

U.S. Department of Labor

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



JAN 15 1985

85-02A
Sec. 3(1), 3(4), 514

Mr. Tony Schrader
Deputy Commissioner
Insurance Department of Iowa
Lucas State Office Building
Des Moines, Iowa 50319

Dear Mr. Schrader:

This is in reply to your letter of April 18, 1984, requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask for an advisory opinion that the arrangement by the Wisconsin Education Association Insurance Trust (WEA Insurance Trust) to provide group health benefits to the employees of the Sioux City Community School District of Sioux City, Iowa (the School District) is subject to insurance laws of the State of Iowa.

You advise that the School District is a duly organized, constituted and existing Iowa school corporation under the laws of the State of Iowa. The School District employs 1,272 people. Of these, 864 are teachers represented by the Sioux City Education Association (SCEA), an affiliate of the Siouland Uniservice Unit, the Iowa Education Association, and/or the National Education Association (NEA). There are 143 operation and maintenance employees represented by the International Union of Operating Engineers, Local 234 (IUOE). The remaining 265 employees are not represented by any organized group. The School District has negotiated collective bargaining agreements with both the SCEA and IUOE under which it agreed to provide group health insurance for the covered bargaining unit employees. On November 18, 1983, the School District applied to participate in the WEA Insurance Trust to provide health benefits to all School District employees who work 15 or more hours per week. In Opinion 83-36A (issued July 5, 1983) to which you refer, the Department of Labor (the Department) held that, based on the submissions and representations made to the Department, the WEA Insurance Trust is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA. You state that the Department of Insurance of the State of Iowa believes that the arrangement between the School District's Board and the WEA Insurance Trust is an undertaking outside Opinion 83-36A.

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).

Thus to be an employee welfare benefit plan within the meaning of section 3(1) of ERISA, the WEA Insurance Trust must not only provide benefits identified in section 3(1), but must also, among other criteria, be established or maintained by an employer, an employee organization, or both.

The term "employer" is defined in section 3(5) of ERISA to include:

... 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.

Although the School District is but one of many employers providing employee benefits through the WEA Insurance Trust, the Department has taken the position that a single employee benefit plan might be established or maintained by a bona fide group or association of employers within the meaning of section 3(5). However, the record does not indicate the existence of any such cognizable, bona fide employer group or association. As such, the WEA Insurance Trust will be deemed to be an employee welfare benefit plan within the meaning of section 3(1) only if it is established or maintained by an employee organization within the meaning of section 3(4) of ERISA.

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

... 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.

In Opinion 83-36A, the Department concluded that the Wisconsin Education Association (WEA), along with the state and local associations affiliated with NEA which sponsor the WEA Insurance Trust, were related labor unions, and thus employee organizations within the first part of the definition in section 3(4). In issuing Opinion 83-36A, it was the Department's understanding that all participants covered under the WEA Insurance Trust were either members of the WEA, NEA, or its affiliates, or employees of the local NEA affiliates or the WEA Insurance Trust itself. However, in the case of the School District, it appears that the WEA Insurance Trust covers participants who are neither represented nor employed by WEA, NEA or its affiliates. As to these employees, WEA, NEA and its affiliates are not one or more labor unions within the meaning of the first part of section 3(4) of ERISA. As a result, the WEA Insurance Trust will be viewed as a single employee welfare benefit plan only if it is established or maintained by an employees' beneficiary association within the meaning of the second part of section 3(4) of ERISA.

Although the term "employees' beneficiary association" is not defined in title I of ERISA, the Department has previously indicated it will use criteria it developed for defining the same term under the Welfare and Pension Plans Disclosure Act (WPPDA). The WPPDA criteria are:

- (1) Membership in an employees' beneficiary association is conditioned on employment status -- for example, if membership is limited to employees of a certain employer;
- (2) An employees' beneficiary association has a formal organization, with officers, by-laws or other indications of formality;
- (3) An employees' beneficiary association generally does not deal with employers;
- (4) An employees' beneficiary association which is an "employee organization" within the meaning of the statute is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

Examining the situation of the School District in light of these criteria, it is apparent that, although all the participants are School District employees, there is no formally organized employees' beneficiary association. Indeed, one substantial group of participants is represented in employment matters by a labor organization unrelated to WEA and NEA. As a result, the Department does not believe that the WEA Insurance Trust is established or maintained by an employees' beneficiary association within the meaning of section 3(4) of ERISA.

In summary, the WEA Insurance Trust is not established or maintained by an employer, since the many employers contributing to the WEA Insurance Trust (including the School District) are not a bona fide employer group or association within the meaning of section 3(5). The WEA

Insurance Trust is not established or maintained by a labor union within the meaning of the first part of section 3(4) since not all participants are represented or employed by WEA, NEA and its affiliates. There is also no employees' beneficiary association under the WPPDA criteria and the second part of section 3(4). As a result, it is the position of the Department that the WEA Insurance Trust is not established or maintained by an employer, employee organization, or both, and is not therefore an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

Section 514(a) of title I of ERISA generally preempts any state law which relates to an employee benefit plan covered by title I of ERISA with certain exceptions not relevant in this case. Because the WEA Insurance Trust is not an employee benefit plan with regard to the employees of the School District, the Insurance Department of the State of Iowa is not, in the Department's view, preempted from attempting to assert its authority.

It should be noted that, although the WEA Insurance Trust is not itself an ERISA-covered plan, the individual benefit arrangements entered into by the various employers contributing to the WEA Insurance Trust may be employee welfare benefit plans within the meaning of section 3(1). These individual arrangements would be subject to ERISA regulation unless their amount and method of public funding, participant composition, and relationship to governmental entities cause them to be governmental plans within the meaning of section 3(32) of title I of ERISA and therefore exempt from ERISA coverage under section 4(b)(1). Such determinations are made on a case-by-case basis.

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,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations