

Pension Benefit Guaranty Corporation

75-37

December 5, 1975

REFERENCE:

[*1] 4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974 and September 2, 1974

OPINION:

This is in reference to the notices of termination filed on September 11, 1974 by * * * of the * * * The notices apply to the * * * Pension Plan for Hourly Factory Employees of * * * and the "Basic Pension Plan for Non-Bargaining Unit Employees of * * *, a Division of the * * *" The notices of termination were submitted pursuant to the provisions of § 4082(b) of the Employee Retirement Income Security Act of 1974 (the "Act") and indicated that both plans terminated on August 28, 1974.

We have completed our review of the information provided with the notices of termination and subsequent submissions forwarded at our request. We have been unable to find substantial evidence that the plans were not terminated for the purpose of avoiding liability under subtitle D of the Act or for the purpose of obtaining the payment of benefits by the Pension Benefit Guaranty Corporation (the "PBGC"). The PBGC may not pay benefits under Section 4082(b) of the Act absent its making the above findings.

It is our position that the only manner of effectuating either [*2] of these two disqualifying purposes is to manipulate the timing of the terminations. The evidence presented to this corporation indicates that the date of August 28, 1974 was fixed after considering the provisions of the Act relating to the impact of the date of termination on employer liability. The evidence further indicates that prior to that date no consideration of the precise timing had been given other than to terminate the plans as a result of terminating the manufacturing operations of the * * * division. The manufacturing operations, we understand, terminated after September 2, 1974. Accordingly, we intend to close these cases absent the submission of additional information within 30 days of your receipt of this letter.

Henry Rose
General Counsel