

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-28A
201(8), 301(a)(10), 403(b)(6)

MAR 12 1981

Mr. John E. Curtis, Jr.
Kilpatrick & Cody
Suite 500
2501 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Curtis:

This is in reply to your letter of November 25, 1980, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether, when established, a proposed arrangement by South Bend Lathe, Inc. (the Company), will be excluded from coverage under parts 2 and 3 of title I of ERISA, and not subject to the requirements of section 403(a) of ERISA.

You advise that on July 1, 1975, the employees of South Bend Lathe (SBL), a division of Amsted Industries (Amsted), utilized a grant from the U.S. Department of Commerce to the City of South Bend to form an employee stock ownership plan (ESOP) which purchased all of the stock of the Company, a new company. In turn the Company purchased all the assets of SBL. As a consequence, you represent, most of the employees lost their right to future pension benefits under the Amsted retirement plans for salaried and hourly employees. The Company wishes to reimburse employees for these lost pension benefits. Therefore, the Company proposes to advise each employee who lost benefits under the Amsted plans that, upon retirement, the Company will "make up" the lost benefits from its assets, but that such payments will be dependent upon the economic fortunes of the Company.

As amended by the Multiemployer Pension Plan Amendments Act of 1980, ERISA section 201(8) excludes from the minimum participation and vesting standards of part 2 of title I:

(8) Any plan, fund or program under which an employer, all of whose stock is directly or indirectly owned by employees, former employees or their beneficiaries, proposes through an unfunded arrangement to compensate retired employees for benefits which were forfeited by such employees under a pension plan maintained by a former employer prior to the date such pension plan became subject to this Act.

Similar language in sections 301(a)(10) and 403(b)(6) excludes such plans respectively from the minimum funding standards of part 3 of title I and the requirements of ERISA section 403(a) that plan assets be held in a trust.

Based on your representations, it is the position of the Department of Labor that the proposed arrangement by South Bend Lathe, Inc., would, when established, be a program described in ERISA sections 201(8), 301(a)(10), and 403(b)(6) and therefore would be excluded from coverage under parts 2 and 3 of title I and from the requirements of ERISA section 403(a).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs