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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

FEB 2 5 2004

[redacted]

Re: [redacted] Case 168863, Baldinger Baking Company (Baldinger) Union Pension Plan (the Baldinger Plan)

Dear [redacted]

The Appeals Board has reviewed your appeal of PBGC's June 20, 2002 determination of your benefit under the Baldinger Plan. For the reasons stated below, the Board changed PBGC's determination by increasing your monthly PBGC benefit payable as a Straight Life Annuity (SLA) starting on your Actual Retirement Date (ARD) from $217.61 to **$406.95** per month.

Determination and Appeal

PBGC determined that starting on your ARD (October 1, 1995) you were entitled to a monthly benefit of $217.61 payable as an SLA, which provides a benefit for your lifetime and no survivor benefit. PBGC's letter noted that you have been receiving a monthly benefit of $426.88 and that PBGC would reduce your $217.61 final monthly benefit by $21.76 per month until you have repaid the overpayments, without interest. PBGC included a Benefit Statement showing some of your personal data and how they calculated your benefit.

Your July 11, 2002 appeal stated that the date of termination of employment shown on your Benefit Statement is incorrect because you continued to work for Baldinger until February 14, 1992 when you "had to retire on disability" due to work-related injuries. Your appeal mentioned that after "Baldinger Baking Co. merged with Eastbald," and after you quit working due to work-related injuries, "a new contract was reached where the then working employees were able to make up the lost time of interrupted coverage" but that your disability kept you from being a "part of it." Your appeal also said that the reduction in your benefit would create an economic hardship for you. Your appeal concluded by saying that the calculations shown on PBGC's Benefit Statement are "a mathematical mystery" and asked whether there might be "a simpler way" to show the calculations.

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Discussion

1. **Your Date of Termination of Employment**

Documents in PBGC's files show that the Baldinger Plan terminated on January 26, 1991. As a result, PBGC cannot include your service with Baldinger after that date when calculating your vested benefit under the Baldinger Plan.

PBGC's Benefit Statement erroneously labeled January 26, 1991 as your date of termination of employment because you were still actively employed on the Baldinger Plan's termination date and service after that date could not be used to calculate your PBGC benefit. We regret the inconvenience caused by the mislabeling.

2. **Offset of Your Baldinger Plan Benefit by the Benefit You Accrued under the MBU Plan**

In a telephone conversation with an appeals analyst, you indicated that because you did not "make up the lost time of interrupted coverage," you are not entitled to a benefit under the MBU Plan. That appeals analyst talked to the current administrator of the MBU Plan, and the administrator confirmed that you are not entitled to a benefit under the MBU Plan because you had only 8.25 years of service under the MBU Plan, and the MBU Plan's vesting schedule provides zero percent vesting if a participant has fewer than ten years of service.

The Appeals Board found that because the Baldinger Plan provisions require your Baldinger Plan benefit to be offset by the benefit to which you are entitled under the MBU Plan, your offset amount should be $0.

3. **Economic Hardship**

PBGC provides pension insurance according to the Employee Retirement Income Security Act of 1974, as amended (ERISA). If a plan sponsor is unable to support its pension plan, PBGC becomes trustee of the plan and pays pension benefits as defined in the plan subject to limitations set by Congress under ERISA.

Records available to the Appeals Board reveal that the Baldinger Plan terminated on January 26, 1991 and that PBGC became trustee of the Baldinger Plan on July 5, 1999.

When PBGC is appointed trustee of a terminated plan, it pays pensions on an estimated basis. Estimated payments are intended to minimize financial hardship for retirees while PBGC prepares formal

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benefit determinations. When PBGC issues formal benefit determinations, however, ERISA and PBGC regulations allow PBGC to recover any previous overpayments, and it is PBGC's policy to do so. The Appeals Board has no authority to change PBGC policy in this matter.

Please note, however, that because PBGC issued its Notice of Determination on May 18, 1999, PBGC regulations require repayment only of the overpayments you received on and after June 1, 1999.

4. **Recalculation of Your Benefit**

a. **Five-Year Phase-In**

Although you requested a "simpler way" to show the calculation of your benefit, the limits on guaranteed benefits set by Congress under ERISA do not allow a simple calculation. One of those limits, the Five-Year Phase-In, affects the amount of your PBGC benefit.

Under this limit, PBGC may guarantee increases in benefits resulting from plan amendments only to the extent of $20 per month or 20% of the increase, whichever is larger, for each full year that the benefit increase was in effect before the plan's termination date. For this purpose, an increase starts to be "in effect" as of its effective date or its adoption date, whichever is later. Since the sponsor did not adopt the original Baldinger Plan until May 2, 1986, the first benefit rate ($22.95 per year of service) was "in effect" less than five full years before the Baldinger Plan's termination date (January 26, 1991), and, therefore, the guaranteed portion of the original benefit using the $22.95 benefit rate is limited to $80 per month or 80% of the benefit, whichever is larger.

Similarly, since the original Baldinger Plan called for an increase in the benefit rate to $24.62 per year of service effective February 4, 1988 (less than three years before the Baldinger Plan's termination date), the guaranteed portion of the benefit increase resulting from this change is limited to $40 per month or 40% of the increase, whichever is larger, but not more than the benefit increase itself.

Finally, since the benefit rate was again increased to $29.44 per year of service effective as of the Baldinger Plan's May 4, 1989 valuation date (less than two years before the Baldinger Plan's termination date), the guaranteed portion of the benefit increase resulting from this change is limited to $20 per month or 20% of the increase, whichever is larger, but not more than the

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benefit increase itself.

In particular, your full Baldinger Plan benefit calculated using the $24.62 benefit rate based on your 14 years of service as of the Baldinger Plan's termination date is $344.68 per month, while your benefit calculated using the $29.44 benefit rate is $412.16. The increase in your benefit resulting from the last benefit increase is $67.48. Since $20.00 is larger than 20% times $67.88, only **$20.00** of the $67.48 increase is guaranteed by PBGC.

b. **Allocation of Assets under ERISA § 4044**

PBGC pays benefits in excess of guaranteed benefits if a plan's assets as of the plan's termination date are sufficient to cover the benefits payable.

In the Baldinger Plan, the assets were sufficient to provide the benefits calculated using the $24.62 benefit rate but insufficient to provide all benefits using the $29.44 benefit rate. Furthermore, based on PBGC's actuarial valuation of benefits payable under the Baldinger Plan as of the Baldinger Plan's termination date, PBGC determined that 82.32% of the non-guaranteed portion of the increase in benefits resulting from the change from the $24.62 benefit rate to the $29.44 benefit rate was covered by the Baldinger Plan's assets.

Your full Baldinger Plan benefit calculated using the $24.62 benefit rate (**$344.68**) is fully payable by PBGC because the Baldinger Plan's assets as of the Baldinger Plan's termination date were sufficient to provide it. And as noted above, PBGC guarantees **$20.00** per month of the last benefit increase.

The non-guaranteed portion of the last benefit increase is equal to $47.48 ($67.48 minus $20.00). The Baldinger Plan's assets as of the Baldinger Plan's termination date were sufficient to provide only 82.32% of this amount. Thus, **$39.09** (82.32% times $47.48) of the $47.48 is payable out of the Baldinger Plan's assets.

As a result of the above calculations, your total PBGC benefit payable as a result of the allocation of the Baldinger Plan's assets is **$403.77** ($344.68 plus $20.00 plus $39.09).

c. **Allocation of the ERISA § 4022(c) Amount**

Section 4022(c) of ERISA allows PBGC to allocate additional money (the § 4022(c) amount) to pay unfunded benefits in excess of guaranteed benefits. Based on PBGC's actuarial valuation of

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benefits payable under the Baldinger Plan as of the Baldinger Plan's termination date, PBGC determined that the Baldinger Plan's § 4022(c) amount was sufficient to cover 37.88% of the unfunded, non-guaranteed portion of the increase in benefits resulting from the change from the $24.62 benefit rate to the $29.44 benefit rate.

The portion of the last benefit increase that is not covered by the Baldinger Plan's assets is $8.39 ($412.16 minus $403.77). Thus, your benefit payable under ERISA § 4022(c) is equal to **$3.18** (37.88% times $8.39).

As a result, your total PBGC benefit is equal to **$406.95** ($403.77 plus $3.18) per month payable as an SLA.

Decision

Having applied provisions of the Baldinger Plan to the facts in your case, the Appeals Board changed PBGC's determination by increasing your monthly PBGC benefit payable as an SLA starting on your ARD from $217.61 to **$406.95** per month. This is the final agency action on the issues you raised in your appeal. You may, if you wish, seek court review of this decision.

When PBGC's Insurance Operations Department (IOD), the PBGC office responsible for issuing benefit determination, receives a copy of this decision, they will change your PBGC benefit amount in accordance with this decision. IOD will recalculate the total amount of your overpayments as well as the temporary monthly reduction that will be required for repayment of that recalculated overpayment amount.

If you need more information about your benefit, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Michel Louis

Michel Louis
Appeals Board Member