

Pension Benefit Guaranty Corporation

89-7

August 15, 1989

REFERENCE:

[*1] >4041(a)(3)>
>4041(c)(2)(A)>
>4041(c)(2)(B)>
>4041(c)(3)(A)>
>4041(c)(3)(D)>

OPINION:

I am writing to advise you that the Pension Benefit Guaranty Corporation (the "PBGC") has decided to suspend processing of the termination of the Pension Plan and Trust Agreement Covering * * * (the "Plan") pursuant to Section 4041(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1341(a)(3) (1982 and Supp. V 1987).

On April 12, 1989 * * *, in its capacity as trustee of the estate of * * *, provided a notice of intent to terminate the Plan to all affected parties pursuant to Section 4041(a)(2) of ERISA, 29 U.S.C. § 1341(a)(2). In that notice, * * * proposed June 15, 1989, as the termination date of the Plan.

On August 4, 1989, the PBGC received a letter from counsel for the International Association of Machinists and Aerospace Workers ("IAM"), which represents certain participants under the Plan. That letter reflects the position of the IAM that the termination of the Plan violates the terms and conditions of an existing collective bargaining agreement. Enclosed with that letter was a copy of a grievance dated June 19, 1989, by IAM District Lodge 142 (the [*2] "Union"), on behalf of participants represented by the Union. n1 In this grievance, the Union alleges that the termination of the Plan violates the terms and conditions of a collective bargaining agreement.

n1 Also enclosed with the letter is a copy of a complaint in the action IAM District Lodge 142 v. Aeronaves, No. 88 CV 2067 (S.D.N.Y.). The complaint alleges, inter alia, that Aeronaves has violated Section 2, First of the Railway Labor Act, 45 U.S.C. § 152, First, by refusing to recognize collective bargaining agreements between Aeronaves and the Union. Further, the letter references a representational dispute under Section 2, Ninth of the Railway Labor Act, 45 U.S.C. § 152, Ninth, between the Union and * * *, which is pending before the National Mediation Board. Whatever effect those proceedings may have on the final resolution of the Union's grievance, neither of those proceedings appears to constitute a formal challenge to the termination of the Plan. Consequently, the PBGC's decision to suspend processing of the termination of the Plan is based solely on the Union's grievance.

In view of the filing of this grievance, the processing of the termination [*3] of the Plan has been suspended until such time as the dispute is finally resolved. I note that as of the date of this letter, * * * has not provided the PBGC with all of the information required by Section 4041(c)(2)(A) of ERISA, 29 U.S.C. § 1341(c)(2)(A). As a result, the PBGC has not made the determinations required under Section 4041(c)(2)(B) and (3)(A) of ERISA, 29 U.S.C. § 1341(c)(2)(B) and (3)(A). Please be advised, however, that it is the position of the PBGC that suspension of the termination pursuant to Section 4041(a)(3) does not relieve the plan administrator of the responsibility to comply with certain statutory requirements for a distress termination. Accordingly, * * * is still required to supply to the PBGC all of the information required under Section 4041(c)(2)(A) and to comply with the requirements under Section 4041(c)(3)(D) of ERISA, 29 U.S.C. § 1341(c)(3)(D), for administering the plan following the issuance of a notice of intent to terminate. See 29 C.F.R. § 2623 for rules relating to the reduction of benefits after the proposed termination date. See also 51 Fed. Reg. 12491, et seq. (1986), for interim rules relating to termination of single [*4] employer plans, and 52 Fed. Reg. 33,325-33,330 (1987), for proposed rules relating to distress terminations of single employer plans.

Please notify us of the outcome of the grievance immediately upon its resolution. If the validity of the proposed termination is upheld, please advise us at that time as to whether you wish to continue with or withdraw the termination. In the event you wish to continue, we will issue a written notice to you reactivating the termination proceedings.

If you have any questions concerning this matter, please feel free to contact Michael Mora at (202) 778-8824.
Carol Connor Flowe, General Counsel