

Pension Benefit Guaranty Corporation

87-10

September 15, 1987

REFERENCE:

[*1] 4041(a)(3) (SEPPAA) - Violation of Collective Agreement

OPINION:

This letter serves to confirm your telephone conversation of September 14, 1987, with * * * of my staff, in which * * * advised you that the Pension Benefit Guaranty Corporation (the "PBGC") had decided to suspend processing of the termination of the * * * Pension Plan (the "Plan") pursuant to Section 4041(a)(3) of ERISA, 29 U.S.C. § 1341(a)(3).

On September 9, 1987, the PBGC received a letter of the same date from a union local representing a number of the Plan's * * * participants, the * * * (the "Union"). That letter reflects the Union's position that the termination of the Plan violates the terms and conditions of an existing collective bargaining agreement. In addition, the September 9 letter transmitted a copy of a September 2, 1987, grievance filed by the Union to challenge the termination and requested, in accordance with ERISA Section 4041(a)(3), that the PBGC suspend processing of the termination.

In view of the Union's September 9, 1987, submission, the processing of the termination of the Plan has been suspended until such time as the labor dispute initiated by the Union to challenge the termination is finally [*2] resolved. Accordingly, assets of the Plan may not be distributed pending further notice from the PBGC. Any such distribution would constitute a violation of Title IV of ERISA.

Please notify us of the outcome of the labor dispute 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. n1

n1 The labor dispute forming the basis for the PBGC's suspension of processing of the termination of the Plan -- the September 2, 1987, grievance filed by the Union -- is one of at least three labor disputes that relate in some way to the termination of the Plan. Two other such labor disputes are: 1) a lawsuit filed by the Union to compel arbitration on a dispute as to the proper interpretation of the Plan's benefit formula; and 2) an unfair labor practice ("ULP") complaint issued in response to the * * * Corporation's filing of a ULP charge asserting that the Union had improperly refused to execute a written document reflecting an alleged oral agreement between the Employer and the Union permitting termination of the Plan. In the event that any labor dispute leads to a final resolution of the Section 4041(a)(3) issue of whether the termination itself is violative of the terms and conditions of an existing collective bargaining agreement, you should advise us so that we may consider reactivating the termination proceedings. [*3]

I am enclosing, for your information, a copy of the Union's September 9, 1987, letter. You indicated in your telephone conversation of today's date with * * * that you wished to review the Union's September 9 letter, and to submit your comments to the PBGC regarding the action the PBGC is taking in response to that letter. We will be pleased to consider your comments.

If you have any questions concerning this matter, please feel free to contact me or Mr. Ashner at (202) 778-8823.

John H. Falsey
Assistant General Counsel