



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

June 14, 2007



Re: Consolidated Appeal for 50 Participants in both the National Steel Corporation's Weirton Retirement Program ("National Plan"), PBGC Case #197614, and the Weirton Steel Corporation Retirement Plan ("Weirton Plan"), PBGC Case #201097

Dear :

The Appeals Board of the Pension Benefit Guaranty Corporation ("PBGC") reviewed the appeal, dated March 15, 2007, you filed on behalf of the 50 participants named in your Exhibit A concerning the PBGC's determinations of their pension service under the subject plans. For the reasons discussed below, we must deny the appeal.

Background

National Steel Corporation ("National") owned the Weirton Steel Division until 1984. Through an employee buyout, a new company, Weirton Steel Corporation ("Weirton"), purchased the operating assets of Weirton Steel Division effective January 11, 1984.

Before and after the sale, National sponsored and maintained the Weirton Retirement Program ("National Plan"). Also, effective January 11, 1984, Weirton established a separate, new plan, the Weirton Steel Corporation Retirement Plan ("Weirton Plan"). As part of the sales agreement, Weirton agreed that the Weirton Plan would assume responsibility for benefits accrued by Weirton Steel Division employees after May 1, 1983.

Both the National Plan and the Weirton Plan terminated without sufficient assets to provide all benefits under Title IV of the Employee Retirement Income Security Act ("ERISA"). The National Plan terminated as of December 6, 2002, and the Weirton Plan terminated as of October 21, 2003. PBGC is trustee of both Plans.

Although the National Plan and the Weirton Plan (collectively "the Plans") have separate plan documents, the Plans' terms are similar in many respects. For example:

- benefit eligibility under both Plans is determined based upon the participant's combined years of service with both National and Weirton;
- the terms "Service" and "Continuous Service" under the two Plans have the same meaning; and
- the Plans provide similar types of benefits, with each Plan providing that a participant with at least 30 years of Service may retire with an unreduced benefit.

All of the Appellants are participants under both the National Plan and Weirton Plan. As you indicated in your appeal, each Appellant: (1) was hired by National Steel before October 31, 1973; (2) experienced a layoff from National Steel that began in the Fall of 1981 and continued past the sale of National Steel's assets to Weirton Steel on January 11, 1984; and (3) was rehired by Weirton Steel sometime after the January 11, 1984 asset sale date. Your appeal disagrees with the way that PBGC calculated Continuous Service for these participants.

Scope of This Decision

The Appeals Board has confirmed that, during the month of September 2005, PBGC issued determinations, with respect to the *National Plan only*, to all 50 Appellants. Of the 50 Appellants, 42 filed timely appeals of their National Plan benefit determinations. See *Enclosure 1* for a list of the participants who filed appeals of their National Plan determinations. During the period March 31, 2006 through July 5, 2006, the Appeals Board issued decisions in each of these appeals. The remaining eight participants, who are listed in *Enclosure 2*, did not file timely appeals.

Thus, before you filed your appeal, the National Plan benefit determinations for all 50 of your clients became final either through Appeals Board decisions, or because they were not timely appealed. For this reason, the scope of this decision is limited to PBGC's determination of Weirton Plan benefits.

Additionally, PBGC records show that seven of the 50 individuals in your Exhibit A have not yet received Weirton Plan benefit determinations from PBGC. These individuals are listed on *Enclosure 3*. We are unable to issue a final Appeals Board decision for those individuals until after they receive their benefit determination. For each of these seven individuals, you may file an appeal on their behalf, or the individual may file his or her own appeal, after PBGC issues its benefit determination.

Your Appeal

In your Consolidated Appeal ("Appeal"), you disputed PBGC's determinations of the Appellants' pension service, asserting that "the PBGC, without any known basis or documentation, ignored the records that had been in existence for the National Plan for 32 years and the PBGC's own conduct for 2½ years and illegally modified each Appellant's National Plan Service Start Date," thereby reducing the Appellants' pension service and removing their eligibility for the 30 Year Retirement benefit. You said:

- All of the Appellants were hired by the National Steel Corporation before October 31, 1973. The National Plan provided for union members' retirement with full pension benefits after 30 years of Service, and all of the Appellants were eligible for retirement and full pension benefits under the National Plan prior to October 31, 2003. *Appeal at 2.*
- The Appellants were continuously employed by National Steel Corporation from their dates of hire until they experienced a layoff in the Fall of 1981. Under the National Plan, participants who were laid off for less than 24 months continued to accrue service toward a 30-year pension during the layoff period. If the layoff period exceeded 24 months, "for each month in excess of 24 months, the participant's 'Start Date' would be extended a corresponding month. In industry terms, and for purposes herein, extending the 'Start Date' is the same as requiring that the employee work additional months beyond the original 30-year retirement date." *Appeal at 2-3.* The Appellants never exceeded 24 months of layoff time under the National Plan; therefore, their Start Date under the National Plan remained unchanged and they did not experience a Break in Service under the National Plan. *Appeal at 4.*
- The Weirton Plan provided that participants who transferred from the National Plan to the Weirton Plan would maintain "the exact seniority profiles that they had under the National Plan, including their Start Date." *Appeal at 4.*
- The Appellants worked at Weirton through October of 2003, at which time they believed that they had obtained 30 years of Service. *Appeal at 5.*

You asked that the PBGC "revert to Appellants' original National Steel Fall 1973 Start Dates, and change the Weirton Plan Start Date to be identical to the National Steel Start Date, thus being consistent with the plain language of the Weirton Plan." *Appeal at 6-7.*

You also raised issues concerning termination of the Weirton Plan and the Weirton Plan's termination date:

- You stated that a majority of the Weirton Plan's Retirement Committee which, according to the Plan, was to consist of at least three members, had to agree to termination of the Plan and that the sole Committee member who signed the *Agreement for Appointment*

of Trustee and Termination of Plan (“Trusteeship Agreement”) with PBGC, Robert Rubicky, had no authorization from the Committee to act on behalf of, or bind, the Committee. Your appeal included affidavits from three Committee members stating that Mr. Rubicky was not authorized by the Committee to sign the Agreement. *Appeal* at 7-8.

- You said that the Retirement Committee “was not provided with the opportunity to contest the [Weirton Plan’s] October 21, 2003 termination date as selected by the PBGC,” and asserted that the termination date was “arbitrary and unsupported as the financial status of the Weirton Plan had been consistently and substantially improving over the previous six months.” *Appeal* at 9.
- You said that, had the Committee been provided the opportunity to review the records of the 50 Appellants before the records were turned over to the PBGC, “the discrepancy [regarding the pension service] would have been addressed and corrected at that time, and the PBGC and the Appellants would not have the confusion over this issue.” *Appeal* at 9.

Additional Information Concerning the Weirton Plan’s Termination

On May 19, 2003, Weirton filed for Chapter 11 bankruptcy, citing declining market conditions and overwhelming post-retirement obligations, which included pension funding. Before and during its bankruptcy, Weirton failed to make the minimum funding contributions to the Plan required under § 412 of the Internal Revenue Code. PBGC records show that, prior to the Weirton Plan’s termination, missed contributions to the Plan totaled about \$87 million, all Plan benefit liabilities were underfunded by approximately \$825 million, and total PBGC-guaranteed liabilities were about \$697 million underfunded. Although Weirton stopped funding the Plan, it continued to pay out Plan benefits, including those that are not guaranteed by the PBGC.

Having concluded that the Plan was severely underfunded and it could reasonably be expected that the PBGC’s possible long-run loss with respect to the Plan would increase unreasonably, PBGC sought termination of the Plan. Please note that ERISA § 4042(a) specifically permits PBGC to seek termination of a pension plan under such conditions. Furthermore, Weirton’s Plan of Reorganization filed with the bankruptcy court on October 7, 2003 did not contemplate the Plan continuing.¹ *Debtor’s Plan of Reorganization*, pp. 21-22 (October 7, 2003).

¹ Weirton’s Plan of Reorganization was filed on October 7, 2003, but was not confirmed. The company later filed a Plan of Liquidation on July 9, 2004 that was confirmed by the Bankruptcy Court on August 24, 2004. Prior to the Plan of Liquidation being confirmed, the original Plan of Reorganization was relied upon by the PBGC as part of the administrative record in reaching its decision regarding the Weirton Plan. Consequently, the document is referenced here despite the fact that it was not confirmed.

On October 20, 2003, PBGC issued to the Retirement Committee of the Weirton Plan ("Committee"), as Plan Administrator, a Notice of Determination required under 29 U.S.C. § 1342(a)(2) and (4). See *Enclosure 4*. The Notice stated that: (1) the Plan has not met the minimum funding standard, (2) the PBGC's possible long-run loss with respect to the Plan may reasonably expect to increase unreasonably if the Plan is not terminated, and (3) the Plan must be terminated under 29 U.S.C. § 1342(c). The Notice further stated that PBGC intends to have PBGC appointed as statutory trustee and to have October 21, 2003, established as the Plan's termination date. The Notice was addressed to Robert Rubicky of the Retirement Committee and to Leonard Wise, Weirton's Chief Executive Officer, with a copy to Mark Glyptis of the Independent Steelworkers Union ("ISU"). PBGC also published a Notice of the termination action on October 20, 2003, in newspapers in different cities where significant numbers of participants and beneficiaries under the Weirton Plan were likely to reside.

Effective November 12, 2003, PBGC and the Committee entered into the Trusteeship Agreement. The Agreement provided: (1) the Weirton Plan is terminated under 29 U.S.C. § 1342(c); (2) PBGC is appointed trustee of the Plan; and (3) the Plan termination date is October 21, 2003, under 29 U.S.C. § 1348. Robert Rubicky signed the Agreement on behalf of the Committee on November 5, 2003, and PBGC auditor Emil Plunkett signed for PBGC on November 12, 2003. The recitals in the Agreement stated that the Committee is the administrator of the Weirton Plan within the meaning of 29 U.S.C. §§ 1002(16) and 1301(a)(1). The Agreement also explicitly stated that the "persons signing the Agreement are authorized to do so." *Trusteeship Agreement*, p. 2.

Applicable Pension Plan Terms

A. Service Under the National Plan: For individuals who worked as hourly employees, eligibility for pension benefits and pension benefit amounts under the National Plan are determined based on "Continuous Service."² Continuous Service under the National Plan includes periods of employment with National prior to the asset sale to Weirton and with Weirton after the sale.³

The National Plan also provides that absences from work for periods longer than two years normally constitute a break in Continuous Service. Although the National Plan allows such a break to be removed if the employee later returns to work, the National Plan also specifically treats absences of more than two years' duration as follows:

² National Plan Document effective January 1, 1998 ("1998 National Document"), the National Plan Document in effect when the National Plan terminated on December 6, 2002, Part 1, Section I (19)(d).

³ 1998 National Document, Part 1, Section I (13)(definitions of "National", "Weirton," and "Company"; Section I (19)(d) (definition of "Continuous Service").

- (1) There shall be no deduction for any time lost which does not constitute a break in Continuous Service, *except that in determining the length of Continuous Service for purposes of this Program:*
 - (i) that portion of any absence which continues beyond two years from commencement of absence due to a layoff, physical disability or leave of absence *shall not be creditable as Continuous Service . . . [emphasis added].*⁴

B. Service Under the Weirton Plan: The Weirton Plan's definition of "Continuous Service" mirrors that of the National Plan, which is quoted above. Thus, the Weirton Plan specifically provides that (1) Continuous Service encompasses periods of employment both with National prior to the asset sale and with Weirton after the sale;⁵ and (2) any absence beyond two years due to a layoff, physical disability or leave of absence "shall not be creditable as Continuous Service."⁶

The Weirton Plan further provides that "Continuous Service under this Plan as of the Effective Date for an Employee on the Effective Date who is an Hourly Employee shall be the same as his continuous service under the Prior Program immediately prior to the Effective Date."⁷ The original Effective Date for the "[Weirton] Plan is January 11, 1984, the date of the consummation of the sale of substantially all of the assets of the Division by National to Weirton." The Prior Program in this case is the National Plan.⁸

C. Calculation of Benefits Under the Plans: The National Plan provides that the participant's accrued benefit amount is first calculated using Service under both Plans, but with "Earnings" limited to the amounts paid by National prior to May 1, 1983.⁹ This benefit amount must then be reduced by a fraction, which is referred to in PBGC's benefit statements as the

⁴ 1998 National Document, Part 1, Section I, (19)(d)(1).

⁵ Weirton Plan Document as amended effective January 1, 1994 ("1994 Weirton Document"), which is the Weirton Plan Document in effect when the Weirton Plan terminated on October 21, 2003, Part 1, Article I (definitions of "Service" and Related Terms," "National," "Weirton," "Division," and "Company").

⁶ 1994 Weirton Document, Part 1, Article I (definition of Service (d)(1)(i)).

⁷ 1994 Weirton Document, Part 1, Article I (definition of "Service").

⁸ 1994 Weirton Document, Part 1, Article I (definition of "Prior Program").

⁹ 1998 National Document, Part 1, Section I, (7) and (8).

“Pro-Ration Factor.” The numerator of this Pro-Ration Factor is the number of years (and fractions calculated to the nearest month) of Benefit Service with National to May 1, 1983, and the denominator is the number of years (and fractions) of Benefit Service with National and Weirton.¹⁰

For individuals who had worked for National as hourly employees, “Benefit Service” has the same meaning as “Continuous Service.”¹¹ As shown on the PBGC benefit statements and as discussed above, the Appellants received pension credit for all of their Service with National because they did not experience a Break in Service under the National Plan.

The Weirton Plan benefit amount also is first computed using Service with both National and Weirton. To avoid duplication of benefits, the Weirton Plan requires that this amount be offset (reduced) by the amount payable under the National Plan, so that the remaining benefit amount reflects only Benefit Service attributable to employment with Weirton.¹² PBGC’s benefit statements provide additional detail on calculation of the benefits payable under each of the Plans.

Discussion

PBGC is a wholly owned United States government corporation created under Title IV of ERISA, 29 U.S.C. § 1302(a). PBGC administers the federal insurance program for pension plans that terminate with assets that are insufficient to pay all benefits under a plan. When PBGC becomes the trustee of a pension plan, PBGC pays benefits to the participants according to the terms of the plan. Because of legal limits under ERISA and PBGC’s regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay. 29 U.S.C. § 1322; 29 C.F.R. § 4022.3.

Determination of Service and Benefit Eligibility under the Weirton Plan

A. The Weirton Plan’s Terms: Your appeal asserted that, under the terms of the Weirton Plan, each Appellant was entitled to a Continuous Service “Start Date” that was before October 31, 1973. You stated that this had been the Continuous Service Start Date for the entire

¹⁰ 1998 National Document, Part 2, Section VI (“Adjustments in Pension or Pension Amounts”). Please note that the reference to “Effective Date” in this Section is defined in Part 1, Section I (8)(a) as “May 1, 1983.”

¹¹ 1998 National Document, Part 1, Section I (19)(b).

¹² 1994 Weirton Document, Part 2, Article XVII, Section 17.8 “Deduction for Other Weirton Pension” and Part 2, Article XX, Section 20.1, “Benefit Reduction for Plan 056 [herein the National Plan], Plan 001 and other National Plan Benefits.”

time they were participants under the National Plan, and the terms of the Weirton Plan required that this Start Date be preserved. Your appeal therefore suggests that Appellants' Continuous Service is not subject to reduction due to a layoff, even though for each Appellant the layoff period started in the Fall of 1981 and continued for more than 24 months.

The Appeals Board concluded that the terms of the Weirton Plan do not support your interpretation. We agree with you that, for employees who worked for both National and Weirton, a layoff longer than two years' duration does not constitute a break in Continuous Service if the employee returns to work for Weirton Steel. But even though the Weirton Plan's terms provide for the removal of the Break in Service, they also specifically provide that only the first two years of such a layoff count in determining a participant's Continuous Service with the two employers.¹³ We further note that, with respect to layoffs of more than two years, the Plans do not distinguish between periods of layoff with National, with Weirton, or which straddle an individual's employment with both companies. Thus, any period exceeding the 24 months does not count toward Continuous Service.¹⁴

As you noted in your appeal, the Weirton Plan provides that: (1) participants who were laid off prior to May 1, 1983, were not transferred to the new Weirton Plan until they were hired by Weirton Steel; and (2) for these employees, National Steel remained the employer until the earlier of when (I) they commenced employment with Weirton Steel or (ii) their 24-month layoff period ended.¹⁵ *Appeal*, pp. 3-5. Based on this provision, you allege that the Weirton Plan permitted laid off employees to continue to accrue Continuous Service even if their 24-month layoff period ended after the sale date. PBGC has credited Appellants with Continuous Service until the end of this 24-month period. The Weirton Plan language that you quote (see your Exhibit B) does not provide, however, that these participants may earn more than 24 months of Continuous Service for the period of layoff that started in the Fall of 1981 and continued until they were hired by Weirton Steel.

¹³ 1994 Weirton Document, Part 1, Article I, (definition of "Service and Related Terms", (d)(1)(i).

¹⁴ *Id.*

¹⁵ 1994 Weirton Document, Part 1, Article I: "Company" shall mean, with respect to the employment of any Participant, (i) National and certain of its divisions, subsidiaries, affiliates or related corporations (including the Division) designated in the Prior Program for participation therein, when referring to a time period before the Effective Date, and (ii) Weirton, when referring to a time period on and after the Effective Date; provided, however, that for a Participant who was laid-off by the Division prior to May 1, 1983 and was on lay-off on the Effective Date, Company shall mean National for any time period on and after the Effective Date until such Participant commences active employment with Weirton after the Effective Date (by actually performing services for Weirton), retires from National or incurs a Break in Service, whichever first occurs.

You also quoted the following Weirton Plan language:

(2) The Continuous Service under this Plan as of the Effective Date for an Employee on the Effective Date who is an Hourly Employee shall be the same as his Continuous Service under the Prior Program immediately prior to the Effective Date.

This provision ensures that the Continuous Service hourly employees earned under the National Plan prior to the employee buyout is preserved for purposes of determining their Continuous Service under the Weirton Plan.¹⁶ PBGC has followed this provision and has credited Appellants with the full amount of the Service that they earned prior to the sale date. This provision, however, does not modify the Weirton Plan terms providing that (as discussed above): (1) Appellants stopped earning Continuous Service when the period of their layoff exceeded 24 months, and (2) Appellants did not resume earning Continuous Service until the date they were rehired by Weirton Steel.

As shown in *Enclosure 5* to this decision, each of the Appellants was absent from work for a period of more than two years due to the layoff. Although their Break in Service was removed when they returned to work with Weirton Steel, the Plans did not allow them to receive Continuous Service credit for their entire period of layoff. Rather, only the first two years or first 24 months of the layoff period would count.

B. The Weirton Plan's Practice Concerning "Start Dates": Although your appeal referred in several places to the participants' "Start Date," the Service provisions under the National Plan and under the Weirton Plan do not use this terminology. Your reference to "Start Date" rather relates to the Plans' practice to adjust the participant's original date of hire in situations involving breaks in Continuous Service, instead of accounting for two or more separate periods of Continuous Service.

The adjusted dates of hire that the prior Plan administrators used for calculation of Continuous Service replicated the results that would have occurred if separate accounting periods were used. Accordingly, we concluded that this practice is consistent with the terms of the Weirton Plan. The use of adjusted dates of hire is illustrated by the service dates for one of the Appellants, whose service with National Steel and Weirton Steel is as follows:

¹⁶ The National Plan provides: "As to a Participant who is an Hourly Employee, "Continuous Service" shall mean service prior to retirement calculated from the Employee's last hiring date (this means in the case of a break in Continuous Service, Continuous Service shall be calculated from the date of reemployment following the last unremoved break in Continuous Service) in accordance with the following provisions; provided, however that the last hiring date prior to August 1, 1980, shall be based on the practices in effect at the time the break occurred." Part 1, Section 1(19)(d) (definition of "Service").

Date of Hire - National Steel	August 16, 1973
Layoff Date	October 11, 1981
24-Month Layoff Service Ends	October 11, 1983
Layoff Ends - Rehire by Weirton Steel	February 12, 1984
Date of Hire Adjusted for Break in Service	December 16, 1973
Weirton Plan's Termination Date	October 21, 2003

Based on the Weirton Plan's terms, PBGC credited this individual with earned Continuous Service (up to the Weirton Plan's termination date) for the following two time periods: (1) from his August 16, 1973 hire date until the 24-Month Layoff Service ended on October 11, 1983, which is 10 years and 2 months (10.16 years); and (2) from the February 12, 1984 rehire date until the Plan's October 21, 2003 termination date, which is 19 years and 8 months (19.67 years). Thus, the total of these two time periods is 29 years and 10 months (29.83 years).

The use of the adjusted date of hire replaces the above calculation with a calculation based on a single time period -- that is, from the December 16, 1973 adjusted date of hire until the October 21, 2003 Weirton Plan termination date. The result using the adjusted date of hire -- 29 years and 10 months (29.83 years) -- is the same as that using the two time periods.

Use of an adjusted date of hire is necessary only if Continuous Service stops because of a Break in Service and later resumes. For this reason, the PBGC (in its National Plan benefit determinations) did not change the dates of hire the National Plan had used for purposes of determining Appellant's Service with National prior to May 1, 1983. None of the Appellants experienced a Break in Service while they were covered under the National Plan because a Break in Service did not occur until two years after the participant was laid off (i.e., after May 1, 1983, the date that the Weirton Plan assumed responsibility for benefits accrued by Weirton Steel Division employees). *Enclosure 5* shows that the PBGC provided each of the Appellants with full pension credit for all of their Service with National, i.e., from their respective original dates of hire to May 1, 1983. The adjusted dates are used only in determining total Continuous Service during employment with both National and Weirton.

Your appeal stated that, for over 32 consecutive years, "the Appellants' Start Dates under the National Plan remained their respective original Fall 1973 Start Dates." Your statement is true with respect to calculation of Appellants' National Steel Service prior to May 1, 1983, because (as discussed in the prior paragraph) no break in Continuous Service occurred before that date. It was the National Plan administrator's practice, however, to use adjusted dates of hire in determining a participant's total Continuous Service with both National and Weirton if the participant's period of layoff exceeded two years. This National Plan practice was examined and accepted by the Appeals Board in the decisions it issued to your clients who had appealed their National Plan benefit determinations. *Enclosure 6* is a copy of one of these decisions.

Also, as is shown by the documents in *Enclosure 7*, which PBGC obtained from Weirton, the practice of the Weirton Plan's administrators was similar to those who administered the National Plan. The benefit statements in *Enclosure 7* are for Weirton Plan participants (with personal data redacted) who retired before that Plan's termination date and who had experienced periods of layoff. These benefit statements show both the calculation of the Weirton Plan benefit (which is based on service with both employers) and the National Plan benefit offset. The two calculations use different Benefit Service dates of hire (or "Pension Calculation Dates"): the Weirton Plan benefit is based on the participant's adjusted date of hire, while the National Plan benefit offset uses the original National Steel date of hire. Accordingly, having examined both the terms of relevant Plan documents and the Plans' practice, we found there is no basis for accepting your statement that the PBGC had "illegally modified each Appellant's National Plan Start Date."

C. Eligibility for 30 Year Retirement Benefits: Both Plans state that a participant who is younger than age 62 and has at least 30 years of Service is eligible for an immediate, unreduced 30 Year Retirement.¹⁷ Under ERISA and PBGC regulations, participants do not receive pension credit for service after a plan's termination date. ERISA § 4022(a); 29 C.F.R. § 4022.4(a). Therefore, while the Appellants continued to be covered under the National Plan when they went to work for Weirton, their Service (or Continuous Service) for benefit eligibility purposes under the National Plan ended on the National Plan's December 6, 2002 termination date. Likewise, the Appellants' benefit eligibility Service under the Weirton Plan ended on the Weirton Plan's October 21, 2003 termination date. (We note that the Weirton Plan froze service for benefit amount purposes effective April 30, 2003 by Amendments to the Weirton Steel Corporation Retirement Plan, adopted April 14, 2003 and effective April 30, 2003.)

Thus, for participants who worked for both National and Weirton and experienced a layoff of more than two years, Service for determining eligibility for a 30 Year Retirement benefit is calculated from the adjusted date of hire to the respective Plan termination date. As *Enclosure 5* shows, none of the Appellants had 30 years of Service under the Weirton Plan when the Plan terminated. Thus, none of the Appellants is eligible for a 30 Year Retirement benefit under that Plan.

Further, Weirton and the ISU, realizing the adverse effect that the terms of the layoff and the resulting adjusted dates of hire had on the Appellants, attempted in 2004, after the Weirton Plan had terminated, to amend the Weirton Plan to credit the Appellants with enough Service so that they could qualify for an immediate, unreduced pension (i.e., 30 Year Retirement). See *Enclosure 8*. Such amendments, however, are not guaranteed by the PBGC. Thus, there would be no change in the Appellants' Continuous Service for PBGC benefit eligibility purposes.

¹⁷ 1998 National Document, Part 2, Section II (3); 1994 Weirton Document, Article XVI, Section 16.3.

Issues Related to the Termination of the Weirton Plan

Your appeal claims that termination of the Weirton Plan was “arbitrary and illegal” because the Trusteeship Agreement was signed by only one Committee member, Mr. Rubicky, who you claim did not have authority from the Committee to authorize termination of the Plan. You also contend that the termination date “selected by the PBGC . . . was arbitrary and unsupported” because the financial condition of the Plan had been improving over the six months prior to the Plan’s termination.

The Appeals Board may review certain initial determinations made by PBGC, including determinations of benefits payable to individual participants. 29 C.F.R. §§ 4003.1(b), 4003.51. Issues relating to plan termination or the plan termination date are outside the scope of what the Appeals Board may decide. 29 C.F.R. § 4003.1; 29 U.S.C. §§ 1342(c); 1348. Therefore, your challenge to the termination of the Weirton Plan is not within the jurisdiction of the Appeals Board.

We note for the record, however, that the Weirton Plan was terminated nearly four years ago in accordance with the provisions of ERISA, its regulations, and the representations in the Trusteeship Agreement that the individual signing the Agreement was authorized to do so. (*Enclosure 9* is a copy of the Trusteeship Agreement.) On the basis of that termination, PBGC has expended considerable time and resources to ensure that participants are paid their guaranteed benefits. The agency has taken over the assets of the Weirton Plan, valued the Plan’s assets and benefit liabilities, calculated and issued hundreds of benefit determinations, and has been paying benefits to participants and their beneficiaries who are eligible. The Agreement specifically states that the “persons signing the Agreement are authorized to do so.” *Trusteeship Agreement*, p. 2. Thus, even if the lawfulness of the plan termination were properly before us, we would not be inclined to decide it in your favor on the basis of affidavits signed two years after the fact, which are lacking in foundation and not supported by formal Plan documentation.

Similarly, regarding the Weirton Plan’s termination date, it is clear that Plan participants had no basis for expecting that the Plan would continue past October 21, 2003. Both the ISU and Plan participants had notice that the Plan would be terminated effective October 21, 2003. A copy of the Notice of Determination stating that PBGC intended to seek termination of the Weirton Plan and to have October 21, 2003, established as the Plan’s termination date was sent to Mark Glyptis of the ISU, and PBGC published the Notice on October 20, 2003, in newspapers in different cities where significant numbers of participants and beneficiaries under the Weirton Plan were likely to reside.

Decision

Having applied pension plan terms, the provisions of ERISA, and PBGC regulations and policies to the facts in this case, the Appeals Board found no basis presented for changing PBGC’s determinations of the Appellants’ benefit entitlement under the Weirton Plan.

Therefore, we deny your appeal. The Appellants have exhausted their administrative remedies with respect to the issues your appeal raised and may, if they wish, seek court review of this decision.

If you need additional information, please call the PBGC's Customer Contact Center at 1-800-400-7242.

Sincerely,

A handwritten signature in cursive script that reads "Sherline M. Brickus".

Sherline M. Brickus
Member, Appeals Board

Enclosures (9)