



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

SEP 16 2004



Re: Case 192233, Nashville Textile Corp.
Hourly Employees' Pension Plan ("Plan" or "NTHP")

Dear

The Appeals Board has reviewed your appeal of PBGC's August 12, 2003 determination of your benefit under the NTHP. For the reasons discussed below, the Board changed PBGC's determination by finding that your service under the Plan was continuous from April 12, 1977 through April 26, 1989, and thus, your benefit is more than the amount stated in PBGC's determination. We will send a copy of this letter to PBGC's Insurance Operations Department, the office responsible for determining and paying benefits, who will contact you directly regarding the amount owed you.

Benefit Determination and Appeal

PBGC's determination letter said that you are entitled to a lump-sum payment of \$1,795.00 plus interest from the date the Plan terminated, April 30, 1999, until the date PBGC pays you. PBGC provided a benefit statement showing how your benefit was calculated and the data used in the calculation.

Your August 16, 2001 appeal said that PBGC did not credit you with all of your years of service. You noted that you worked for the House of Ronnie in Nashville, Georgia and that your earnings were credited to Bristol Lingerie (a Company of the House of Ronnie). To support your appeal, you included copies of your Company Employee Attendance Reports for the years 1970 through 1989.

Law, Regulations and NTHP Provisions

PBGC files contain documents showing that the 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 terms of the NTHP, the provisions of ERISA, and PBGC regulations determine NTHP participants' benefit entitlements.

The NTHP was first effective April 1, 1968 and was restated or amended from time to time. The last restatement was as of April 1, 1989, which is the effective date of the "Adoption Agreement to the Hallman & Lorber Associates, Inc. Defined Benefit Regional Prototype Pension Plan and Trust Agreement" (H&L Prototype).

Prior to the adoption of the H&L Prototype, Article II of the NTHP provided that an employee was eligible to participate in the Plan after meeting certain age and service requirements. The Plan includes the following definitions:

Section 1.08 - Employee: ". . . any person who appears on the Employer's books as a hourly Employee at all times when his eligibility to participate or to continue to participate shall be ascertained . . . **excluding any person who is a member of a collective bargaining unit on whose behalf the Employee representative and the Employer have engaged in good faith bargaining for retirement benefits.**" (Emphasis added.)

Section 1.09 - Employer: "Nashville Textile Corporation, Denise Textile Corporation and Bristol Textile [or Bristol Lingerie] Corporation . . ."

The Adoption Agreement to 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 Collective Bargaining Agreement (CBA) for 1995 - 1998 between Bristol Lingerie and Local #406, Southern and Western District Council of the Upper South Dept., International Ladies' Garment Workers Union (ILGWU). The CBA covered Bristol non-supervisory production, packing and shipping workers at its **Bristol, Virginia plant**. Article XVI, 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 that section specifies the percentage the Employer is to pay "toward the Upper South Department Retirement Fund, ILGWU, a trust fund established by a collective bargaining agreement for the purpose of providing pensions or annuities for employees covered by this Agreement on retirement."

Correspondence Prior to PBGC's Formal Benefit Determination

After you contacted PBGC to ask about any NTHP benefits that might be due you, PBGC's auditor for the Plan researched a listing of the NTHP participants prepared in 1998 by the NTHP's former actuarial consultant, Hallman & Lorber Associates, Inc. Because the list did not include you as a Plan member, you were asked to complete a PBGC "Plan Participation Information" (PPI) form. On February 13, 2003, you completed and signed the PPI form, stating that you worked for Nashville Textile ("Nashville") as a hemming operator at their Nashville, Georgia location from February 2, 1970 through April 25, 1989. You noted that you had always been an hourly-paid employee and that you were not an NTHP ". . . participant covered by a collective bargaining agreement (union contract) with the employer"

You authorized the PBGC to obtain your earnings for the years 1970 through 1989, as reported to the Social Security Administration ("SSA"). Examination of that data shows that most of your earnings for 1970 through 1976 were from companies unrelated to Nashville Textile and that, during these years, you had reported earnings from Nashville Textile as follows:

- 1970 - 2nd quarter only
- 1971 - April through December
- 1972 - 1st quarter only
- 1973 - 1975 - none
- 1976 - 4th quarter only.

The SSA report shows you again had earnings from Nashville from the 2nd quarter of 1977 through 1980, and during the years 1986 through 1989. The report also shows that the majority of your earnings for the years 1981 through 1985 were from Bristol Lingerie, Inc. ("Bristol") and that you were also employed on a limited basis with other unrelated companies during 1984, 1985, and 1986. Based on your earnings history and the information you provided, PBGC determined that your service under the Plan was as follows:

Hire Date:	February 1, 1977
Break in Service:	December 31, 1980
Rehire Date:	January 1, 1986
Employment Termination Date:	April 26, 1989.

Thus, PBGC determined that you had earned seven (7) years of Credited Service (also called "Accrual Service") when your employment with Nashville ended. However, on the copy of your PBGC benefit statement you enclosed with your appeal, you noted that your employment at Nashville was "off and on" from February 2, 1970 through 1989.

Discussion

Our review of the PBGC audit report reveals that Nashville Textile Corporation was a subsidiary of the House of Ronnie. According to the SSA report and the "Employee and Attendance" records you provided, Nashville first hired you on April 23, 1970. However, the SSA report shows that you had only a small amount of income from Nashville for the years 1970, 1971, 1972 and 1976, and that the majority of your earnings for the years 1970 through 1976 were from companies unrelated to Nashville. Based on the record, you did not have enough hours of service with Nashville during the period 1970 through 1976 to be eligible to participate in the Plan.

A Company record PBGC auditors obtained shows that you began working with Nashville on a regular basis on April 12, 1977 (see *Enclosure*). This hire date is consistent with the information on your 1977 Employee Attendance Record and your SSA earnings report. Accordingly, we found that your hire date for purposes of the Plan is April 12, 1977, not February 1, 1977 as shown in your PBGC benefit statement.

During a telephone conversation with the analyst assigned to your case, you specifically asked why your service from 1981 to 1985 was not included in computing your PBGC benefit. As noted above, the SSA report shows that most of your earnings during this period were from Bristol Lingerie. PBGC records show that Bristol was another subsidiary of the House of Ronnie. The CBA between the International Ladies' Garment Workers Union and Bristol covered Bristol hourly employees working in a position such as yours (hemming operators). Since the SSA shows that Bristol reported earnings for you for the years 1981 through 1985, PBGC assumed that you were not eligible to participate in the NTHP because you were a Bristol employee working in a position covered by the CBA. Thus, PBGC did not use the years 1981 through 1985 to calculate your benefit under the Plan.

However, the CBA between Bristol and the ILGWU covered Bristol non-supervisory production, packing and shipping workers at its **Bristol, Virginia plant** only. On your PBGC Plan Participation Information form, you noted that you worked for Nashville Textile at its Nashville, Georgia location and that you were not covered by a CBA. Based on our review, the Appeals Board concluded that (1) the Plan's records support your statement that the workers at the Nashville, Georgia location did not have a union contract, and (2) Bristol never employed you at its Bristol, Virginia plant. Thus, the Board found that your employment with Nashville from 1981 through 1985 should be included in calculating your benefit under the Plan.

PBGC's records show that on October 1, 2003, while your appeal was under review, PBGC paid you a lump sum of \$2,218.98 (\$1,795.00, the present value of your PBGC benefit + \$423.98, interest). Calculation of this amount, however, was based on a February 1, 1977 hire date and did not include your service from 1981 through 1985. The net effect is that you have been underpaid.

Decision

Having applied the provisions of the NTHP and the CBA to the facts of this case, the Appeals Board found that your service under the Plan is from April 12, 1977 through April 26, 1989.

We will send a copy of this letter to PBGC's Insurance Operations Department, who will recalculate your benefit. They will also contact you directly concerning your underpayment. We appreciate your patience while PBGC completes the processing of your case. Meanwhile, if you need other information from PBGC, please call our 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

Enclosure