

Pension Benefit Guaranty Corporation

80-20

November 25, 1980

REFERENCE:

4022(a) Benefits Guaranteed. Type of Benefits Guaranteed
4041 Termination by Plan Administrator
4042 Termination by PBGC

OPINION:

This is in response to your letter to * * * of this Office in which you request that the Pension Benefit Guaranty Corporation ("PBGC") seek appointment as Trustee of the A Industries, Inc. Employees' Retirement Plan (the "Plan") under Section 4042 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1342. Further, you request that PBGC take steps to ensure that participants will receive guaranteed benefits consistent with the minimum requirements of Title I of ERISA, even though the Plan had not been amended to comply with those requirements. As explained more fully below, the information before PBGC at present appears to indicate that benefits provided under the terms of the Plan are sufficiently funded and that proceedings in accordance with the provisions of Section 4042 of ERISA will be unnecessary. Further, PBGC was without authority under the law in effect at the time the Plan terminated to guarantee benefits other than those described in the Plan.

As we understand the facts, [*2] the Plan was established in 1971 during collective bargaining between Local 304, * * * as Local Union 304, * * * hereinafter the "Union") and B Inc. The Plan had an effective date of September 7, 1973.

A Industries * * * was incorporated in South Dakota in January, 1973, and took over B that same month. It opened its meat packing plant in Sioux Falls, South Dakota, on March 5, 1973, employing B's former employees. As part of its takeover, A agreed to recognize the Union and to assume the obligations under the existing collective bargaining agreement, including the sponsorship of the Plan.

In December, 1973, A amended the Plan to change the funding vehicle and to define more fully the criteria for benefit qualification and for earning credited service. Thereafter, the Plan provided that after 10 years of credited service, an employee could qualify for a disability pension at any age, a normal retirement benefit at age 65, and an early retirement benefit at age 60. An employee who had 15 years of credited service and had reached age 50, but was not over 60, could qualify for a deferred vested benefit. There was no vesting schedule. After 1973, the Plan was not amended again. [*3]

On October 4, 1977, A sent a brief letter to the General Counsel of PBGC stating that the Plan was terminated, effective September 6, 1977. After being informed by letter dated October 11, 1977, that a Notice of Intent to Terminate, in compliance with 29 C.F.R. § 2604.4, would be required, A filed its Notice on March 16, 1978. PBGC thereafter attempted to make a determination of the sufficiency of the Plan as required by ERISA § 4041.

The determination of sufficiency requires extensive information so that the plan assets may be valued as of the date of plan termination and the nonforfeitable benefits under the terms of the plan can be calculated. The Company initially provided insufficient information for PBGC to determine whether the assets held under the Plan were sufficient to discharge when due all obligations with respect to guaranteed benefits. As a result, in October, 1979, PBGC informed A that it would commence steps to place the Plan in trusteeship. However, additional information was provided and preliminary estimates show that the assets are sufficient to pay the benefits determined under the terms of the Plan. Therefore, trusteeship of the Plan by PBGC [*4] would not be appropriate at this time.

Under the law in effect at the time the Plan terminated, PBGC guaranteed benefits that were nonforfeitable under the terms of a terminated plan (ERISA § 4022(a)). Nothing in the statute allowed PBGC to base its guarantees on anything but the terms of the plan. As a result, if a plan had not been amended to comply with ERISA, the PBGC was unable to guarantee the benefits to which a participant was entitled under the minimum standards established by Title I of ERISA.

Congress recognized that PBGC could not guarantee benefits, which, though required by Title I OF ERISA, had not

been adopted by plans; thus, innocent participants were paying a price in lost benefits because some employers failed to ERISAFy their plans. As a result, Congress included in the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), Pub. L. No. 96-364 (Sept. 26, 1980), an amendment to ERISA § 4022(a). MPPAA § 403(c). Under the amended law, PBGC now has the authority to guarantee benefits for which the participants have satisfied the appropriate requirements of Title I of ERISA. However, this new authority applies only to plans that terminate after the [*5] date of enactment of the MPPAA, September 26, 1980, and thus cannot have any effect on the A Plan.

When PBGC ultimately makes its determination of sufficiency under ERISA § 4041, we will inform you. If you have any questions concerning the foregoing, please contact * * * of this office at (202) 254-4873.

Mitchell L. Strickler
Acting General Counsel