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

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NOV 26 2003

Re: Appeal [redacted] [redacted], Nashville Textile Corp. Hourly Employees' Pension Plan (Plan or NTHP)

Dear Mr. Byrd:

The Appeals Board has reviewed the appeal you filed for your client, [redacted] of PBGC's July 22, 2003 benefit determination. For the reasons stated below, we are denying the appeal.

Benefit Determination and Appeal

PBGC determined that your client was not eligible to participate in the NTHP and, therefore, is ". . . not entitled to a PBGC benefit because [her] classification was covered by a collective bargaining agreement under the Union of Needletrades Industrial and Textile Employees" (UNITE).

Your August 21, 2003 appeal letter stated that PBGC's determination letter did not contain "any statutory authority or a factual basis for denial." You requested "the legal and factual information [PBGC] relied upon in rendering its decision." You asserted that your client ". . . has information that other parties who were employed at the same time as [herself] and members of the same union are . . . receiving benefits under . . ." NTHP. You asked ". . . why similarly situated individuals are treated different."

Law and Regulations

PBGC files contain documents showing that NTHP terminated April 30, 1999 without sufficient assets to satisfy all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Therefore, the provisions of the NTHP, ERISA and PBGC regulations determine NTHP participants' benefit entitlements. ERISA § 4022(a) provides that, subject to certain limits, PBGC shall guarantee the payment of all nonforfeitable benefits under a covered plan that terminates. ERISA defines a "nonforfeitable benefit" as ". . . a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of [ERISA]." ERISA § 4001(a)(8); see also 29 Code of Federal Regulations

Section 1.09 defined "Employer" as ". . . Nashville Textile Corporation, Denise Textile Corporation and Bristol Textile Corporation . . ."

The Adoption Agreement and the H&L Prototype continued the exclusion of hourly employees in the collective bargaining unit whose representative negotiated in good faith regarding pensions. The Appeals Board obtained a copy of the 1995-1998 Collective Bargaining Agreement between Denise Lingerie and Local #426, Southern and Western District Council of the Upper South Dept., ILGWU (CBA). In Article XVI of the CBA, Section 1 (Health, Welfare, Retirement and Health Services Fund) provides that the Employer shall pay a percentage of ". . . its total gross weekly payroll . . . of all employees covered under the Agreement (**whether Union or non-Union workers**, and whether regular or trial period workers) employed by the Employers . . .". Paragraph 2 of Section 1 specifies the percentage the Employer is to pay "towards the Upper South Department Retirement Fund, ILGWU, a trust fund established by a collective bargaining agreement for the purpose of providing pension or annuities for employees covered by this Agreement on retirement." (Emphasis added.)

Decision

Having applied the provisions of the law and NTHP to the facts of this case, the Appeals Board found that your client was not an NTHP participant while she worked for Denise in a position covered by the CBA. Further, there is no evidence she ever held a non-bargained position at Denise. She, therefore, is not entitled to a pension payment from PBGC. This is the agency's final action on this case and your client may, if she wishes, seek court review of this decision.

Other Matters

It is noted that your client may have a pension from the multi-employer pension plan to which the employer contributed. For further information about such a benefit, please contact:

ILGWU National Retirement Fund
Attention: Loraine Balcom
730 Broadway, 9th Floor
New York, NY 10003

You stated that your client knows of individuals employed at the same time and in the same union as herself who were receiving/received benefits under both NTHP and the ILGWU retirement plan, and you questioned PBGC's apparent disparate treatment of your client and these people. During a recent telephone conversation with me your client named several of these

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individuals. Our records indicate that none have filed appeals. The Appeals Board, therefore, does not have the authority to review their cases. Further, the Privacy Act prevents me from disclosing any specific information about them to you.

In general, however, please know that as reported on an Attachment to the Form 5500 filing for the period ending March 31, 1996, Denise had 218 hourly employees -- 198 identified as ineligible for NTHP and 20 as NTHP participants. The latter possibly may have been hourly paid supervisors or office staff during some or all of their employment with Denise and apparently not eligible for pensions from the ILGWU retirement fund for such periods of employment. PBGC cannot speak about the payments ILGWU is making. During our review, we contacted PBGC's auditor for NTHP for information. As he has access to appeals documents he is aware of your client's concern and has indicated that his office will review PBGC payments to assure compliance with the provisions of the NTHP and PBGC rules.

Please know that PBGC will always, even after an appeal is closed, review any new, specific documentary evidence which demonstrates that the appellant is entitled to a PBGC payment. If your client has evidence showing that a period of her employment with Denise was in a position **not** covered by the CBA, which may qualify her for an NTHP benefit, or if she needs information from PBGC's auditor on this Plan, she should write to:

Pension Benefit Guaranty Corporation
Insurance Operations Department
Attention: John Gaul, Auditor
P.O. Box 151750
Alexandria, VA 22315-1750

She may also call PBGC's Customer Contact Center at 1-800-400-7242 and ask to speak to Mr. Gaul.

Sincerely,



Harriet D. Verburg
Chair, Appeals Board

cc: