

Pension Benefit Guaranty Corporation

77-138

April 8, 1977

REFERENCE:

[*1] 4063 Liability of Substantial Employer for Withdrawal

OPINION:

This is in reference to your letter of * * *, requesting a determination by the PBGC as to the consequences under Title IV of the Employee Retirement Income Security Act of 1974 (the Act) of a proposed sale by * * * of the assets of its facility at * * * whose employees are covered by * * * (the "Plan"). You indicate that the purchaser will reemploy the * * * employees and offer reemployment to the former employees of two facilities * * * previously closed by * * *. The purchaser will become a contributing employer under the Plan for all employees who are reemployed. * * * will guarantee any contingent employer liability of the purchaser under Title IV in the event that the purchaser terminates participation within the next 5 years. Under these circumstances, the plan administrator will determine that Section 13 of the Plan document is inapplicable to the previous closings and to the sale of the * * * facility. This provision limits benefit payments to the participants of a closed facility to the assets attributable to contributions made on account of participation at the facility.

If * * * ceases to contribute to the Plan upon [*2] the closing of the * * * facility, and benefit payments to * * * participants may be satisfied from the total sum of plan assets and are not limited to the assets attributable to contributions made on account of participation at that facility, * * * will have withdrawn from the Plan pursuant to Sec. 4063 of the Act. This is so even if the purchaser of the assets of the * * * facility agrees to employ and make contributions to the Plan for the former * * * employees at the three facilities covered by the Plan. Further, the liability of * * * must be determined and satisfied in accordance with the provisions of Sec. 4063. However, we note that subsection (e) of Sec. 4063 authorizes the PBGC to waive the normal liability requirements whenever it determines that there is an indemnity agreement in effect among the remaining employers under the Plan which is adequate to satisfy the purposes of Sec. 4063 and Sec. 4064 of the Act. * * * may wish to consider the possibility of obtaining such an indemnity agreement.

We hope this is of assistance.

Henry Rose
General Counsel