

Pension Benefit Guaranty Corporation

76-75

June 4, 1976

REFERENCE:

[*1] Miscellaneous

208 Mergers, Consolidations and other Transfers of Plan Assets

OPINION:

We have carefully considered your letters of March 24, 1976 and of April 29, 1976. In your letter of March 24th, you have asked that we intervene in the matter of * * * vs. * * * etc. "to assert . . . [our] preemptive authority" and direct the parties not to take any steps to implement a court ordered merger of the two plans until we can conduct an investigation.

We have determined that we cannot take the steps you propose. The Department of Labor and the Internal Revenue Service have not yet issued regulations explicating and implementing § 208 with respect to single employer plans. In these circumstances, we have not yet issued regulations determining the extent to which § 208 applies to terminations with or among multiemployer plans. Consequently, as Mr. Delevett advised you, our position is that § 208's limitation on mergers is not yet in effect with respect to multiemployer plans. In any event, § 514(a) of the Act, which we assume you believe gives us the "preemptive authority" to which you refer, does ". . . not apply with respect to any cause of action which arose, or any act or omission which [*2] occurred before January 1, 1975." Act § 514(b)(1). The April 16, 1975 court opinion, which you supplied, states that ". . . on February 12, 1974, the trustees of the * * * by letter, informed the trustees of the * * * pension fund that they had voted not to proceed with the proposed integration." It thus appears that the cause of action upon which the State court's decree of specific performance is based arose prior to January 1, 1975. Therefore, in light of § 514(b)(1), we do not believe that the Act confers any authority on us to interfere in this matter. For these reasons, we decline to intervene.

Henry Rose
General Counsel