

Pension Benefit Guaranty Corporation

85-26

November 22, 1985

REFERENCE:

[*1] 4022 Benefits Guaranteed

OPINION:

You have indicated that the business of your client, the * * * Company will be purchased in a leveraged buy-out by a few of the current employees through a newly organized corporation. It is expected that most of the employees will continue to work for the new corporation with a significant reduction in benefits and possibly a reduction in salary. In connection with the sale, your client plans to terminate its three pension plans. You have indicated that the assets of all three plans are insufficient to pay benefits guaranteed under Title IV of ERISA, so that following the plan terminations, PBGC will become responsible for unfunded guaranteed benefits. You have asked whether those employees eligible for unreduced retirement (30 years of service) who continue to work in similar jobs for the new company can be treated as retired from the * * * Company.

We assume that the question is one of first impression that is not addressed in the plan documents, since * * * is the plan sponsor and plan administrator.

Those employees who continue to work for the new company should not be treated, under the terms of the * * * plans, as eligible for retirement. As one [*2] court has observed, "[i]nitially, it would appear most unlikely that any employee would reasonably believe that early retirement benefits could commence while he or she was still working at the same job even though a different employer has taken over salary obligations." *Esler v. Northrop Corp.*, Case No. 20537-B (W.D. Mo. Aug. 4, 1981) Slip Op. p. 5.

Further, we note that, under certain circumstances involving continued employment with a buyer or other successor, the PBGC does not guarantee early retirement benefits regardless of the terms of a pension plan. Title IV was intended, first and foremost, to guarantee retirement benefits, and was not intended, for example, to subsidize a compensation package for employees of an ongoing business.

The * * * plans have not yet terminated and been through the PBGC's normal administrative process. While I fully expect that the views expressed above would be consistent with any final PBGC determination, this letter does not constitute, and the PBGC has not made, a final agency decision.

Mitchell L. Strickler
Acting General Counsel