

Pension Benefit Guaranty Corporation

81-21

July 28, 1981

REFERENCE:

[\*1] 4044(a) Allocation of Assets. Requirement of Following Statutory Allocation Provisions

OPINION:

This is in response to your letter concerning a pension plan (the "Plan") maintained by \* \* \* Company \* \* \* of the \* \* \* (the "Union"). You request the opinion of the Pension Benefit Guaranty Corporation (the "PBGC") with respect to the treatment of certain contributions to the Plan. We think that those contributions must be considered employee contributions and hence benefits derived from them are nonforfeitable for purposes of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA").

As you represent the facts, the Union entered into a group insurance contract \* \* \* in 1960 with the \* \* \* Policy \* \* \* was financed solely by employee contributions. Approximately half of the contributions were allocated to a Contractholder Fund and under the contract were not recoverable by participants ceasing employment with \* \* \*

In 1967 Policy \* \* \* was terminated and replaced by the present Plan, which is noncontributory and which is funded through a new contract issued by \* \* \* to the Plan's joint Board of Trustees. The amount in the Contractholder Fund, totaling \$108,000, was transferred [\*2] to \* \* \* and has been commingled by \* \* \* with contributions to the Plan received from \* \* \* Participants who became eligible for retirement benefits under Policy \* \* \* received an additional benefit of fifty cents per month per year of participation under the terminated Policy \* \* \* On February 6, 1979, the Internal Revenue Service issued a letter ruling that contributions allocated under Policy \* \* \* the Contractholder Fund and subsequently transferred to the Plan constituted employee contributions within the meaning of I.R.C. § 411(a)(1) and thus benefits derived from them were nonforfeitable.

PBGC has concluded that the amount in the Contractholder Fund should be treated as employee contributions. Thus, the amount transferred in 1967 from the Contractholder Fund that existed pursuant to Policy \* \* \* to the Plan constitutes voluntary employee contributions to the Plan within the meaning of Section 4044(a)(1) of ERISA, 29 U.S.C.A. § 1344(a)(1) (1975 and Supp. 1976-80). Benefits derived from those contributions are nonforfeitable for purposes of Title IV of ERISA.

This determination is subject to reconsideration under the PBGC administrative review regulation (the "Regulation"), [\*3] a copy of which is enclosed, as a determination with respect to allocation of assets. 29 C.F.R. § 2618.1(b)(4) (1980). You may seek reconsideration within thirty days of the date of this letter by following the procedure set forth in Subpart C of the Regulation.

I hope I have been of assistance. If you have any questions please contact the staff attorney assigned to the matter, \* \* \* at (202) 254-3010.

Henry Rose  
General Counsel