

Pension Benefit Guaranty Corporation

77-123

January 14, 1977

REFERENCE:

[*1] 4062(e). Liability of Employer in Single Employer Plans. Closing of Facility Affecting More Than 20% of Plan Participants

OPINION:

This is in response to your letter of *** and your subsequent telephone conversation with and letter of *** to *** of my staff. You asked whether notification to this Corporation, pursuant to Section 4062(e) of the Employee Retirement Income Security Act of 1974 (the "Act"), was required as a result of the cessation of operations as of *** by *** a wholly-owned subsidiary of ***, at its *** facility.

As we understand the pertinent facts, *** and its divisions and subsidiaries, all of which are under common control within the meaning of Section 4001(b) of the Act, participate in a total of seven non-multiemployer pension plans. A total of *** hourly and salaried employees employed by *** its subsidiaries and divisions were active participants under the seven plans. *** employees at the *** plant participated in two *** of these plans: *** (the "Salaried Plan") and *** (the "Hourly Plan"). As a result of the shutdown of the *** facility at *** of the *** participants in the Salaried Plan and *** of the *** participants [*2] in the Hourly Plan have been separated from employment.

You suggest that Section 4062(e) does not apply when a cessation of operations at a facility results in the separation from employment of less than 20% of the total number of participants in all non-multiemployer plans maintained by *** its divisions and subsidiaries. Under this reading of the Act, no notification pursuant to Section 4062(e) would be required in this case, because the closing of the *** facility resulted in the separation from employment of less than 20% *** of the employees of ***, its divisions and subsidiaries, participating in the seven aforementioned pension plans.

We have considered your presentation and have concluded that your suggestion would not result in a reasonable interpretation of Section 4062(e) of the Act. We believe a more persuasive reading to be that only the participants in each plan should be counted in applying Section 4062(e). We do not believe that Section 4062(e) supports the interpretation that all employees participating in all non-multiemployer plans maintained by the employer, as determined under Section 4001(b) of the Act, must be aggregated for purposes of determining [*3] whether the 20% total of Section 4062(e) is satisfied. The focus of Section 4062(e), as with respect to most of Title IV, is the individual plan.

Section 4001(b) of the Act, on the other hand, only defines the employer for purposes of Title IV. Thus, it defines, inter alia, the entity liable to this Corporation upon the occurrence of a plan termination. It does not define the term "plan."

Accordingly, based upon the above facts, we have determined that notification to this Corporation pursuant to Section 4062(e) is required with respect to the Hourly Plan (but not the Salaried Plan) because the cessation of operations at the *** facility has resulted in the separation from employment of more than 20% of the participants in the Hourly Plan; your letter of *** will be deemed to have constituted such notice. Consequently, we are referring this matter to *** of this Corporation's Office of Program Operations for further attention.

I hope this information is of assistance to you.

Henry Rose
General Counsel