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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5660
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Attn: PFEA '04 Project

RECEIVED
OFFICE OF REGULATIONS
AND INTERPRETATIONS
2005 MAR - 1 PM 2:59

Re: **Annual Funding Notice for Multiemployer
Defined Benefit Plans**

Introduction

The "Comments" on the proposed regulations/model notice related to the above-referenced Annual Funding Notice requirements are being submitted on behalf of the

Steelworkers Pension Trust ("Trust")
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Based on the January 1, 2004 Actuarial Report for the Plan, regular employer contributions in 2003 amounted to \$78.8 million, benefit payments were \$57.5 million, the actuarial value of assets was \$1.491 billion, and approximately 79,000 persons were covered by the Plan.

We have reviewed the proposed regulations and submit the following commentary on such regulations followed by supplemental comments on the Model Notice.

Comments - Proposed Regulations S.2520.1014

Subsection (5): This subsection refers to the plan's funded "current liability" percentage. The only current liability calculated is to satisfy the requirements of the Retirement Protection Act of 1994. For this calculation, two key actuarial assumptions (mortality and interest) are often different from the assumptions used by the Trust actuary for the funding calculations required by ERISA. For instance, under this Plan, the funding ratio based on the 12/31/03 RPA '94 Current Liability and the actuarial value of assets (as the proposed regulation requires) was 103.2%. The corresponding information supplied to the Trust's accountants (FAS '35) refers to accumulated benefit liability as of 12/31/03 and is based on the Plan's actuarial funding assumptions. As of 12/31/03 the funding ratio on this basis was 108.5%. The use of RPA '94 current liability may paint a less favorable picture of a plan's funding even though the Trust actuary is satisfied with the plan's funded condition.

It is interesting to note that yet another basis is used to calculate the funding ratio reported on line 2c of the Form 5500 Schedule B (Actuarial Certification). For that purpose, the RPA '94 current liability is measured against the current value of assets rather than the actuarial value of assets. Again, using this Plan as an example, the funding ratio on this basis was 89.7 % as of 12/31/03.

Subsection (6): Providing the information, as proposed, may confuse the average plan participant, beneficiary, etc. since very few people will understand why there is a difference between market value and actuarial value of plan assets. There are numerous IRS-acceptable methods for calculating the actuarial

value, and, this information is likely to lead to a flood of participant inquiries and confusion concerning the need for such value differences. We believe that there are few, if any, members of our staff who are able, or who would feel comfortable, in answering the inquiries.

The ratio of assets to benefit improvements, in our opinion, can show misleading information. The bulk of expected asset growth may be generated by significant active participant employee contribution increases or plan mergers with few or no participants in pay status. In our opinion, such ratios can readily imply a funded condition of the plan substantially different from the factual situation. Again, is the actuarial value or market value of assets to be used for this purpose?

Subsection (7): It is our opinion that, when reporting on a plan's funded condition, it is inappropriate to incorporate PBGC rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions if a plan were to become insolvent.

It is our understanding that a purpose of the Funding Notice is to alert individuals to apparent plan funding problems--possibly prompting bargaining unit employees to seek employer and Trust actions to resolve the problem(s) through cooperative steps. Incorporation of rules governing insolvent multiemployer plans "sends the wrong message" to the participants, beneficiaries, employers and union organizations. Again, we anticipate, in the least, panic and a flood of inquiries. More drastic action on the part of certain interests who will use this information out of context is expected.

Subsection (8): Publishing a description of the plan's benefits that are generated by the PBGC (effectively

anticipating the plan becoming insolvent), in our opinion, was not the intent of the Pension Equity Act of 2004. Once again, this material/information has no place in a "Funding Notice", a notice that reflects the financial and actuarial information applicable to the plan for the most recently completed plan year.

Subsection (d): This paragraph states that "a funding notice shall be furnished within 9 months after the close of a plan year unless the Internal Revenue Service has granted an extension of time to file the annual report, in which case such furnishing shall take place within 2 months after the close of the extension." Why not seek relief from the requirements of section 101 (f)(3) of the Pension Equity Act and set the date for sending the notice as the same date that the Summary Annual Report (SAR) is mailed, provided such date falls within the timeframe of the legal constraints imposed on the plan by law so that this information can be mailed simultaneously with the SAR?

General Comments:

Background Information re Funding Notice
for Multiemployer (ME) Plans

We have the following views vis a vis proposed regulations:

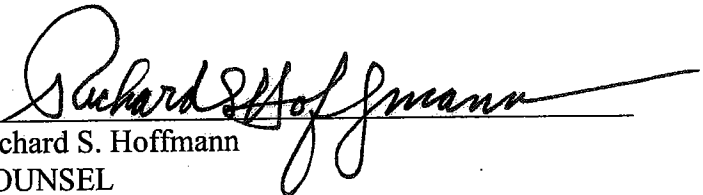
- Very few individuals have a substantial understanding of the numerous technical issues involved with the funding of a ME plan. Adequate information is already published in the annual SAR, and these regulations would introduce new concepts (e.g. the ratio of assets to benefit payments, the funding ratio and information relating to insolvent plans). The confusion generated by this regulation will expedite the demise of many plans.
- The agency's estimate of the burden of collecting information is remarkably inaccurate. In its explanation, the agency's reference to a legal counsel's hourly rate of \$83 is absurd.

Lawyers experienced with ME plans will charge between \$250-\$350 per hour or more! Financial professionals' average hourly rate will be of similar magnitude, assuming similar expenses.

- Introducing concepts of funded ratio, actuarial vs. market value of assets and ideas linked to insolvent plans will prompt confusion and nervous apprehension among recipients.
- The burden of these regulations will fall on the contractual administrator as the regs prompt questions and issues affecting the wide array of recipients.

We hope these several comments and views provide a meaningful insight vis a vis our concern with the proposed regulations. If you have questions concerning any of our comments and observations, please feel free to call the undersigned.

Cordially,



Richard S. Hoffmann
COUNSEL

RSH:pb