PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

August 23, 2006

Re: Case 198374, Pellet Hourly Wage Employees Pension Plan (the "Pellet Plan")

Dear

We are responding to your appeal of PBGC's April 21, 2005 determination of your benefit under the Pellet Plan. For the reasons stated below, we are denying your appeal.

PBGC's Benefit Determination and your Appeal

In its determination letter, PBGC informed you that you were not entitled to a PBGC benefit because the Pellet Plan required five years of service to qualify for a vested pension benefit and you had only 2.42 years of service. Additionally, on May 13, 2005, PBGC provided the following additional explanation in response to a telephone inquiry from you:

> You were denied benefits because you were credited with only having 2.4167 years of service. You were hired on August 1979 and your last day worked was January 1980. This decision was made based on section 5.1(a)(1) of plan 002, which provides that absence which continues beyond two years from commencement of absence due to layoff or physical disability shall not be creditable as continuous service.

Your June 3, 2005 appeal stated that you were "never terminated" from employment and you were "eligible to return to work at anytime from 1/12/80 to date of closure/sale of National Steel to USX on 5/20/03." You further explained that your circumstances were unique because you were

You asserted that you were on layoff status from January 12, 1980, to August 1990, when you were called back to work. Your appeal states that, upon such recall notification, " the Union, United Steelworkers, on my behalf, met with the Company to put in place an agreement per contract language that allowed for a leave of absence for and the maintaining of accrued seniority and years of service for pension purposes." You further contended that this agreement remained in place until the buyout of National Steel by USX, and that therefore you accumulated 23 years and 9 months of service from August 1979 until May , 2003. You also said that during this entire time you received

"all communications sent to hourly employees relative to insurance, audits, right to know rules, bankruptcy notifications, etc."

You provided documentation in support of your claims, which included: (1) copies of the pension agreement's continuous service provision; (2) seniority lists from the Company for 1998 and 2002; (3) copies of language in the 1989 and 1990 basic [redacted] leave of absence; and (5) a September 9, 1999 letter from the Company Benefits Manager stating that your credited service for pension purposes was 20 years and 1 month.

Additionally, you asserted that neither the Union nor you "have ever at any time been notified by the company that the leave agreement was invalid or in need of revisions." You stated that your wife and you had made retirement decisions with the expectation that you would have "some retirement benefit from my years of service at National Steel." Finally, you contended that, because of your many years as a [redacted] your "circumstance and relationship as an hourly employee of National Steel was the exception and not the rule" and that "in the eleventh hour, I am being singled out when all the evidence supports inclusion because of the unique circumstances of my case."

Background

The records PBGC obtained from National Steel show that you were hired by the Company on August [redacted] 1979, and were put on layoff status on January [redacted] 1980. Your appeal stated that you remained on layoff status, without the Company offering you a recall to work, until August 1990. You also submitted letters from Hanna Mining Co. dated February 5, 1981, March 27, 1984, and April 3, 1987, and from National Steel dated October 20, 1989, that had notified you that you had been laid off for 12 or more consecutive months. The letters also stated that you needed to respond within 15 days if you desired to be continued on the records of the Company as available for immediate recall to work. It appears that you provided such notification, since Company records in 1998 and 2002 continued to list your seniority date as August [redacted] 1979.

An Agreement between the Company, the Union and you, which you signed on October 4, 1990, stated: [redacted] is hereby granted a leave of absence [redacted] The Agreement also said that "The Company will extend the leave of absence and continue it as long as [redacted] There is no record, however, that you ever returned to work for the Company, and your appeal suggested that you continued to [redacted] up to and after the Pellet Plan's December 6, 2002 termination date.

Plan Provisions

The 1980 Pension Agreement became effective on July 31, 1980, and therefore was in effect shortly after the date of your layoff. Under this Agreement, 10 years of "continuous service" was required for vesting in a pension benefit. See section 2.8 of the 1980 Pension Agreement, which is provided in Enclosure 1. Under the 1989 Pension Agreement, the vesting requirement was reduced from 10 years to 5 years of continuous service.

Section 5.1 of the 1980 Pension Agreement (also provided in Enclosure 1) states that "continuous service" means "service prior to retirement calculated from the Employee's last hiring date (this means in the case of a break in continuous service, continuous service shall be calculated from the date of reemployment following the last unremoved break in continuous service) . . . ." Section 5.1(a) further states: "There shall be no deduction for any time lost which does not constitute a break in continuous service, except that in determining the length of service for pension purposes: (1) that portion of any absence which continues beyond two years from commencement of absence due to a layoff or physical disability shall not be creditable as continuous service; . . . ." Finally, section 5.1(b)(4)(ii) provides: "if a person absent on account of layoff or disability in excess of two years returns to work with the Company within an additional period equal to (aa) three years, or (bb) the excess, if any of his length of continuous service at commencement of such absence over two years, whichever is less, such break shall be removed and his continuous service at the time of such break shall be restored . . . ."[1]

Discussion

When the Plan terminated on December 6, 2002, it did not have sufficient assets to provide all benefits PBGC guarantees under Title IV of the Employee Retirement Income Security Act ("ERISA"), and PBGC became the Plan's trustee. Because of legal limits under ERISA and PBGC's regulations, the benefits that PBGC guarantees may be less than the benefits a pension plan would otherwise pay.

As discussed above, the 1980 Agreement provided that continuous service is broken by an "absence due to a layoff or a physical disability which continues for more than two years . . . ." The only exceptions to this rule are for a "compensable disability incurred during course of employment, " and for returning to work following a layoff or disability within a period equal to the lesser of three years or the excess, if any of the

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[1] The Pellet Plan's definition of "continuous service" – as well as the provision that a break in service occurs if a person is absent due to layoff which continues for more than two years – remained unchanged in the later Agreements. See, for example, Enclosure 2, which is a copy of the "continuous service" provisions under the Pension Agreement effective as of December 31, 2000. We note that the later Agreements amended the rules concerning the removal of break of service upon re-employment, but that the removal of the break was contingent upon the employee completing one year of continuous service following such re-employment.

employee's "length of continuous service at commencement of such absence over two years." Because neither of these exceptions applies to your case, you incurred a break in service two years after your layoff date.

The Leave of Absence Agreement

There is no evidence that you were ever were re-employed by any of the Companies covered under the Pension Agreements. However, as you stated in your appeal, your employment status changed in 1990 from laid-off to leave of absence as a result Agreement between the Company, the Union and you.[2] This leave of absence agreement references Exhibit F, Paragraph 2, Subparagraph (a) of the Basic Labor Agreement between National Steel Pellet Company and U.S.W.A. Local Union No. 2660 dated August 1, 1989 ("Basic Agreement").[3]

You claimed you are entitled to additional pension service based on this leave of absence agreement. The leave of absence agreement, however, is silent about pension rights. Also, since the leave of absence agreement was executed shortly after the Company notified you in August 1990 of a recall to work, it appears that the primary (if not only) purpose of the leave of absence agreement was to preserve your seniority position in the event that [redacted] and you then desired to return to work. Under the Basic Agreement, a break of service for seniority purposes occurs if an employee receives a recall notice and then fails to report to work after 15 days, unless he obtains a leave of absence.[4] Thus, by obtaining a leave of absence, your seniority position was preserved.

However, while seniority under the Basic Agreement takes into account the employee's "continuous service," that term is defined differently than in the Pension Agreement. For seniority purposes, a layoff does not result in a break in continuous service, so long as the employee timely responds that he is available for work after he receives a notice from the Company inquiring about his availability or obtains a leave of absence. See Enclosure 5. But for pension purposes, continuous service ends after two years, even if the employee timely notifies the Company that he is available for work. Therefore, the fact that you obtained a leave of absence for seniority purposes does not mean that you were granted additional continuous service for pension purposes.

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[2] See Enclosure 3, which is a copy of this agreement which you signed on October 4, 1990.

[3] Enclosure 4 is a copy of this provision, which you provided in your appeal. You asserted that the language in this Exhibit to the Basic Agreement was drafted specifically to address your situation as [redacted]

[4] See Article IX, section 9.5(D) of the Basic Agreement effective July 1, 1994 , which is provided as Enclosure 5.

Moreover, there is nothing to indicate that your leave of absence was intended to apply retroactively to remove a break in service for pension purposes. Indeed, the leave agreement specifically applies only to the time period during which you [redacted] You also stated in your appeal that [redacted] (which was more than eight years after you were laid off). Therefore, the leave of absence agreement did not change the fact that, for pension purposes, your continuous service was broken in January 1982, because you had been laid off for more than two years.

We further concluded that the leave of absence agreement itself cannot be considered to constitute re-employment within the meaning of the Pension Agreements, especially when it is considered that you never actually returned to work for the Company. Thus, we decided that the provisions in the Pension Agreements concerning the removal of breaks in continuous service following re-employment are not applicable to your situation, since you never were re-employed.

Letters from Pellet's Benefits Manager

Your appeal included a copy of a September 9, 1999 letter to you from Jim Karstens, Benefits Manager of National Steel Pellet Company (Enclosure 6), that stated: "As of today's date you are credited with 20 years 1 month of service for pension purposes. Using the current multiplier of $40.00 per year, your present accrued pension benefit is $803.00 monthly." It also stated that you were "considered to be on leave of absence at the present time." However, a second letter dated January 14, 2002 from Jim Karstens (Enclosure 7) stated: "We have been informed by National Steel Corporation that you are not entitled to pension service following your last day worked for National Steel Pellet Company. Your last day of work at National Steel Pellet Company was January [redacted] 1980. The pension agreement does not have a provision that allows service to continue during your leave of absence."

While neither letter provided a full explanation of the Company's reasoning, it appears that the second letter corrected the first based upon the Company's re-evaluation of the relevant language in the Pension Agreements. Thus, the second letter, rather than the first, appears to reflect the Company's position at the time the Plan terminated with respect to your pension eligibility. In any event, we concluded that the second letter (rather than the first) correctly reflects the language in the relevant Plan documents, for the reasons that are discussed above. We further noted that, under section 404(a)(1)(D) of the Employment Retirement Income Security Act (ERISA), neither plan fiduciaries nor their administrative employees are allowed to disregard the requirements of a written plan document. Accordingly we concluded that we cannot determine your pension rights based on the September 9, 1999 letter.

You stated that your wife and you had made retirement decisions with the expectation that you would have "some retirement benefit from my years of service at National Steel." [redacted]

[redacted] the fact remains that you worked less than a year with the Company before you were laid off, and you never subsequently returned to work. Furthermore, the leave of absence agreement did not contain any provisions concerning pension rights. Under these circumstances, we are unable to conclude that you reasonably should have expected to receive a pension benefit from the Pellet Plan. In any event, PBGC must pay benefits in accordance with the governing Plan documents, and accordingly we are unable to provide you with a benefit for the reasons given in your appeal.

Therefore, the Appeals Board decided that you cannot be credited with additional continuous service based on your particular situation. We therefore found that PBGC correctly determined that you earned only 2.4167 years of continuous service under the Pellet Plan and were not vested in a pension benefit. Furthermore, based on ERISA section 4001(a)(8), PBGC is unable to pay you a benefit because PBGC's guarantee is limited to vested benefits.

Request for a Hearing

You stated that Union and past management employees are willing to testify on your behalf, and you also are available to provide testimony either in person or through video teleconferencing. PBGC's Rules for Administrative Review of Agency Decisions provide that an opportunity to appear before the Appeals Board and an opportunity to present witnesses will be permitted at the Appeals Board's discretion. See 29 Code of Federal Regulations § 4003.55. The Appeals Board has concluded, however, that there is no dispute of material fact in your appeal that requires a hearing to resolve. Accordingly, the Board denies your request for a hearing.

Decision

For the reasons discussed above, we must deny your appeal. This is the PBGC's final action in your case and you may, if you wish, seek court review of this decision. If you need other information from PBGC, please call the Customer Contact Center at 1-800-400-7242.

Sincerely,

Charles W. Vernon

Charles W. Vernon
Chair, Appeals Board

Enclosures (7)