

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



OPINION NO. 84-24A
Sec. 3(1), 3(5), 514(b)(6)

JUN 14 1984

Mr. Daniel H. Mundt
Mundt and Hall
715 West Superior Street
Duluth, Minnesota 55802

Dear Mr. Mundt:

This is in reply to your letters of July 21, August 4, September 6, and October 17, 1983, requesting an advisory opinion regarding coverage under title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Minnesota Timber Producers Association's Group Health Plan (the Program) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that the Program was created by the Minnesota Timber Producers Association (MTPA) to provide health and welfare benefits to eligible employees.

The Program is under the control of a Board of Trustees, all of whom must be members of MTPA. In the event of a vacancy on the Board of Trustees, the President of MTPA may designate an alternate Trustee to fill the vacancy.

The Bylaws of MTPA provide for three classes of members in Article II, section 1:

Section 1. Classes of Members:

The corporation shall have three classes of members. The designation of such classes and the qualifications and rights of the members of such classes shall be as follows: (a) Active Members. Persons or private organizations shall be eligible for membership if engaged in the timber business; (b) Associate Members. Persons or private organizations may be eligible for membership if related in any way to the timber business; (c) Retired Members. Persons who are retired Active Members of the Association.

Only Active Members are permitted to vote. You also represent that all Active Members are employers. The plan document for the Program provides that all members and associate members of the MTPA who are current in their dues are eligible to participate in the Program. (Article I section 1.1.) Full-time employees of employers are eligible to receive benefits. (Article I, section 1.2.) The terms "employee" and "employer" have the same meaning as in the Declaration of Trust (the Trust), an agreement entered into by the members of the Insurance Committee of the MTPA and dated March 1, 1982. (Article II, section 2.1.)

"Employee" is defined in Article I, section 1.3 of the Trust as "any employee with respect to whose employment payments are made to the Group Health Fund by an employer, or by the

employee, or by the employer in combination with the employee."

The term "employer" is defined in Article I, section 1.4 of that document as follows:

1.4 Employer.

a. The term "Employer" as used herein shall mean any forest industry employer, including a sole Proprietor or Partner (or other employer that may become a party pursuant to Article X hereof) (1) who in some manner acceptable to the Trustees consents to be bound by the terms of this Trust Agreement and is bound in writing to make contributions to the Fund with respect to Employees and (2) is accepted for participation in the Group Health Fund by the Trustees and (3) makes contributions to the Group Health Fund as required by this Trust Agreement.

Article X, section 10.3 referred to in the definition of the term "employer" provides:

10.3 Other Employers and Their Employees May Join The Plan.

The Trustees may extend the coverage of this Trust Agreement to such other parties and upon such terms and conditions as the Trustees shall determine, provided such parties are required to conform to the terms and conditions of this Trust Agreement and to make the same rate of contributions required of the Employers herein for the same level of benefits in this Plan. Such other Employers and their employees shall have no right to participate in the appointment or replacement of Trustees.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" to include:

... 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 such plan, fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).

Although the Program provides health benefits among those identified in section 3(1) to be an employee welfare benefit plan, the Program must also, among other criteria, be established or maintained by an employer, an employee organization, or both.

The terms "employee organization" and "employer" are defined respectively by ERISA sections 3(4) and 3(5) as:

(4) The term "employee organization" means 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 in 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.

(5) The term "employer" means any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.

There is no indication that MTPA, which established and maintains the Program, is an employee organization within the meaning of section 3(4) of ERISA. MTPA does not exist "... for the purpose, in whole or in part, of dealing with employers" Furthermore, MTPA is not an "employees' beneficiary association" because membership in MPTA is not conditioned upon one's employment status but rather is open to both employers and employees.

With regard to the issue of whether MPTA is an "employer" within the meaning of section 3(5) of ERISA, the definitional provisions of ERISA recognize that a single employee welfare benefit plan might be established or maintained by a group or association of employers, within the meaning of section 3(5), acting in the interests of its employer members to provide benefits to their employees.

The Department of Labor has taken the position that where membership in a group or association is open to anyone engaged in a particular trade or profession regardless of employer status, and where control of such a group or association is not vested solely in employer members, such group or association is not a bona fide group or association of employers within the meaning of section 3(5) of ERISA. If, however, membership in an association is limited to employers and the association is controlled solely by those employer members, the association would be a bona fide group or association of employers under ERISA section 3(5). Membership in MTP is open to anyone engaged in a particular industry and is not conditioned on one's status as an employer. Thus, it would appear that MTPA is not a bona fide association of employers.

The program of benefits offered by the Program, therefore, is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA because it is not established or maintained by an employee organization or an employer, as those terms are defined in sections 3(4) and 3(5) of ERISA, respectively. Any employer that establishes and maintains a welfare benefit program for its employees through the Program, however, may have established an employee welfare benefit plan covered by title I of ERISA.

We would point out, moreover, that the Program appears to be a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA, as amended by the Act of January 14, 1983 (Pub. L. 97-473). Section 514(b)(6) of ERISA, as amended, provides, in part, that in the case of a MEWA which is a fully insured employee welfare benefit plan, and notwithstanding any other provision of section 514, state law which regulates insurance may apply to the extent that such law provides standards requiring the maintenance of specified levels of reserves and levels of contributions which any such plan, or any trust established under such a plan, must meet in order to pay benefits when due. Section 514(b)(6) further provides that in the case of any other employee welfare benefit arrangement which is a MEWA, state insurance law may apply to the extent not inconsistent with title I of ERISA.

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

Sincerely,

Morton Klevan
Deputy Administrator