

Pension Benefit Guaranty Corporation

76-74

June 3, 1976

REFERENCE:

[*1] 4021(b)(1). Plans covered. Individual Account Plans

OPINION:

This is in response to your letter of April 23, 1976, addressed to * * * the Pension Benefit Guaranty Corporation, in which you ask the Pension Benefit Guaranty Corporation ("PBGC" or "Corporation") to advise you of its position regarding your opinion:

". . . that under these provisions [Article V, Section 2 of the Carpenters' Industrial Pension Plan and Article 2(a) of the Carpenters' Construction Pension Plan] of the Plans, read in the light of Sections 4021(b) and 3(34) of ERISA and the decision in the John Connolly case referred to above, the Pension Fund is not required or permitted to pay termination insurance premiums to the Pension Benefits [sic] Guaranty Corporation, in that the Pension Plans are excluded from the termination insurance provisions of ERISA as 'individual account plans' and/or 'defined contribution plans.'"

In addition, you ask whether or not the Corporation intends to appeal the decision rendered in the Connolly case.

The Corporation will appeal the Connolly decision. However, you should be aware that the Connolly decision only applies to the actual plan that was before the court, [*2] and that the benefit provisions contained in the * * * Plans are significantly different than the provisions in the * * * Plan.

While you did not provide the Corporation with a copy of the relevant portions of a collective bargaining agreement, it would appear from the terms of the Plan that a participating employer is obligated to contribute to the Fund a specific amount for each hour that a Plan participant works for that employer. Participants may earn Past and Future Service Credits based (primarily) on the number of hours they work in a given year. These Credits, however, are not a factor in determining the amount of a participant's benefit entitlement (except for the Past Service benefit in the Industrial Plan), rather they are utilized solely to determine who is or is not vested in a pension.

Section 3(34) of the Employee Retirement Income Security Act of 1974 ("ERISA" or "Act") provides:

"The term 'individual account plan' or 'defined contribution plan' means a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and [*3] any forfeitures of accounts of other participants which may be allocated to such participant's account."

In order to determine whether the * * * Plans meet the definition set forth above, each benefit provision in the Plans will be examined separately.

The * * * Pension Plan contains no provisions for maintaining individual accounts for each participant as required by the Act. Further, the pension benefit provided in the Plan is a flat dollar amount governed by the amount being contributed by the participant's employer at the time the pension commences, provided the participant has earned one year of Future Service Credit at that contribution rate. There appears to be no attempt to determine the amounts that have been contributed on behalf of an individual participant; nor, as required by the Act, is the individual participant's benefit determined by the amount of contributions made over the years on his behalf and any income or experience gains and losses credited to his account as required by the Act. Since the Normal Pension benefit provision contained in the * * * Pension Plan does not meet the statutory criteria of an individual account plan, the Plan cannot be excluded [*4] from Title IV coverage. Further, as the other forms of retirement benefits, i.e., Reduced, Early and Vested Deferred, are all based on the Normal Pension benefit, they, too do not meet the statutory definition of an individual account plan.

The * * * Pension Plan is somewhat more complex than the * * * Plan. Pension Credits are not only used to determine vesting but the Normal Pension is comprised of two parts, one based on Past Service Credits and one on Future Service Credits. A participant receives a defined benefit of \$1.50 per month for each year of Past Service Credit, if the

initial Contribution Rate paid on behalf of the employee was \$.10 per hour. A different dollar amount is determined actuarially if the initial contribution rate is less than \$.10 per hour.

The * * * Plan does provide for maintaining individual accounts for each employee. This account is "the sum of Employer Contributions made on behalf of an Employee, without additions for interest." Plan, Article I, § 19. A participant's monthly benefit is 1.5% of the amount in the Account as of his retirement. Since a participant is entitled to a benefit for life (Plan, Article VII, § 1), a monthly benefit [*5] of 1.5% of an Employee's Account would exhaust the Employee Account within 66 months of the participant's retirement if the participant's retirement benefit was paid solely from the Employee Account. Further, since there is no allocation of the trust's income, expenses, gains and losses to participant accounts, a participant's lifetime benefit cannot be funded solely from the amount in his account. The benefit in the Plan is based on and funded by the unallocated trust income and the aggregate benefit paid to the participant during his lifetime is not limited to the amount in his account; thus, the Plan does not satisfy the statutory individual account plan definition, and cannot be excluded from Title IV coverage as an individual account plan.

Under the terms of the Plan, should the reserves of the Plan used to pay such benefits become depleted, participants would still be entitled to benefits. It is these benefits that PBGC insures - and pays - when necessary. Thus, Plan participants would benefit from insurance coverage should the Plan ever be unable to pay benefits.

I hope the analysis set forth above is helpful in explaining PBGC's position on this matter. Should you have [*6] any further questions please feel free to contact me.

Henry Rose
General Counsel