Pension Benefit Guaranty Corporation

83-9

April 6, 1983

REFERENCE:
[*1] 4022 Benefits Guaranteed
29 CFR 2613 Guaranteed Benefits

OPINION:

This is in response to your recent letter concerning former hourly employees of A Corporation * * * whom you represent. These former A employees seek to retire under the provision of the A Corporation Hourly Employees Pension Plan (the "Plan") which permits immediate retirement with an unreduced pension benefit if an employee's age and years of service equal 80 or more (an "80-point pension").

As you have represented the facts, the employees in question all were laid-off on or before * * *. On December 8, 1982, A, together with its parent, B Corporation, filed for reorganization under Chapter 11 of the Bankruptcy Code. On * * *, A terminated its two pension plans. Since that time all of the assets of A have been sold at auction by the trustee in bankruptcy.

Article IV, Section 2, paragraph (a) of the Plan permits employees to retire with a full unreduced pension benefit when age and years of service equal 80 or more. Article IX, Section 4, paragraph (a) provides:

"If an employee is laid off for any reason within three years of the date he would be eligible [for an 80-point pension], he will receive credited service for [*2] the period of layoff from the date up to the date his age and years of credited service, including such period of layoff, equal 80."

You state that the former A employees you represent were all laid-off within three years of earning an 80-point pension and fully expected to retire with an 80-point pension even though they had been laid-off. You further state that all such employees "would soon be eligible for full 80-point pensions if the hourly plan had not been terminated." You seek, therefore, to have the PBGC recognize credited service for periods after the date of Plan termination.

Section 4022 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1322(a) (Supp. IV 1980) provides that the Pension Benefit Guaranty Corporation (the "PBGC") will guarantee all benefits which are nonforfeitable on the date a pension plan terminates. Consistent with the statutory mandate, 29 C.F.R. § 2613.3. provides that the PBGC will guarantee, subject to certain limitations, benefit amounts as of the date of plan termination for benefits which are a) nonforfeitable under § 2613.6; b) pension benefits as defined in § 2613.2, and c) benefits to which the participant [*3] is entitled under § 2613.5.

While the 80-point pension is clearly a "pension benefit" as defined in § 2613.2, it does not appear that with respect to the participants you represent the benefit would be considered nonforfeitable. Section 2613.6 defines a nonforfeitable benefit as "a benefit payable with respect to a participant . . . [for which] on the date of termination of the plan the participant (or beneficiary) has satisfied all of the conditions required of him under provisions of the plan to establish entitlement to the benefit, except the submission of a formal application, retirement, completion of a required waiting period . . . ."

Under Article IX, Section 4, paragraph (a) of the Plan, laid off employees continue to earn credited service for three years at most during periods of layoff. Once a pension plan terminates, however, accruals of credited service cease. This is true with respect to all plan participants, whether they are working or are laid-off. Even employees who continue to work for an employer after that employer terminates its pension plan do not receive credited service after the date of termination of the pension plan.

Thus, the PBGC recognizes credited [*4] service accrued up to the date of termination, whether it is earned as a result of employment or as a result of a lay-off provision in the plan similar to the one here. The former A employees you represent ceased accruing service credit as of the date of plan termination. Therefore, they do not have sufficient age and services to qualify for an 80-point pension as of that date. They have failed to complete the necessary requirements for such a pension and their benefit is not, accordingly, nonforfeitable. As such it is not guaranteed.

You have stated that Article IX, Section 4, paragraph (a) should be interpreted as granting three years of credited service to laid-off employees on the effective date of lay-off. Thus, for example, an employee who had 12 years of service credit on the date of lay-off would on the next day have 15 years. This interpretation, however, is inconsistent with the plain language of the plan provisions. Employees receive credit for certain periods of layoff or for active work. Thus, the employee in the example above who is laid off but who returns to work one year later would clearly only receive one year's credited service for the lay-off period, [*5] not three. Under the interpretation you have presented, employees would receive three years credited service plus additional credited service for years after they return to work. This result is plainly not intended.

In sum, the PBGC recognizes credited service, whether earned during layoff or during active employment, in the same way where plan terms, as here, so provide. In either case, accrual of credited service ceases, as does the accrual of benefits and vesting credit, on the date of plan termination. The former A employees whom you represent will receive credited service through the date of termination. In accordance with Section 4022 of ERISA, 29 U.S.C. § 1322 and 29 C.F.R. Part 2613, and pursuant to the terms of the pension plan, only participants whose age and service equal 80 as of the date of plan termination will have a nonforfeitable 80-point pension benefit. It is important to note, however, that participants who do not qualify for an 80-point pension as a result of the plan termination, will in most instances qualify for deferred vested pensions. Many will also be able to elect early retirement at age fifty-five.

We trust this response is of assistance to you. [*6] Should you have any questions concerning this matter, please contact * * * at (202) 254-7224.

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