U.S. Department of Labor

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

Reply to the Attention of:

OPINION 81-35A
3(2), 4(a), 3(6)

MAR 23 1981

Ms. Stana A. Grim
Bliss & Laughlin Industries
122 West 22nd Street
Oak Brook, Illinois 60521

Dear Ms. Grim:

This is in response to your letter of August 15, 1978, regarding the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask for an exemption from the reporting and disclosure requirements contained in part 1 of title I of ERISA on behalf of the Bliss & Laughlin Industries Incorporated Non-Contributory Pension Plan for Hourly Paid Employees at Buffalo, N.Y. Plant (the Buffalo Plan) and the Bliss & Laughlin Industries Incorporated Non-Contributory Pension Plan for Hourly Paid Employees at Mansfield, Mass. Plant (the Mansfield Plan). Although you request an exemption from the reporting and disclosure requirements of title I of ERISA, you suggest that these plans are not covered by ERISA. If the Plans are not subject to title I, no administrative exemption from the reporting and disclosure requirements would be necessary, since the Plans would not be subject to those requirements.

You advise that, as a result of a shutdown agreement between Bliss & Laughlin Industries Incorporated (the Company) and the Union (unidentified in your letter), the Buffalo Plan was "frozen" as of July 31, 1971. We assume that this means that benefit accruals under the Buffalo Plan ceased on that date. In addition, all participants had their employment terminated as of the same date. Certain administrative functions and the payments of benefits have continued since then as part of the agreement. A similar agreement between the Company and the Union "froze" the Mansfield Plan and terminated the employment of its participants as of July 16, 1973. You suggest that, since the termination of the employees and the Plans occurred before enactment of ERISA, the Plans are not within the definition of employee pension benefit plans contained in ERISA section 3(2). You also suggest that the Plans have not been maintained subsequent to ERISA and that the Plans, therefore, are not plans described in ERISA section 4(a).

Section 3(2)(A) of ERISA defines an employee pension benefit plan as:

> … any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program --
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> (i) provides retirement income to employees, or
>
> (ii) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

Section 4(a) of ERISA provides:

> Sec. 4. (a) Except as provided in subsection (b) and in sections 201, 301, and 401, this title shall apply to any employee benefit plan if it is established or maintained --
>
> (1) by any employer engaged in commerce or in any industry or activity affecting commerce; or
>
> (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or
>
> (3) by both.

One of your arguments to the effect that the Buffalo and Mansfield Plans are not covered under ERISA is that the Plans were not maintained after enactment of ERISA. In Opinion 75-16A (issued November 13, 1975, copy enclosed) the Department of Labor took the position that, although a pension plan was frozen prior to ERISA, the related trust which continued in existence constituted an employee pension benefit plan within the meaning of section 3(2). To the extent that the Buffalo and Mansfield Plans continue to provide retirement benefits, they are maintained within the meaning of ERISA sections 3(2) and 4(a).

Your second argument is that the Buffalo and Mansfield Plans are not within the meaning of section 3(2) since they do not provide retirement income to anyone who was an "employee" after enactment of ERISA. Section 3(6) of ERISA defines "employee" as "… any individual employed by an employer." This definition does not explicitly exclude individuals who were not employed by an employer sponsoring a pension plan on or after the date of enactment of ERISA. In fact, it makes no reference to the date of enactment. Further, there is no indication in the legislative history of ERISA that Congress meant to exclude from the protection of parts 1 and 4 of title I those plans whose participants were not employed by the employer after enactment of ERISA. If Congress had intended to exclude such plans from title I coverage, we believe that it would have done so in a manner that made its intentions clear and unambiguous. Therefore, it is the position of the Department of Labor that the Plans are subject to title I of ERISA.

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
Pension and Welfare Benefit Programs

Enclosure