

Pension Benefit Guaranty Corporation

78-11

June 23, 1978

REFERENCE:

[*1] 4064(a) Liability of Employers in Multiple Employer & Multiemployer Plans. Applicability
4064(b) Liability of Employers in Multiple Employer & Multiemployer Plans. Amount of Employer Liability
4062 Liability of Employer in Single Employer Plans
4041 Termination by Plan Administrator
4042 Termination by PBGC
4043. Reportable Events

OPINION:

This is in response to your request for rulings from the Pension Benefit Guaranty Corporation (the "PBGC") on certain implications under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") of a tentative agreement among the parties to the * * * Pension Fund (the "Fund"). Your request was made on behalf of * * *, which withdrew from the Fund effective June 30, 1976, and * * * * *, which withdrew effective December 31, 1977. Neither company was a substantial employer with respect to the Fund, within the meaning of ERISA § § 4001(a)(2) and 4063.

According to the information you and counsel for other contributing employers have given us, the two Unions that represent Fund participants and the employers currently contributing to the Fund have tentatively agreed with one another and with * * * and * * * on an arrangement whereby benefit [*2] accruals under the Fund will cease, but the Fund itself will remain in operation. The remaining employers will continue contributing to the Fund in an annual amount at least sufficient to meet the minimum funding requirements of Titles I and II of ERISA; the contribution obligation will be allocated among those employers in proportions that generally reflect the liability they would face if the Fund were terminated at this time. Fund participants who remain in the employ of the contributing companies will continue to receive vesting credit. The obligations of the three largest continuing employers, which together will be responsible for almost 90% of contributions to the Fund, will be unconditionally guaranteed by those companies' parent corporations. * * * and * * * will make negotiated lump-sum payments to the continuing employers for the benefit of the Fund.

It is our understanding that this tentative agreement was reached after difficult negotiations among all of the parties, who faced the prospect of Fund termination and extensive litigation following a series of employer withdrawals and reductions in participation. The parties have consulted PBGC from time to time in the [*3] course of exploring available alternatives, and we are persuaded that the proposed agreement is a good-faith arrangement to protect the valid interests of all concerned.

You have asked, first, whether the negotiated withdrawal payments to be made by * * * and * * * would be treated as plan contributions for purposes of § 4064 of ERISA. Section 4064(a) of ERISA imposes termination liability on "all employers who . . . at any time within the five plan years preceding the date of termination, made contributions under" a plan maintained by more than one employer. Under § 4064(b) of ERISA, the termination liability is allocated among the employers in accordance with their proportional share of the contributions required to be made over the preceding five-year period. The liability may be allocated "on any other equitable basis prescribed by the [PBGC] in regulations." If the negotiated withdrawal payments were treated as contributions under § 4064, the period during which * * * and * * * would be exposed to contingent termination liability would be prolonged, and their proportional shares of the liability calculated under the statutory formula would probably be increased.

We do not [*4] believe that Congress intended such a result under the circumstances presented here. The withdrawal payments are not being made in lieu of continuing contributions to the Fund, as neither company is obligated to make such contributions. Evidence available to us demonstrates that the arrangement is a bona-fide settlement of potential claims among the parties in an effort to avoid plan termination. The Fund and its participants will benefit directly from the withdrawal payments, which will mitigate the financial burden for the continuing employers and thereby strengthen the Fund's prospects for continuation. In light of these considerations, the PBGC will not treat withdrawal payments made by * * * and pursuant to the tentative agreement as "contributions" for purposes of § 4064 of ERISA.

Section, you have asked whether * * * and * * * * * would be treated as employers that maintained the Fund for purposes of § 4062 of ERISA. The Fund is a single plan to which more than one employer contributes. If the Fund terminates, the Title IV liability of the employers that have contributed to it will be determined in accordance with § 4064 of ERISA; § 4062 of ERISA will not be applied [*5] to determine * * * and * * * obligations with respect to the Fund.

Third, you have asked whether the proposed arrangement would constitute termination of the Fund under § 4041 of ERISA, or provide the basis for Fund termination under ERISA § 4042. Where, as here, benefit accruals cease but vesting, funding and compliance with the other requirements of Titles I and II of ERISA will continue, voluntary plan termination under § 4041 of ERISA is unnecessary; implementation of the tentative agreement would not automatically give rise to termination of the Fund under that statutory provision. Under § 4042 of ERISA, the PBGC has discretion to petition for court-ordered involuntary termination, if PBGC makes at least one of the findings enumerated in § 4042(a) of ERISA. On the facts now available to us, involuntary termination of the Fund does not appear appropriate. Please note that we have not investigated the financial condition of the continuing employers thoroughly. At present, however, we do not believe that the tentative agreement will constitute the basis for termination of the Fund in accordance with § 4042 of ERISA.

The cessation of accruals under the Fund will constitute [*6] a reportable event under § 4043(b) of ERISA. I am forwarding our correspondence to * * * PBGC's Division of Plan Review, which handles reportable events. If anything further is needed in this connection, a member of * * * staff will be in touch with the plan administrator.

I understand that you have informed * * *, * * * that the last question raised in your ruling request will be modified significantly. We will therefore defer responding pending receipt of your modified inquiry.

Please note that the above rulings relate solely to the application of the cited provisions of Title IV of ERISA. The PBGC takes no position on the possible treatment of the proposed transaction under other laws.

I hope these rulings are helpful. If you have any questions please be in touch with * * *, who can be reached by telephone at (202) 254-6476.

Henry Rose
General Counsel