

UNITED STATES COURT OF APPEALS

Filed 12/23/96

TENTH CIRCUIT

CHARLES R. FETTY; ALFRED D. AGUERO;
ARTHUR A. AGUERO; DAVID L. ALEXANDER;
HILARIO ALFONSO, JR.; DAVID R. ALLEE;
ROBERT JOHN APODACA; EDWARD J.
ARAGON; VIRGIL R. ARAGON; LAWRENCE A.
ARCHULETTA; ROBERT J. ARCHULETA;
KENNETH R. ARKO; CRISTOBAL ARMijo;
JOHN EDWARD ARMijo; RICHARD L.
ARMSTRONG; EMANUEL AVILLA; SIMON A
AYALA; JOE LOUIS BACA; RICHARD J. BACA;
DALE W. BANDY; BASILIO A BARELA;
DAMIAN EDUARDO BARELA; EUGENE S.
BARELA; JOHNNIE T. BASTA; MICHAEL
JOSEPH BECHAVER; ROBERT BELTRAN;
WILFRED BENITEZ; LAUNNIE S. BIRCH; GARY
BLATNICK; ALEXANDER PHILLIP BONATA;
FRANK M. BONETTA; PHILLIP J. BOYER;
ROGER EARL BRAUN; WILLIAM O. BROWN;
MILLARD J. BUCKLEY; BARRY BURBIDGE;
LAWRENCE W. BURRY; THOMAS R.
BUSTAMANTE; CHARLES BUSTILLOS;
FREDERICK L. CAGE; CARMEN S. CARLO;
EDWARD M. CARLSON; JAMES L. CATRON;
ANTHONY A. CESARIO; ARNOLD E. CHACON;
DIXIE ELAINE CHAPO; GEORGE CHAPOP;
MICHAEL D. CHAPPELL; RICHARD LEON
CHOCKLEY; JAMES L. COATS; STEVE COCA;
CLARENCE C. COCHRAN; PAUL A. COCHRAN;
DAVID E. COLBY; GARY M. COLE; MARTIN A
COLE; CECIL E. COMSTOCK; JAMES R.
CONNOR; JOHN R. CONNOR; DELFIN N.
CORDOVA; JERRY A. CORDOVA; PATRICK L.
CORDOVA; CARLOS Z. CORTEZ; DELBERT
ANDY COTTRELL, JR.; JOHN J. COURTNEY;
JIM R. CRUZ; JOSE G.F. CRUZ; FREDERICK L.
DAVIS; JOSEPH DAZZO; JOE P. DE GRADO;

ELOY R. DELGADO; JOHN D. DEVRIES;
CHARLES V. DIONESE; WILLIAM D. DISALVO;
RICHARD P. DISSLER; STANLEY A. DOWD;
MARVIN HENRY DREWES; JOHN R. DUNLAP;
JOSE D. DURAN; THOMAS V. DURAN; LARRY
L. DWYER; MERLYN D. EALEY; TIMOTHY L.
EAST; EUGENE T. EDWARDS; JERRYN L.
EMERSON; ELMER C. ESPINOZA; ERNESTO S.
ESQUIBEL; SHANNON FAIR; CARLOS LOUIS
FERRIS; CHARLES R. FERRY; ALVIN C. FETTY;
CARL L. FETTY; GLENN R. FINNEY; LIBERATO
FLORES; JACK E. FOGLE; A.D. FRANKLIN;
JOYCE E. GALLARDO; JOHN J. GALLEGOS;
NESTOR A. GALLEGOS; JOSEPH L. GARBISO;
DOMINGO A. GARCIA, JR.; FRANCISCO
GARCIA; GERALD A. GARCIA; JOHN GARCIA;
JOSE S. GARCIA; LEROY E. GARNER; ELMER
C. GILBERSTON; EUGENE GIORDANO; JOSEPH
A. GODINEZ; CARL A. GOMEZ; JOHN GOMEZ;
GABRIEL GONZALES; RICHARD M.
GONZALES; JOE F. GORSHE; JAMES A. GREGG;
MANUEL A. GUTIERREZ; WILLIAM L.
HAMLER; HARRY F. HANEY, JR.; RALPH P.
HART; DON HEADRICK; VERNON L. HELLER;
LEROY E. HENSLEY; ELIAS HERNANDEZ;
ERNEST A. HERNANDEZ; JAMES G.
HERNANDEZ; GENE P. HILL; GEORGE C. HILL;
ALBERT R. HUME, JR.; DONALD L. HUSTON;
THEODORO JAQUEZ; ARTHUR E. JOHNSON,
JR.; CARL L. JOHNSON; HENRY W. JOHNSTON;
ALEXANDER J. KAISER, III; JOSEPH A.
KENICK; JOHN KNAFELC; STAN KROL;
FILBERT F. LA CRUE; DONALD R. LADD;
RICHARD D. LANGE; ROBERT TURGEZ;
KENNETH D. LEWIS; ERNEST P. LINDLEY;
GEORGE E. LINGO, III; GERALD C. LONG;
ALFRED R. LORETO; JOHN A. LOVATO; JESSIE
J. MAEZ; TELESFOR F. MAES; JOSEPH B.
MAHANEY; JUMMIE A. MANN; ARTHUR

J. MARTINEZ; FRED A. MARTINEZ; JAMES E. MARTINEZ; JAMES M. MARTINEZ; JOSE S. MARTINEZ; LEONARDO F. MARTINEZ; MACLOVIO MARTINEZ; PAUL E. MARTINEZ; REYNALDO G. MARTINEZ; DAVID MATHEWS; LARRY LEON MC CARTEE; JIM E. MC CARTY; RICHARD L. MC DOUGAL; HENRY J. MEDINA; RAMON MEDINA; ROSS W. MEDINA; RUBEN MEDINA; JON K. MIHALICK; BILLY L. MILLER; GLENDLE F. MILLER; LEONARD G. MINO; ROBERT M. MONCIVIAIZ; LLOYD V. MONTIEL; ANDY MONTOYA; JOE L. MONTOYA; LEO R. MONTOYA; PEDRO E. MONTOYA; ROBERT T. MONTOYA; DAVID T. MOORE; FREDERICK L. MOSHER; TOMMY MUÑOZ; RICHARD C. MUSSO; REYMUNDO NAJERA; ROBERT W. NELSON; LAWRENCE A. NOGA; JAMES L. OROZCO; ERNIE L. PACHECO; HOWARD E. PACHECO; JOE P. PACHECO; NICK P. PANTAZES; JOHN E. PARKER; GEORGE RICHARD PAVLIN; RONALD D. PEITZ; MICHAEL G. PERRY; SANDY L. PERRY; ROBERT J. PLUTT; WILLIAM M. PLYMELL; DONALD D. POLK; LOUIS D. POTOKAR; GEORGE L. PRIEN; HOMER L. PRUETT; ROGER PRUITT; PAUL EVERETT PULIDO; ROBERT J. QUINTANT; DOMINIC C. RADOSTA; ROBERT RAMIREZ; ARTHUR M. RAMPA; JOHN M. RAMPA; RONALD L. RANSON; RALPH REDMAN; LOUIS L. RICCILLO; ANTHONY D. RIVAS; JOSEPH F. RODRIGUEZ; TERRY ROGERS; ALEX A. ROITZ, JR.; TIMOTHY C. ROLDAN; JAY E. ROM; ANTHONY L. ROMERO; BENJAMIN A. ROMERO; LEONARD R. ROMERO; SECUNDINO ROMERO; RAYMOND L. ROSEMAN; ANGELO J. ROTONDO; LLOYD RUSSEAU; HERBERT ST. CLAIR; DOMINICK A. SALAMENO; ENASO G. SALAS; JOSEPH A. SANCHEZ; LAWRENCE SANDERS; JAKE A.

SANFORD; THOMAS SANTILLI; JAMES A.
SHAFFER; STANLEY H. SHAUFLER; LEROY
SHOBLO; MICKEY L. SMITH; PHIL T. SMITH;
RAYMOND SMITH, JR.; WALTER SMITHOUR;
REGINALD G. SNIFF; RONALD E. SNIFF; LEWIS
O. SNOW; VICTOR E. SOLANO; JAMES D.
SOTO; SAMUEL SOTO; EVERAL R. SPERRY;
DAVID E. SPINUZZI; THOMAS L. SPRAGUE,
SR.; STEVEN M. STEFANIC, JR.; LAWRENCE V.
STEVENS; FRED E. STORM; ROBERT L.
STURTEVANT; JAMES J. STYDUHAR; TOMMY
SUAREZ; ROBERT M. SUTTON; JAMES SWOPE;
MICHAEL E. SWOPE; RONALD WAYNE SWOPE;
JOE TAULLIE; CHARLES T. TORRES; JUAN F.
TORRES; DAVID J. TRACY; ALDEN L.
TRIMBLE; KENTON E. TRIMBLE, Mr.; HAROLD
TRUJILLO; JOSEPH B. TRUJILLO; JOSEPH T.
TRUJILLO; MARK V. TRUJILLO; SIMON
PATRICK TRUJILLO; JOHN L. ULIBARRI;
BENJAMIN VALDEZ; SIMMIE VAUGHT; LEROY
L. VELARDE; GENE N. VELASQUEZ; JOSE E.
VILPANDO; GENE N. VELASQUEZ; ANTHONY
S. VIGIL; JOHN M. VIGIL; JOSEPH L. VIGIL;
LOUIS G. VIGIL, JR.; ALBERT E. VILLA;
TOMAS G. VILLARREAL; JOHN J. VOLK;
DONALD W. WALKER; DAVID L. WATKINS;
EARL E. WEAR; ROBERT CHARLES WILLIAMS;
CLIFFORD F. WILLS; JOSEPH S. WILSON;
JAMES W. WINGARD; ROBERT A. WISE;
WILLIAM J. WOLGRAM,

Plaintiffs - Appellants,

v.

PENSION BENEFIT GUARANTY
CORPORATION,

Defendant - Appellee.

No. 96-1106
(D. Ct. No. 95-K-336)
(D. Colo)

ORDER AND JUDGMENT*

Before TACHA, McWILLIAMS, and BALDOCK, Circuit Judges.

Plaintiffs appeal the district court's February 20, 1996 Memorandum Opinion and Order affirming the determination of defendant Pension Benefit Guaranty Corporation ("PBGC") and dismissing plaintiffs' appeal. Plaintiffs contend that PBGC's decision to deny early retirement benefits under the terminated retirement plan of their former employer was arbitrary, capricious and contrary to law. We exercise jurisdiction pursuant to 28 U.S.C. § 1291 and affirm.

PBGC's interpretation and application of its own regulation is entitled to substantial deference. PBGC's determination must be upheld unless it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(a). We must render an independent decision and apply the same standard of review as the district court. Olenhouse v. Commodity Credit Corp., 42 F.3d 1560, 1580 (10th Cir. 1994) (citation omitted). Under the arbitrary and capricious standard of review we evaluate "whether the agency examined the

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

relevant data and articulated a rational connection between the facts found and the decision made.” Olenhouse, 42 F.3d at 1574 (citation omitted).

We agree with the district court that PBGC correctly interpreted applicable law in its decision to deny plaintiffs’ applications for 70/80 and Rule-of-65 benefits under the Plan. PBGC’s action was neither arbitrary nor capricious. Plaintiffs had not suffered a break in continuous service by reason of a layoff as of the Plan termination date. See 29 C.F.R. § 2613.3 We reject plaintiffs’ attempt to equate “layoff” in sections 5.06 and 5.07 of the Plan with “retirement” in 29 C.F.R. § 2613.6. Therefore, we AFFIRM for substantially the reasons given by the district court.

ENTERED FOR THE COURT,

Deanell Reece Tacha
Circuit Judge