

Pension Benefit Guaranty Corporation

82-6

March 4, 1982

REFERENCE:

[\*1] 3(16) Definitions. Administrator  
4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate

OPINION:

This is in response to your request that the Pension Benefit Guaranty Corporation (the "PBGC") reconsider its initial determination that the Notice of Intent to Terminate (the "Notice") the above-referenced pension plan (the "Plan") is not valid under section 4041 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. No. 96-364 (September 26, 1980), 29 U.S.C. § 1341 ("ERISA"). After reconsideration of this matter, I conclude that the Notice is invalid.

Pursuant to ERISA section 4041(a), 29 U.S.C. § 1341(a), and PBGC Regulation 2612.3(b), 29 C.F.R. § 2616.3(b), a valid notice of intent to terminate a pension plan under Title IV of ERISA must be signed by the plan administrator, as that term is defined in ERISA section 3(16), 29 U.S.C. § 1002(16). Pursuant to Plan Article III, section 1, "[t]he Plan shall be administered by a Board of Administration (who shall be the Plan Administrator as provided for under section 3(16) of ERISA) . . . ." The Board of Administration is to be composed of [\*2] four members, two appointed by the Company and two appointed by \* \* \* (the "Union"). Plan Article III, section 1. The Plan further provides that a quorum for the transaction of business of the Board of Administration consists of at least one Company-appointed and one Union-appointed. Plan Article III, section 3.

The Notice was not signed by the Board of Administration, which is the plan administrator. Rather, the Notice was signed by the president of the Company and received by the PBGC on April 29, 1981.

Although the Company questions the existence of the Board of Administration, the Union advises that \* \* \* were appointed to the Board by the Union in the early 1960s; \* \* \* left the Board in the late 1970s; and \* \* \* remained a member of the Board.

The Company asserts that the Company, through its personnel department, filled the role of and performed the duties of plan administrator. The same Plan Article III, which expressly states that the Board of Administration is the plan administrator, lists the duties of the Company with respect to plan administration, e.g., preparing and filing all appropriate governmental forms, establishing and carrying out a funding policy [\*3] and method consistent with ERISA, and furnishing the Board with necessary employee data to enable the Board to establish employee's rights to benefits and the amount of the benefits. The Company cannot be heard to assert that the Company, by fulfilling its own express administrative duties, became de facto plan administrator.

Additionally, I note that in 1977 and 1979 the Company lent its hand to amending the Plan. Yet the amendments did not conform the Plan to the reality the Company now asserts existed. For example, one amendment increased the responsibilities of the Board of Administration and obligated each Plan participant to notify the Board if the participant changed address.

Based on the foregoing, I conclude that in the instant case the Notice submitted has not been filed by the plan administrator. You have exhausted your administrative remedies by seeking this reconsideration. This letter constitutes a final determination, of the PBGC and is effective on the date of its issuance. If you have any questions regarding this matter, please contact \* \* \* of my staff at (202) 254-4873.

Henry Rose  
General Counsel