Pension Benefit Guaranty Corporation

75-95

December 3, 1975

REFERENCE:
[*1] 4006(a)(3) Premium Rates. Initial Rates
4062(a) Liability of Employer in Single Employer Plans. Applicability
4062(b) Liability of Employer in Single Employer Plans. Amount of Employer Liability

OPINION:

The Department of Labor recently forwarded for reply, by this Corporation, a copy of the letter sent to you by * * *

* * * A copy of that letter is attached. * * * questions numbered 1,2, and 5(g) relate to the sections of the Employee Retirement Income Security Act of 1974 ("ERISA") which the Pension Benefit Guaranty Corporation ("PBGC") administers.

Question number 1 asks whether a union, in its capacity as an employer, may be liable upon termination of a pension plan in the same manner as an employer. If so, the writer asks, would the union have to "put up" 30 percent of its assets?

Under ERISA, when a labor union maintains a pension plan for its employees, it would be liable as an employer in the event of termination (ERISA § § 3(5), 3(9), 4062, 4064). As you are no doubt aware, that liability is the lesser of the difference between the current value of the plan's guaranteed benefits over the current value of the plan's assets allocable to such benefits, and 30 percent of the employer's [*2] net worth (ERISA § § 4062, 4064). If the union's employees are participants in a multiemployer plan, the union's liability would generally be based upon the ratic of the union's required contributions over the 5-year period preceding termination to total contributions required of all employers (including the union) during that period. See ERISA § 4064.

Question number 2 asks how a pension plan can collect liability owed to it by an employer contributor which has been adjudicated a bankrupt. Of course, it is impossible to deal with this question fully, in light of the varied factual circumstances it may embrace. But if the question refers to a "substantial employer" (one who contributes 10 percent or more to a plan to which at least two employers contribute) who withdraws from a plan, the plan may not need to collect from the bankrupt. Such an employer must post a bond or place funds in escrow to assure payment of the employer's share of liability to PBGC if the plan terminates within the 5-year period. Where this procedure is followed, the escrowed funds, or bond proceeds, will ordinarily be available to the PBGC, and there is no need for the plan to collect any money thereafter. [*3] On the other hand, the PBGC may waive a security arrangement where it determines that there is an indemnity agreement among the other employers under the plan which provides adequate protection. In that situation, the plan may have to file a claim in bankruptcy in the event it needs to enforce the indemnity agreement.

Fianlly, question number 5(g) urges that multiemployer plan insurance premiums which are presently due be "withheld" until January 1, 1978, since plan termination insurance does not generally cover such plans until that date. ERISA requires the payment of premiums by multiemployer plans in years preceding mandatory insurance coverage for such plans. See ERISA § § 4006(a)(3), 4082. And PBGC has no authority to waive them. It should be noted, moreover, that PBGC has discretion to guarantee benefits in multiemployer plan terminations prior to January 1, 1978 (ERISA § 4082(c)(2), (3)). In fact, several plans have requested that the * * * Corporation exercise that power, as you may be aware. Under the circumstances, it does seem appropriate that multiemployer plans pay premiums from the date of enactment, as the Act requires.

I hope that we have answered your constituent's [*4] questions to his satisfaction. Should he wish further information, he may contact PBGC directly at 2020 K Street, N.W., Washington, D.C. 20006.

Henry Rose
General Counsel