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November 14, 2022

Regulatory Affairs Division
Office of the General Counsel
Pension Benefit Guaranty Corporation
445 12th Street NW
Washington, DC 20024-2101
Sent via Email: reg.comments@pbgc.gov

RE: 4213 Proposed Rule on Withdrawal Liability Interest Rates

Dear Sir/Madam;

This office is legal counsel to the International Association of Machinists and Aerospace Workers District No. 9 Pension Fund (the "Pension Fund"). The Pension Fund is a multiemployer pension fund within the meaning of 29 U.S.C. §1002(37)(A), Section 3(37)(A) of the Employee Retirement Income Security Act ("ERISA"). The Pension Fund provides defined benefit pension benefits to participants who have been employed by auto dealers, auto repair shops, machine shops, and related industries.

Several employers have withdrawn from the Pension Fund in recent years, thereby incurring withdrawal liability. As a result of this experience, the Pension Fund supports the proposed Pension Benefit Guaranty Corporation ("PBGC") rule regarding interest rate assumptions that may be used by a plan actuary in determining a withdrawing employer's liability.

There are several reasons for the Pension Plan's support of the proposed Rule.

First, the proposed Rule resolves the uncertainty about the appropriate withdrawal liability interest rate. Currently, the Pension Plan's Actuary uses his best estimate for the withdrawal liability interest rate, which is the IRS published Current Liability Interest Rate. The Pension Fund has an interest rate assumption of 7.5% for determining minimum funding requirements. Recently, at least two (2) Courts of Appeal have questioned the validity of using a withdrawal liability interest rate which differs significantly from the minimum funding interest rate.[1] While neither of these decisions were issued by the Eighth Circuit Court of Appeals (within whose jurisdiction the Pension Fund lies), these decisions create the possibility that the Pension Fund Actuary's best estimate could be challenged. The proposed Rule eliminates that uncertainty by expressly providing that a plan Actuary has a wide range of discretion in establishing withdrawal liability interest rates, ranging from the settlement interest rates established by the PBGC under Section 4044 of ERISA to the minimum funding rate, to a combination of the two. By clarifying that a

[1] See Sofco Erectors, Inc. v. Trustees of the Ohio Operating Engineers Pension Fund, 15 F.4th 407 (6th Cir. 2021); United Mine Workers of America 1974 Pension Plan v. Energy West Mining Company, Case No. 20-7054 (D.C. Cir. July 8, 2022)

plan is not required to use a withdrawal liability interest rate which is the same as, or similar to, the minimum funding interest rate, the proposed regulation removes the uncertainty caused by the above-discussed judicial decisions.

Secondly, the proposed rule reduces the likelihood of challenges to the Actuary's best estimate withdrawal liability interest rate through arbitration or federal court litigation. Such litigation has the potential for requiring the Pension Fund to expend significant amounts in attorneys' fees, arbitration fees and court costs.

Thirdly, the proposed Rule preserves plan assets. The Pension Fund Actuary's best estimate, as with the Section 4044 interest rate, produces a larger withdrawal liability than that which would be derived through the use of the minimum funding rate, thus increasing the plan's assets in the event of withdrawal. Moreover, a larger liability acts as a deterrent to employer withdrawals and improves the Fund's solvency. Use of the Fund's minimum funding interest rate, by contrast, produces a substantially smaller employer liability, thus reducing plan assets in the event of a withdrawal and encouraging employer withdrawals.

In conclusion, the Proposed Rule provides the plan Actuary with broad discretion in formulating an interest rate based on her/his "best estimate", eliminates the current confusion and uncertainty regarding acceptable withdrawal liability interest rates and may have the effect of preserving plan assets and deterring withdrawals.

For these reasons, the Pension Fund supports the Proposed Rule.

Very truly yours,

GREG A. CAMPBELL

GAC/jcb