

Pension Benefit Guaranty Corporation

76-100

August 6, 1976

REFERENCE:

[\*1] 4041(a) Termination by Plan Administrator. Filing of Notice of Intent to Terminate 4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974 and September 2, 1974

OPINION:

The Pension Benefit Guaranty Corporation ("PBGC") has reviewed its determination that \* \* \* (the "Plan") terminated after the date of enactment of the Employee Retirement Income Security Act of 1974 (the "Act") and the provisions of § 4082(b) are therefore not applicable. In making a determination of a date of termination under § 4082(b), the PBGC carefully reviews the facts and circumstances in each case. Accordingly, in undertaking this review, the PBGC has considered your letter of November 21, 1975, and the substance of recent telephone discussions with \* \* \* of the Office of the General Counsel in which you took the position that the Plan terminated on July 19, 1974.

The pertinent facts, as we understand them, are as follows. On September 12, 1974, a notice of plan termination pursuant to the provisions of § 4082(b) was duly filed on behalf of the Plan. Following a review of this matter, the PBGC concluded that the Plan did not terminate after June 30, [\*2] 1974, and prior to September 2, 1974, but at a time after the date of enactment of the Act because of the continuance of monthly contributions to the plan fund through May 19, 1975. Accordingly, par letter of November 7, 1975, the PBGC determined that the Plan terminated after the date of enactment of the Act and therefore recommended that a notice of intent to terminate be filed in accordance with the requirements of § 4041(a).

In support of your proposition that the Plan terminated on July 19, 1974, you have indicated in discussions with this Office and in your letter of November 21, 1975, that the eight employees of \* \* \* Who continued to work and accrue pension credits after the July 19, 1974 closing of the \* \* \* plant were thereafter considered to be employees of a co-subsidiary, \* \* \* and therefore contributions to fund pension credits earned by these employees were erroneously made to the Plan and should have been made to the pension plan maintained by \* \* \* Further, you indicated that determination of July 19, 1974, as the termination date of the Plan is consistent with a position previously adopted by the PBGC with respect to another plan termination, in that the number [\*3] of employees who continued to work after the July 19, 1974 plant closing was too insubstantial to warrant determination of a later date of termination. Finally, you requested that the PBGC concur in a transfer of contributions and pension credits earned after July 19, 1974, from the Plan to the pension plan maintained by \* \* \*

As a result of its review, the PBGC has reaffirmed its prior determination that the Plan terminated after the date of enactment of the Act. We have considered representations that the eight shipping employees of \* \* \* who continued to work following the July 19, 1974 closing of the \* \* \* plant exclusively shipped good manufactured by \* \* \* and that immediately following the plant closing these employees no longer worked at the \* \* \* plant, but at another location under the control of \* \* \* We also have reviewed your report that following the closing of the \* \* \* plant on July 19, 1974, negotiations commenced between \* \* \* and the collective bargaining agent representing the eight remaining \* \* \* employees to bring these employees within the employ of \* \* \*

The new information does not undermine the basis of our original decision that the eight employees [\*4] remaining after the closing of the \* \* \* plant, as employees of \* \* \* continued to accrue benefits under the Plan and that contributions were therefore made to the correct plan. Further, although approximately 94 participants left employment on or before July 19, 1974, as a result of the plant closing, the fact that these eight participants continued to receive pension credits after July 19, 1974, until May 19, 1975, demonstrated substantial Plan activity into 1975. Under these circumstances, contributions made to fund benefits earned by the eight \* \* \* employees for the period July 19, 1974, to May 19, 1975, should not be transferred to the trustee of the pension plan maintained by Accordingly, because contributions under the Plan were made until May 19, 1975, the provisions of § 4082(b) are not applicable, and termination of the Plan must proceed pursuant to § 4041. We therefore recommend that a notice of intent to terminate pursuant to § 4041 be filed with the PBGC.

Kenneth L. Houck  
Executive Director