

**U.S. Department of Labor**

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



AUG 22 1985

OPINION NO. 85-31A  
Sec. 3(4), 3(14)(C), (D), (E), and (H)  
406(a)(1)(B)

Mr. F.A. LeSourd  
LeSourd & Patten  
3900 Seattle-First National Bank Building  
Seattle, Washington 98154

Re: Alaska Teamster-Employer Legal Services Trust (LST)  
Identification Number F-2943A

Dear Mr. LeSourd:

This is in reply to your letter of July 17, 1984, concerning the status of LST as a party in interest or a disqualified person with respect to the Alaska Teamster-Employer Pension Trust (PT) for purposes of the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1954 (the Code).<sup>1</sup> Specifically, you request an advisory opinion on the following questions:

1. At the time of certain loans by PT to LST, was LST a contributing employer with respect to PT and therefore a party in interest under section 3(14)(C) of ERISA?
2. At the time of said loans, was LST an employee organization with members covered by PT and therefore a party in interest with respect to PT under section 3(14)(D) of ERISA?

Alternatively, if the Department determines that question 1 is one of a substantially factual nature precluding the issuance of an advisory opinion pursuant to section 5.01 of ERISA Proc. 76-1 (41 FR 36281, August 27, 1976), you request an information letter or advisory opinion on the question of whether the payment by an employee benefit plan of a reasonable fee for administrative services, which are provided by a related employee benefit plan (or its subsidiary)

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<sup>1</sup> Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) effective December 31, 1978, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code, with certain exceptions not here relevant, has been transferred to the Secretary of Labor. Therefore, the references in this letter to specific sections of ERISA refer also to corresponding sections of the Code.

establishes, in and of itself, an employer-employee relationship between the plan receiving such administrative services and the employees of the service provider.

In your letter, you state that LST provides comprehensive legal benefits to Union members and that contributions to LST are made by various employers pursuant to a collective bargaining agreement between such employers and the Union on behalf of its members. LST is jointly administered by employer trustees and trustees representing members of the Union. PT is a multiemployer pension plan generally covering participants employed in over-the-road and local transportation, as well as related industries, in Alaska. You also state that between May 1977 and December 1978, PT made loans to LST. You state further that, from its inception, LST has contracted with the Alaska Teamster-Employer Service Corporation (ESC) for ESC to provide administrative services to LST. ESC, which is wholly owned by PT, also provided administrative services for various other Alaska Teamster welfare plans, as well as other entities related to the Alaska Teamsters Union (the Union). ESC charges fees for the services it provides in amounts sufficient to cover its costs, which are allocated on the basis of the amount of work performed for each ESC customer. Combining these services into one entity (i.e., ESC), enables the organizations serviced to reduce their operating costs.

You explain that, in its early years, ESC employed one person to perform the primary administrative functions for all of the Alaska Teamster plans. However, as the administrative duties in connection with such plans increased, ESC hired additional personnel to provide administrative services for the various plans. Thus, as the activities of LST developed, ESC employed an assistant administrator and other personnel to assist in providing administrative services to LST. The assistant administrator and other personnel were hired and paid by and reported to the administrator of ESC. You represent that ESC had the sole power to select the assistant administrator and support personnel, to fix their salaries, and to terminate their employment; that ESC paid unemployment and social security taxes for these persons; and that LST had no power to specify whom ESC should hire to provide the administrative services, what salary they should be paid, etc. You state that LST did not pay the salaries of any employees of ESC but paid a monthly fee representing that portion of ESC's total costs attributable to the services ESC provided to LST.

ESC employees were covered by both PT and LST, according to the information submitted. You explain that the Internal Revenue Service has suggested that LST is an employer with respect to PT because ESC employees are covered by PT and LST has reimbursed ESC for the salaries of certain employees hired by ESC to provide administrative services to LST.

According to section 3(5) of ERISA, an "employer" is "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan." An employer any of whose employees are covered by an employee benefit plan is a party in

interest, pursuant to section 3(14)(C) of ERISA, with respect to such plan. Similarly, a direct or indirect owner of 50% or more of the stock of a corporate employer of plan participants is also a party in interest, within the meaning of section 3(14)(E) of ERISA, with respect to such plan.

Our advisory opinion procedure (ERISA Proc. 76-1) explains that there are certain areas where, because of the inherently factual nature of the problem involved, or because the subject of the request for opinion is under investigation for a violation of ERISA, the Department ordinarily will not issue advisory opinions. We agree with your suggestion that question 1 is one of an inherently factual nature on which the Department will not issue an opinion, pursuant to section 5.01 of ERISA Proc. 76-1.

Regarding your alternative question 1, we note that the mere payment by a plan to the wholly owned subsidiary of another plan of reasonable compensation for necessary administrative services rendered by such subsidiary to the former plan, does not in itself cause the former plan to be deemed an employer, within the meaning of section 3(14)(C) of ERISA, with respect to the plan owning the service-provider. Of course, whether a particular arrangement for services renders the plan receiving the services an employer with respect to the service-provider depends on the surrounding facts and circumstances.

Please note that, because ESC, a service provider to LST, is wholly-owned by PT, PT is a party in interest with respect to LST by reason of ERISA section 3(14)(H). In addition, Exhibit C of your letter of July 17, 1984 shows that employees of ESC were covered by LST. Such coverage also causes PT, the sole owner of ESC, to be a party in interest with respect to LST pursuant to section 3(14)(E) of ERISA. Therefore, PT's loans to LST were prohibited under section 406(a)(1)(B) of ERISA.

The term "employee organization" in section 3(4) of ERISA 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." Under section 3(14)(D) of ERISA, a party in interest with respect to a plan includes an employee organization any of whose members are covered by such plan.

LST is not an "employee organization" within the first part of the definition in section 3(4) of ERISA because it does not exist for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships. Instead, it is a plan which exists to provide benefits to participants. Furthermore, LST is not an "employees' beneficiary association" within the meaning of the second part of the definition in

section 3(4). Although the term “employees’ beneficiary association” is not defined in ERISA, the Department of Labor (the Department) has previously indicated that it will apply the definition of the same term developed under the Welfare and Pension Plans Disclosure Act (WPPDA), which preceded and was repealed by ERISA. That definition sets forth the following four criteria for qualification as an “employee beneficiary association”:<sup>2</sup>

- (1) membership is limited to employees of a certain employer or members of one union;
- (2) the association has a formal organization, with officers, bylaws, or other indications of formality;
- (3) the association generally does not deal with an employer (as distinguished from organizations described in the first part of the definition of "employee organization"); and
- (4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

Although LST may have some characteristics of an “employees’ beneficiary association” (for example, it was organized for the purpose of providing welfare benefits), LST does not have all the characteristics of an “employees’ beneficiary association.” LST is not an “association” of employees with membership requirements and a formal organization with officers, bylaws, or other similar indications of an “employees’ beneficiary association.” Accordingly, it is the Department’s position that LST is not an employee organization within the meaning of ERISA section 3(4) and therefore was not a party in interest, within the meaning of section 3(14)(D) of ERISA, with respect to PT during the period in question.

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

Sincerely,

Elliot I. Daniel  
Assistant Administrator for Regulations and Interpretations

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<sup>2</sup> See WPPDA Interpretive Manual §315.100 (1965).