

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 81-25A
3(4)

FEB 27 1981

Mr. Richard L. Stiles
Bachman, Cummings & McIntyre
500 West Franklin Street
P.O. Box 1155
Appleton, Wisconsin 54912

Dear Mr. Stiles:

This is in response to your letter of June 23, 1980, on behalf of the Lathers' Local Union No. 117 Health and Welfare Plan (the Plan) concerning the applicability of certain reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion regarding the applicability of the limited exemption for certain small welfare plans provided in 29 C.F.R. §2520.104-20 to the Plan. In the event the Department determines that the Plan is not entitled to the limited exemption under §2520.104-20, you request a determination as to which, if any, reporting and disclosure exemptions may apply to the Plan. We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to your request.

You represent that the Plan provides health, disability and life insurance benefits for participants. The Plan at all times has had less than 100 participants during any particular plan year. Contributions to the Plan, which are held in trust (Trust), are made by participating employers pursuant to a collective bargaining agreement. The benefits provided by the Plan are provided exclusively through insurance contracts issued by insurance companies which are qualified to do business in the state of Wisconsin. The premiums are paid by the Trust within three months after receipt from the particular employer. As of August 29, 1980, the Trust had approximately \$17,000, which you indicate is unusually high and is primarily the result of a recent merger between the Lathers' Local No. 117 and another union local. The average balance in the Trust had ranged between \$6,000 and \$9,000 a year.

The Plan was established and is maintained pursuant to a collective bargaining agreement between the Wood, Wire and Metal Lathers International Union Local No. 117 (the Union) and participating "contractors" within the jurisdiction of Local No. 117 (the Employers). Periodic payments are made by the Employers to the Trust for the purpose of providing through policies of insurance, or through self-insurance as the trustees deem desirable, life, accident,

hospitalization, medical, surgical and benefits of a similar nature for eligible employees. The Trust is administered by a Board of Trustees consisting of three trustees appointed by the Union and three trustees appointed by the Employers. In general, it appears that the Board of Trustees has authority to control and manage the operation and administration of the Plan.

You request an opinion that the Plan may avail itself of the limited exemption for certain small welfare plans set forth in section 2520.104-20. In support of this request you contend that the Trust is an "employee organization", as defined in section 3(4) of ERISA, which meets the criteria of subparagraph (b)(2)(ii) of section 2520.104-20.¹

The term "employee organization" is defined in section 3(4) of ERISA to mean:

... any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or part, of dealing with employers concerning an employee benefit plan or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

In the Department's opinion, the Trust does not exist for the purpose of dealing with employers concerning an employee benefit plan, nor was it organized for the purpose of establishing such a plan. Rather, the Trust is a product of the dealings, through the collective bargaining process, between employers and an employee organization -- the Union -- that led to the establishment of the Plan, and is part of the Plan. Thus, under the circumstances described in your letter, the Trust

¹ Section 2520.104-20 provides in relevant part that "the administrator of any employee welfare benefit plan which covers less than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act." Paragraph (b) provides in pertinent part: "This exemption applies only to welfare benefit plans -

(2)(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization qualified to do business in any State, the premiums for which are paid directly by the employer or employee organization [maintaining the plan] from its general assets and partly from contributions by its employees or members, provided that contributions by participants are forwarded by the employer or employee organization within three months of receipt ..."

is neither an "employee organization" as described in section 3(4) of ERISA² nor is it the entity "maintaining" the Plan for the purpose of section 2520.104-20 of the Department's regulations.

On the basis of the foregoing, we conclude that the Plan may not avail itself of the limited exemption provided by section 2520.104-20.

With respect to your request concerning other reporting and disclosure exemptions that may be available to the Plan, we refer you to 29 C.F.R. §2520.104-41 (March 10, 1978, as amended August 1, 1980) and 29 C.F.R. §2520.104-46 (March 10, 1978, as amended August 1, 1980), copies of which are included for your convenience.

Under section 2520.104-41, a plan with fewer than one hundred participants at the beginning of the plan year is required, for plan years beginning on or after January 1, 1980, to file a complete annual return/report (Form 5500-C) only every third year and short registration type reports (Form 5500-R) in the two intervening years. Pursuant to section 2520.104-46, the administrator of a plan with fewer than one hundred participants at the beginning of the plan year is not required, among other things, to engage an independent qualified public accountant to conduct a financial examination of the plan. Based on the representations contained in your letter, it appears that the reporting and disclosure relief provided under the aforementioned sections would apply to the Lathers' Local Union No. 117 Health and Welfare Insurance Fund.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
Pension and Welfare Benefit Programs

Enclosures

² It should be noted that this conclusion is solely for the purposes of Title I of ERISA and is not intended to express any opinion as to the status of the Trust under section 501(c)(9) of the Internal Revenue Code of 1954, relating to voluntary employees' beneficiary associations.