

1587717

FORM 307-C7-608-491D-A



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

DEC 16 2003



Re: Appeal The Retirement Plan for Salaried Employees of Sharon Steel Corporation ("Salaried Plan," Case #: 161810)

Dear

The Appeals Board has reviewed your appeal of PBGC's January 3, 2000 corrected determination of your Salaried Plan benefit. As explained below, we are denying your appeal.

PBGC determined that you are entitled to a benefit of \$440.62 per month, payable in the form of a 50% Joint and Survivor Annuity. (PBGC's first determination, dated December 21, 1999, incorrectly said that your benefit was payable as a Straight Life Annuity with no survivor benefit.) PBGC noted that this amount is larger than the estimated benefit of \$425.88 per month you have been receiving. PBGC will send you a one-time payment for the difference, which will include interest from your retirement date (August 1, 1998) to the first of the month in which PBGC pays you. According to your January 24, 2000 appeal, your only disagreement is with the "phase-in" reduction to your benefit.

Plan History

The Salaried Plan adopted an amendment on March 11, 1988, that froze benefit accruals (but not vesting or eligibility service) retroactively to June 30, 1987. Because this freeze was retroactive and reduced participants' accrued benefits, it required IRS approval under section 412(c)(8) of the Internal Revenue Code and section 302(c)(8) of the Employee Retirement Income Security Act (ERISA). On September 8, 1988, the IRS approved the amendment. The terms of the amendment did not place any conditions on its effectiveness, nor did the amendment contain an expiration date. On January 1, 1989, the Plan was amended to "unfreeze" benefit accruals, effective June 1, 1991. This amendment did not restore benefit accruals for the period the freeze was in effect, i.e., between June 30, 1987 and June 1, 1991.

When the Salaried Plan terminated, effective October 17, 1993, its assets were not sufficient to provide all benefits PBGC guarantees under Title IV of ERISA. Because of legal limitations under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

158.7717

Phase-in of PBGC's Guarantee of Benefit Increases

ERISA sections 4022(b)(1) and (b)(7) phase-in PBGC's guarantee of "any increase in the amount of benefits under a plan resulting from a plan amendment" made or effective within the five years before Plan termination. This phase-in is equal to the greater of 20 percent of the benefit increase per month, or \$20.00 per month (but not more than the amount of the increase), for each full year the Plan amendment was in effect before Plan termination. Under ERISA, the time a benefit increase is in effect begins with the later of the date the increase was adopted or the date it became effective.

Section 4022.2 of PBGC's regulation on *Benefits Payable in Terminated Single-Employer Plans* defines a benefit increase as "any benefit arising from the adoption of a new plan or an increase in the value of benefits payable arising from an amendment to an existing plan." This section further states that "benefit increase" includes "any change in plan provisions which advances a participant's or beneficiary's entitlement to a benefit, such as liberalized participation requirements or vesting schedules, reductions in the normal or early retirement age under a plan, and changes in the form of benefit payments."

PBGC treated the Plan amendment unfreezing benefit accruals as a benefit increase subject to phase-in. PBGC determined that this amendment was "in effect" under ERISA for two full years between its effective date (June 1, 1991) and the Plan's termination date (October 17, 1993). Thus, PBGC phased-in its guarantee of benefits attributable to post-June 1, 1991 accruals at the rate of 40%/\$40 per month.

Discussion

Your appeal said that the accrual freeze was intended to be temporary and the unfreezing merely a resumption of old benefits, not a benefit increase. To support your position, you included a copy of an October, 1994 affidavit from a former Sharon Senior Vice President. While the affidavit does assert that company officials intended the freeze to be temporary, it also notes that the intent was to unfreeze the plan "at such time as the business prospects of Sharon Steel Corporation improved." However, ERISA's phase-in rule establishes a "bright-line" test governed only by the occurrence of a benefit increase. ERISA does not permit PBGC to ignore a required phase-in based on the intent or particular economic circumstances of a plan sponsor. Moreover, the terms of the freeze amendment did not place any conditions on its effectiveness, nor did it contain an expiration date. Thus, even if the freeze was intended to be temporary, a plan amendment clearly was required to "unfreeze" the Plan.

As a result of the March 11, 1988 freeze amendment, participants could accrue no additional benefits under the Salaried Plan, but instead were limited to the benefits they had earned as of the effective date of the freeze (June 30, 1987). Then, solely by operation of the June 1, 1991 unfreeze amendment, participants resumed accruing benefits based on their service and

#1587717

FEH130707-SCAS-491D-4

earnings after that date. The economic impact of this amendment was to increase immediately after June 1, 1991 the accrual rate of zero that was in effect immediately before June 1, 1991.

For the reasons described above, the Appeals Board concluded that the amendment unfreezing benefit accruals resulted in an increase in the value of benefits payable to Salaried Plan participants arising from an amendment to an existing plan.

Decision

Having applied the law, Plan provisions and PBGC regulations and policies to the facts in this case, the Appeals Board found that (1) the 1991 Plan amendment lifting the freeze on benefit accruals is a benefit increase under ERISA section 4022(b)(1)(B); (2) the amendment was in effect under ERISA for two full years before the Plan termination date; and (3) PBGC's guarantee of the amount of any benefit increase resulting from the Plan amendment is phased-in at the 40%/\$40 rate. Therefore, we found no basis for changing PBGC's determination of your benefit and must deny your appeal.

This is the Agency's final decision with respect to this matter and you may, if you wish, seek court review. If you have any questions, please call PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

Linda M. Mizzi
Member, Appeals Board

113 12 13 15