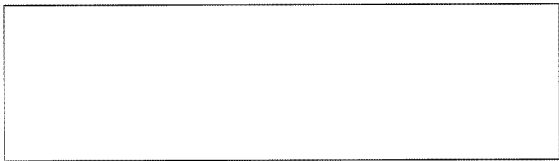


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Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026



DEC 02 2005

Re:  Case 200106, Slater Steels Fort Wayne Specialty Alloys  
Division United Steel Workers Pension Plan (the "Plan")

Dear

The Appeals Board reviewed the appeal filed by your client,  and the supplement you filed on his behalf, regarding PBGC's January 27, 2005 determination that  is not entitled to a 70/80 retirement benefit ("70/80 Retirement"). For the reasons stated below, the Appeals Board concluded that PBGC is unable to guarantee a 70/80 Retirement for  because he did not meet the requirements for that benefit before the Plan's termination date.

*PBGC's Determination and Your Appeal*

PBGC's determination letter told  that in addition to the age and service requirements for eligibility for a 70/80 Retirement, "the Plan requires that the participant's continuous service be broken due to a shutdown. At the time of your termination of employment, the company had not yet shut down; therefore you were not eligible for the 70/80 Retirement."

February 13, 2005 appeal said that PBGC's reason for denying his entitlement to a 70/80 Retirement was an incomplete representation of the Plan's language. He quoted the Plan's language, emphasizing that a participant could qualify for a 70/80 Retirement by having his Continuous Service broken by either a plant shutdown or a layoff. His appeal letter stated as follows:

"Therefore, I believe I am entitled to the full 70/80 Pension because I meet the 70/80 eligibility requirements and my 'continuous service' was broken on 10-31-03 when I was laid off and incurred a permanent separation from Slater Steels. This break in continuous service was spelled out in a document entitled 'Shutdown Agreement' dated October 26, 2003 (between Slater Steels and USWA) and approved by the Federal Judge adjudicating Slater Steels bankruptcy and closure. . . ."

Your March 10, 2005 letter requested an extension of time to supplement the appeals of thirty Plan participants, including  until 30 days after PBGC's response to a request that would be filed under the Freedom of Information Act (FOIA). You filed your FOIA request on March 15, 2005 and PBGC's Disclosure Officer responded to your request under cover letter dated July 19, 2005. On August 2, 2005, you requested

another extension of time to file supplemental appeals for your clients until September 9, 2005. The Appeals Board granted both of your extension requests.

Your September 7, 2005 supplemental appeal asserted that PBGC erred in finding that a permanent shutdown of the Fort Wayne plant did not occur before the November 6, 2003 date of plan termination ("DOPT"). You stated that PBGC, in concluding that a permanent shutdown had not occurred before DOPT, had failed to take into account the October 26, 2003 Shutdown Agreement between USW and Slater, which provided that a "permanent shutdown had occurred [as of October 26, 2003] as a result of the idling of the Fort Wayne facility." You therefore contended that each employee who met the age and service requirements and terminated employment under the Shutdown Agreement before DOPT could qualify for 70/80 Retirement based on a "permanent shutdown."

*Law, Regulations and Policy*

PBGC records indicate that, when the Plan terminated on November 6, 2003, it did not have sufficient assets to satisfy the benefits guaranteed by PBGC under Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). The Appeals Board has limited this decision to whether [redacted] met the necessary conditions for PBGC to guarantee 70/80 Retirement for him.

Entitlement to a guaranteed benefit is determined by the provisions of the Plan's governing document that were in effect when the Plan terminated, and by ERISA and PBGC's regulations. ERISA § 4022(a) provides that, subject to certain limitations, PBGC shall guarantee the payment of all nonforfeitable benefits under a covered pension plan that terminates. ERISA defines a "nonforfeitable" benefit as "... a benefit for which a participant has satisfied the conditions for entitlement under the plan or the requirements of [ERISA]." See ERISA § 4401(a)(8), 29 U.S.C. §1301(a)(8); 29 C.F.R. § 4001.2 (definition of nonforfeitable benefit). PBGC regulations provide that a guaranteed benefit must be nonforfeitable on the plan's termination date. See 29 C.F.R. § 4022.3.

The issue in this appeal is whether [redacted] qualified for 70/80 Retirement because his "Continuous Service" was broken due to either a "layoff" or a "permanent shutdown of a plant, department, or a subdivision thereof." Conditions such as these, which involve how the employment relationship is terminated, are substantive requirements established under Plan terms that must be satisfied by the termination date. See *Fetty v. PBGC*, 915 F. Supp. 230 (D. Colo. 1996), *aff'd*, 104 F.3d 367 (10th Cir. 1996), *cert. denied* 522 U.S. 812 (1997) (subsidized early retirement benefits based upon plan shutdown are not guaranteed if the shutdown occurs after the date of plan termination); see also *PBGC v. Republic Technologies Int'l*, 386 F.3d 659 (6th Cir. 2004) (court affirms PBGC's selection of a pre-shutdown termination date that avoided vesting of shutdown benefits).

A PBGC policy, "Payment of Benefits to Working Retirees," provides guidelines for the agency's payment of shutdown benefits under plans that PBGC has terminated and trustee. Under this policy, PBGC "will scrutinize shutdown benefits and make case-by-case determinations of whether facility shutdowns have occurred." The policy defines a

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"shutdown benefit" as "a subsidized early retirement benefit that becomes payable when all or substantially all of an employer's operations at a facility cease, resulting in a loss of jobs that is expected to be permanent for all or substantially all of the employees at that facility who are participants in the plan."

*Relevant Plan Provisions*

The Plan defines 70/80 Retirement as follows:

\*4.04 70/80 Retirement

- (a) Subject to the provisions of Section 5.03, if a Participant's Continuous Service is broken due to a layoff, a permanent shutdown of a plant, department, or a subdivision thereof, or a Disability that does not qualify as a Permanent Incapacity Disability, and the participant has attained age 55 and completed at least 15 years of Continuous Service, or the sum of the Participant's age and years of Continuous Service equals 80 or more; but he has not attained age 62 as of such date, he may elect to retire under the 70/80 retirement."

Plan section 1.05 provides that a "Break in Service" means "a period which constitutes a break in an Employee's Vesting Service, as provided in Section 3.01(b)." Section 3.01(a) provides that "Vesting Service shall begin on an Employee's Employment Commencement Date and end on the Employee's Severance Date." Subsections 3.01(b) through (e) set forth additional vesting service rules that involve situations such as re-employment, family leave, and military service; however, none of the subsections provides that a participant can incur a break in service before the Severance Date.

Plan § 1.36 defines a "Severance Date" as the earliest of:

- "(a) the date an Employee quits, retires, is discharged (however, if the Employee is re-employed within six months of his initial Severance Date, such Severance Date shall be disregarded), termination (if and when such termination occurs pursuant to the provisions of the basic collective bargaining agreement) due to permanent shutdown of a plant, department, or subdivision, thereof, or dies; (b) the first anniversary of the date on which an Employee is first absent from service, with or without pay, for any other reason such as vacation, sickness, disability, layoff, or leave of absence; or (c) the second anniversary of the date on which an Employee is first absent from service, with or without pay, by reason of compensable disability . . . ."

*Background*

Slater and several of its affiliates filed Chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Delaware ("Bankruptcy Court") on June 2, 2003. On October 8, 2003, Slater filed a motion seeking to idle its operations at Fort Wayne, Indiana, and Lemont, Illinois ("Idling Motion"). The Idling Motion stated that the "Slater Companies have faced increasing financial stress since 2002" and that they "together with many other companies in the steel industry, have been adversely affected by historically

high levels of stainless steel bar imports in the United States, increased output costs, a decrease in the average selling price of stainless steel bar products and production curtailments.”

The Idling Motion further stated that:

“11. . . . the Slater Companies have determined that they lack sufficient liquidity . . . to support the magnitude of losses that the Stainless Steel Bar Business [at the Fort Wayne Facility] continues to experience. . . . although there have been some expressions of interest, the Debtors had not yet received a satisfactory offer to purchase the Fort Wayne Facility as a going concern. . . . The Debtors hope that by idling their operations at the Fort Wayne Facility in an orderly manner, . . . they can preserve the value of the Fort Wayne Facility in order to (a) maximize values for creditors, (b) minimize the disruption to the Slater Companies’ remaining operations and (c) minimize the effort and expense necessary to renew operations in the event the Debtors are able to identify a buyer for the Fort Wayne Facility.” and

“13. In connection with their discussions with their lenders and other advisors, the Debtors have formulated a plan (the ‘Idling Plan’) for the idling of operations to protect the equipment and infrastructure at the Facilities. . . .”

On October 28, 2003, the Bankruptcy Court issued an order that authorized implementation of the Idling Plan.

On October 26, 2003, Slater and USW entered into a “Shutdown Agreement,” which was subject to Bankruptcy Court approval. The Shutdown Agreement stated that: “The idling of the Fort Wayne facility is scheduled to commence upon the entry of a Bankruptcy Court order approving the Idling Motion, and Slater anticipates that most operations will be shut down by December 31, 2003.” The Shutdown Agreement, among other things, provided:

- “2. Termination of Employment Relationship. Each employee covered by this Shutdown Agreement shall be deemed to have a permanent separation date from Slater and to have his or her continuous service broken as of the date laid off from the Fort Wayne facility following the date hereof [October  2003].
- 3. Pension Plan. The parties agree that those employees separated on or after the date of this Shutdown Agreement as a result of the idling of the Fort Wayne facility, have had their ‘Continuous Service’ broken due to a layoff or permanent shutdown of a plant, department, or a subdivision thereof, within the meaning of Section 4.04 of the Pension Agreement Between Slater Steel, Fort Wayne Specialty Alloys Division and United Steelworkers of America Restated Effective January 1, 2001 (hereinafter the ‘Pension Plan’), thus entitling those employees to receive a 70/80 retirement benefit under the Pension Plan, if otherwise eligible. . . .
- 6. Procedures for Reductions in Force. In reducing the workforce at the Fort Wayne facility, Slater shall lay off employees based on seniority . . . except that Slater will use its best efforts to lay off, as soon as possible, those employees eligible for the 70/80 retirement benefit under the Pension Plan, providing that

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the eligible employees execute a release of Slater from any claims relating to such layoffs."

In an Order dated November 18, 2003, the Bankruptcy Court authorized Slater to enter into the Shutdown Agreement with the USW.

[redacted] and a Slater representative signed a "General Release of Slater Steels Pursuant to the Shutdown Agreement." In this Release, Slater agreed that [redacted] Continuous Service would be deemed broken due to layoff effective 10/31/2003 "in accordance with the Shutdown Agreement," and he agreed to release Slater from all claims related to the layoff. Approximately 30 other Slater employees signed similar releases.

On November 6, 2003, PBGC issued to Slater a Notice of Determination stating that PBGC had determined that the Plan "will be unable to pay benefits when due" and "the Plan must be terminated in order to protect the interests of the Plan's participants" and, accordingly, the Plan should be terminated effective November 6, 2003. PBGC and Slater then entered into an agreement, dated May 31, 2004, providing that the Plan was terminated effective November 6, 2003, and that PBGC was appointed trustee of the Plan under 29 U.S.C. §1342(c).

PBGC found, based on Plan actuarial valuation reports, that there were 435 active plan participants as of January 1, 2001, 420 active plan participants as of January 1, 2002, and 366 active plan participants as of January 1, 2003. Additionally, PBGC records contain monthly "Inter-Office Correspondence" prepared by Diana Scruggs, who was Slater's Administrative Coordinator for Human Resources, for the months ending September 30 through December 31, 2003. This correspondence contains the following end-of-month employment statistics for the unionized Production and Maintenance (P&M) positions, the unionized Office and Technical (O&T) positions, and Salaried positions at the Fort Wayne facility.

Date of Employee Count	P&M	O&T	Salaried	Total
Sept. 30, 2003	250	27	84	361
Oct. 31, 2003	182	24	80	286
Nov. 30, 2003	113	17	58	188
Dec. 31, 2003	25	4	25	54

Also, it appears from the correspondence dated December 1, 2003, that 96 of the 98 employees who terminated employment during November 2003 had done so after the November 6, 2003 DOPT.

In a memorandum dated September 23, 2004, PBGC concluded that, based on the information it had concerning Slater's employment levels, "the Fort Wayne plant was still operating on November 6, 2003 (DOPT)." Accordingly, because a permanent shutdown had not occurred before DOPT, PBGC determined that Plan participants "are not eligible to receive the 70/80 shutdown pension benefits."

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*Discussion*

1. Break in Continuous Service due to Lay-off

Your client's original appeal letter suggested that, in addition to the age and service eligibility requirements for a 70/80 Retirement, he satisfied the third eligibility requirement by having his Continuous Service broken due to a layoff, as provided by the Shutdown Agreement.

As noted above, Plan § 1.36 defines the "Severance Date" as the earliest of three possible dates, with the following governing entitlement to a benefit based on layoff: "the first anniversary of the date on which an Employee is first absent from service, with or without pay, for any . . . reason such as . . . layoff . . ." Also, Plan sections 1.05 and 3.01 establish that a "Break in Service does not occur prior to the Severance Date. Thus, the Plan's terms clearly provide that a "Break in Service" based on layoff cannot occur before the first anniversary of the date the participant was first placed on layoff. Accordingly, the Board concluded that, based on Plan terms, [redacted] could not qualify for a guaranteed 70/80 Retirement benefit based on a layoff, because he did not experience a "Break in Service" based on layoff before the Plan's DOPT.

2. When the Shutdown Occurred

Your supplemental appeal letter argued that:

"PBGC erred in finding that a permanent shutdown of the Fort Wayne plant did not occur before the DOPT. Remarkably, in the two documents that PBGC furnished in reply to the USW's information request – a September 23, 2004 memorandum from Tom Skotedis, Actuary, TPD7 to Susan Strassman, OPSS, and a July 8, 2005 e-mail message from Tom Skotedis to Virginia Wright – PBGC fails to mention and review the October 26, 2003 Shutdown Agreement between the USW and the Company. The Shutdown Agreement, which determined within the meaning of the Plan that a permanent shutdown occurred as a result of the idling of the Fort Wayne facility and that each affected employee terminated service upon the last date of employment, controls.

In its September 23, 2004 memorandum, PBGC relies upon several news articles reporting levels of employment at the plant, including an article that relates that as of December 2, 2003, there were approximately 190 employees working at the plant. These news articles are not primary evidence. Nowhere in its record does PBGC describe the work that was performed at the Fort Wayne plant after the DOPT."

The Appeals Board agrees that the news articles are not primary evidence. However, the employment totals discussed in PBGC's memorandum essentially are consistent with the totals in the Inter-Office Correspondence prepared by [redacted] (see "Background" above). These documents, which you received in response to your request for information under the Freedom of Information Act, constitute reliable evidence of employment levels at the Fort Wayne facility. Accordingly, the Board concluded that the

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conclusions in PBGC's memorandum are valid, notwithstanding the references to news articles.

As discussed above, PBGC's "Payment of Benefits to Working Retirees" policy defines a shutdown benefit as "a subsidized early retirement benefit that becomes payable when all or substantially all of an employer's operations at a facility cease, resulting in a loss of jobs that is expected to be permanent for all or substantially all of the employees at that facility who are participants in the plan." The shutdown benefit provisions in this policy reflect PBGC's interpretation of the guaranteed benefit provisions under Title IV of ERISA and under PBGC's regulations. Additionally, the guidance in the Policy is based on PBGC's experience in administering plan provisions similar to those involved in this appeal. Finally, the meaning of "shutdown" in PBGC's Policy is fully consistent with the plain meaning of the term, and there also is nothing in the Plan document or the Collective Bargaining agreement ("Basic Agreement") that would indicate that a different meaning was intended to apply in this case.

Accordingly, in light of the substantial level of employment at the Fort Wayne facility on the Plan's termination date; the Appeals Board decided that a "permanent shutdown" of the Fort Wayne facility had not occurred on or before the Plan's November 6, 2003 DOPT. The information provided by Slater, which shows that approximately 180 P&M Workers and 24 Office Workers were employed on DOPT at the facility, plainly is inconsistent with a conclusion that "all or substantially all of an employer's operations at a facility" had ceased. The Board further observes that the Shutdown Agreement, which states that "Slater anticipates that most operations will be shut down by December 31, 2003," is consistent with the conclusion that the Fort Wayne facility was still operating on DOPT.

3. The Shutdown Agreement

Your appeal letter stated that:

"The Shutdown Agreement, which recognized that a permanent shutdown would occur upon the idling of the facility, construed Section 4.04 of the Plan, which establishes the 70/80 Retirement Benefit. Further, the acknowledgement that employees would terminate continuous service upon the permanent shutdown of the plant is consistent with Section 3.01(a) of the Plan, which provides that a 'Severance Date' occurs when 'an Employee quits, retires, is discharged . . . , [or upon] termination (if and when such termination occurs pursuant to the provisions of the basic collective bargaining agreement) due to permanent shutdown of a plant, department, or subdivision, thereof[.]'"

The Shutdown Agreement did not include PBGC as a party, was negotiated without PBGC's participation, and was not approved by the Bankruptcy Court until after PBGC had issued its Notice of Determination that the Plan should be terminated. Furthermore, this Bankruptcy Court approval did not occur until after the Plan's termination date. Accordingly, the Shutdown Agreement has no legal effect upon PBGC with respect to its obligation to guarantee benefits under Title IV of ERISA. See ERISA §§ 4022, 4061; 29 U.S.C. §§ 1322, 1361.

So that participants might know when they have satisfied the eligibility requirements for a benefit payable under a qualified, defined-benefit pension plan, ERISA requires that every pension plan shall be established and maintained pursuant to a written instrument. ERISA § 402, 29 U.S.C. § 1102. Of course, plan administrators (or others in authority) may issue documents to construe ambiguous plan terms, and such interpretations may be separate from the formal plan document. However, even if a document is intended to be an interpretation of plan language with respect to a given factual situation, the document is ineffective in determining rights under a pension plan when it conflicts with unambiguous plan provisions.

The Appeals Board found that, rather than being an interpretation or construction of the Plan's and Basic Agreement's provisions in light of the events that were occurring at the Slater facility, the Shutdown Agreement introduced a new way to meet the third eligibility requirement for 70/80 Retirement. Although the Shutdown Agreement attempts to define "permanent shutdown" by equating it to the "idling" of the Fort Wayne facility, there is a substantive difference between those two terms. As discussed above, a "shutdown" occurs when "all or substantially all of an employer's operations at a facility cease, resulting in a loss of jobs that is expected to be permanent." An "idling," on the other hand, was described in the Idling Agreement as "an orderly cessation of operations at the Facilities during which time, and after which, the Debtors will seek a buyer for the Facilities and their respective assets." It may have seemed probable, when the Idling and Shutdown Agreements were made, that a permanent shutdown eventually would occur at the Fort Wayne facility. However, the Appeals Board is unable to conclude, based on the record before it, that the events that occurred before DOPT were equivalent to a permanent shutdown.

Additionally, the Appeals Board found no language in the Plan or the Basic Agreement to suggest that a participant could qualify for a 70/80 Retirement based on layoff by signing a release agreeing to accept a layoff and an immediate termination of employment in anticipation of a permanent shutdown of a plant. As discussed above, the Plan document clearly provided that a participant could not qualify for 70/80 Retirement based on layoff until at least one year after the date the participant was first put on layoff. The Shutdown Agreement accordingly appears to be nothing more than an attempt to allow certain participants to vest in 70/80 Retirement prior to the Plan's termination by PBGC, even though the terms of the Plan and the Basic Agreement do not provide for such vesting. Indeed, we know of no reason why Slater and USW provided in the Shutdown Agreement that employees eligible for 70/80 Retirement benefit could be laid off first -- not necessarily in accordance with the seniority provisions of the Basic Agreement -- outside of an attempt to require PBGC to guarantee 70/80 Retirement for [redacted] and others in his situation. We note that section IX of the Basic Agreement establishes as a basic principle that "no employee shall remain at work while a qualified employee with more continuous service seniority is on an extended layoff."

Accordingly, the provisions that Slater and USW adopted in the Shutdown Agreement with respect to qualification for 70/80 Retirement cannot be treated as a plan interpretation. Rather, since the provisions of the Shutdown Agreement as applied to the



facts of the case essentially caused a change in the existing terms of the Plan and Basic Agreement, such changes should have been implemented through the plan amendment process. And if the parties had adopted a plan amendment at the time that Slater and USW entered into the Shutdown Agreement, PBGC would have been unable to guarantee benefits under it because the amendment would have been adopted less than one full year before the Plan terminated. See ERISA § 4022(b)(1); 29 U.S.C. § 1322(b)(1); and 29 C.F.R. § 4022.24, .25.

We further note that the Shutdown Agreement did not include PBGC as a party, was negotiated without PBGC's participation, and was not approved by the Bankruptcy Court until after PBGC had issued its Notice of Determination that the Plan should be terminated. Furthermore, this Bankruptcy Court approval did not occur until after the Plan's termination date. Accordingly, the Shutdown Agreement has no legal effect upon PBGC with respect to its responsibilities under Title IV of ERISA.

In conclusion, the Appeals Board found that [redacted] did not incur a break in Continuous Service before the Plan's termination date as a result of a permanent shutdown of his plant. Furthermore, even though he accepted a layoff and immediate termination of employment in accordance with the terms of the Shutdown Agreement, the acceptance of layoff did not constitute a break in Continuous Service under the Plan's terms. Therefore, he did not qualify before the Plan's termination date for 70/80 Retirement based on layoff. We regret that the outcome of your appeal is not favorable, but ERISA and PBGC regulations do not allow PBGC to guarantee shutdown or layoff benefits to participants who did not meet the eligibility requirements for such benefits before their plan terminated.

Decision

Having applied the law, Plan provisions, and PBGC rules to the facts of this case, the Appeals Board decided that [redacted] did not qualify for a 70/80 Retirement prior to the Plan's termination, and therefore PBGC is unable to guarantee that form of benefit for him. This decision is the agency's final action regarding the issues decided in this appeal. [redacted] may, if he wishes, seek court review of the Board's decision that he is not entitled to a guaranteed 70/80 Retirement benefit.

As was stated in PBGC's determination, [redacted] will receive a full determination of his PBGC benefits no later than June 1, 2007, and he will have an opportunity to appeal that determination. If you or your client needs other information from PBGC, please call PBGC's Customer Contact Center at 1-800-400-7242.

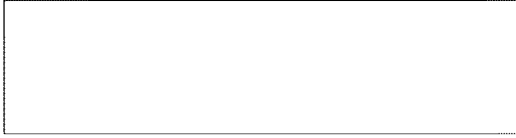
Sincerely,

Michel Louis  
Appeals Board Member

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cc:



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