

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-58A
SECTION 4(b)(4)

JUL 2 1981

Mr. J. Patrick Pokorny
Associate Director of Employee Benefits
Pickands Mather & Company
1100 Superior Avenue
Cleveland, Ohio 44114

Dear Mr. Pokorny:

As you know, the Department of Labor has undertaken an investigation for the purpose of determining whether the Pension Plan for Bargaining Unit Employees of Wabush Mines, Pickands Mather & Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the Plan), constitutes an employee pension benefit plan subject to coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). For the reasons set forth below, we conclude that it does not.

The Plan covers hourly employees under a collectively bargained agreement with Locals #6254, #6285, and #6680 of the United Steelworkers of America. The contributing employers to the Plan are Wabush Mines, Wabush Lake Railway Company, Limited, and Arnaud Railway Company. Pickands Mather & Company (Pickands) is the managing agent of Wabush Mines. Pickands also monitors the performance of the trustee for the Plan and has final administrative responsibility for the Plan. The trustee is Royal Trust of Canada, Toronto, Canada. Benefit payments and employer contributions are set up and approved by a Pension Committee whose members are considered employees of Pickands. The Plan has been qualified by the Canadian Department of National Revenues.

You represent that all employees covered by the Plan are Canadian residents and that none are citizens of the United States. All operations of Wabush Mines, Wabush Lake Railway Company, and Arnaud Railway Company are located in Canada. Both Wabush Lake Railway Company and Arnaud Railway Company are Canadian companies. Wabush Mines is a joint venture of one United States and two Canadian companies.

Section 4(b)(4) of ERISA excludes from coverage under title I of ERISA any plan which "... is maintained outside of the United States primarily for the benefit of persons substantially all of

whom are nonresident aliens " Based on the circumstances described above, it is the position of the Department of Labor that the Plan is a plan described in section 4(b)(4) and therefore is not covered by title I of ERISA.

Sincerely,

Ian D. Lanoff
Administrator
Pension and Welfare Benefit Programs