement which states: "Employees who qualify for early retirement may retire at age 62 without their pension being reduced."

The Board does not consider the language in Section 9 of the Agreement to be inconsistent with the Plan document. In particular, please note that [redacted] is not an employee who retired at age 62. Instead, he is a former employee who retired at age 62.

In conclusion, the Board found that PBGC correctly based its determination on the clear terms of the formal Plan document and on the *consistent practice of the Plan* prior to Plan termination.

Decision

Having reviewed the law, the Plan's provisions, and the Plan's practice, we are denying the appeal you filed on behalf of your client, [redacted]. This is the agency's final decision. You or your client may seek court review. If you or your client need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242 and ask to speak to the Authorized Representative for the Plan.

Sincerely,

William D. Ellis

William D. Ellis
Appeals Board Member

cc: [redacted]

Enclosure: Excerpts from 1998 Plan