

Pension Benefit Guaranty Corporation

76-68

May 19, 1976

REFERENCE:

[*1] 4004(f)(4) Temporary Authority. Waiver of Employer Liability

OPINION:

We have considered the Petition for Waiver of * * * dated May 30, 1975, as supplemented by your letter of December 22, 1975.

* * * requested a complete waiver of the liability * * * imposed by Section 4062 of the Employee Retirement Income Security Act of 1974 (the "Act"), 29 U.S.C.A. § 1362 (1975). Pursuant to Section 4004(f) of the Act, 29 U.S.C.A. * * * § 1304(f), the Pension Benefit Guaranty Corporation (the "PBGC") may grant such a waiver during the first 270 days after enactment of the Act upon a showing that the waiver is necessary to avoid undue hardship. By a Resolution of May 30, 1975, the Board of Directors of the PBGC waived liability imposed by Section 4062 subject to subsequent confirmation that the imposition of said liability in whole or in part would cause an undue hardship to the employers involved and that the employers were not able, as a practical matter, to continue the plans.

* * * has submitted information to the PBGC to provide * * * confirmation that imposition of Section 4062 liability would constitute an undue hardship. This information included the May 30, 1975 Petition for Waiver and exhibits [*2] thereto, the December 22, 1975 supplementary letter, and * * * SEC * * * Form 10-K for 1974.

Arguments raised include the fact that the decision to close * * * arose prior to the enactment of the Act; that the * * * Pension Plan (the "Plan") itself provided for cessation of employer liability when the Plan was terminated; and that * * * always funded at the maximum deductible rate. Moreover, * * * asserted that the unfunded liability was primarily due to the advanced age of the * * * workers and the substantial unfunded liability at the time * * * acquired the plant. * * * also contended that the imposition of employer liability amounts to a retroactive impairment of contract by Congress.

We recognize that the decision to close * * * was for a legitimate business purpose, i.e., to avoid continuing losses, and that imposing employer liability on * * * will add to those losses. But we believe that these circumstances do not make a waiver necessary to avoid the "unreasonable hardship" which Congress contemplated in Section 4004(f)(4), since the circumstances you describe are not unusual upon termination of a plan. We believe that for the hardship to be "unreasonable" something [*3] more must be shown. For instance, we have granted a waiver where the employer demonstrated that he would be unable to continue in business due to imposition of employer liability.

Accordingly, we have decided not to waive employer liability in this case. Case Officer * * * will communicate with you further regarding the determination of liability pursuant to Section 4062 of the Act.

Kenneth L. Houck
Executive Director