

Pension Benefit Guaranty Corporation

75-38

July 28, 1975

REFERENCE:

[*1] 4082(b). Effective Date; Special Rules. Applicability of Title IV to Plan Terminations Occurring Between July 1, 1974 and September 2, 1974

OPINION:

Your letter addressed to the Department of Labor attaching * * * inquiry regarding termination of the * * * Racine facility has been forwarded to this agency for response.

As you know, the Racine facility was permanently closed in October 1974. The facility's * * * Pension Fund had been terminated during August of that year. The Pension Benefit Guaranty Corporation (the "Corporation") has carefully considered the circumstances surrounding * * * decision to terminate the Pension Plan at that time and has concluded that Congress did not authorize it to guarantee pension benefits under the circumstances of this case.

Pursuant to § 4082(b) of the Employee Retirement Income Security Act of 1974 (P.L. 93-406), the Corporation may not pay benefits guaranteed under Title IV for plans terminating between June 30, 1974 and September 2, 1974 unless the Corporation determines on the basis of substantial evidence "that the plan was terminated for a reasonable business purpose and not . . . for the purpose of avoiding the liability which might be imposed [*2] under Subtitle D if the plan terminated on or after the date of enactment of this Act." 29 U.S.C. § 1381, 83 Stat. 1034 (1974). The Corporation has found that the record does not support such a determination.

In a letter dated August 23, 1974 from the company's Director of Industrial Relations to the Union's Business Agent, * * * itself explained its decision to terminate the pension plan in August:

As you are aware, Congress is considering and apparently will soon pass the Employee * * * Retirement Income Security Act of 1974. This Act would impose certain liabilities in connection with pension plans which are not presently required by law, nor provided by our plan.

To preserve the status quo with respect to the current legal obligations and liabilities of the parties applicable to our pension plan, the company deemed it necessary and has taken the appropriate action to terminate such plan. (Letter from * * *, * * * to * * * of the

In litigation now pending before the U.S. District Court, the Union alleges that the company's termination of the * * * Pension Plan in August, 1974 was improper. While the Court's decision on the issue of the Plan's termination date would not, [*3] of course, be decisive for purposes of our Act, its finding and the particular relief granted by the Court would create new circumstances relevant to the Corporation's overall assessment of the Plan's status. Consequently, the Corporation would be willing to reconsider the case upon timely request after the pending litigation has been finally resolved.

With best wishes.

Steven E. Schanes
Acting Executive Director