

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



APR 10 1986

86-16A
Sec.

Mr. Mark D. Roth
General Counsel
American Federation of Government Employees
1325 Massachusetts Avenue, N.W.
Washington, D.C. 20005

Dear Mr. Roth:

This is in reply to your letter of January 24, 1986, requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the American Federation of Government Employees Union Leader Support Fund Plan (the Support Fund) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

You advise that during its 1984 convention, the American Federation of Government Employees (AFGE) adopted a resolution calling for the establishment of the Support Fund for the purpose of providing subsistence-type assistance to union leaders, who have been fired in reprisal for their union representational activities, while their administrative appeals are pending. Subsequently the AFGE National Executive Council (the NEC) has adopted a proposed program to implement that resolution.

Under the proposed program, the Support Fund would provide a benefit of \$50 per week (to the extent sufficient revenues exist) to officers of AFGE and its affiliated locals and councils "who are wrongfully removed from their employment in reprisal for their exercise of union rights." It would be funded by voluntary contributions from any source but, for a union officer to be eligible, his or her local (if a local officer) or council (if a council officer) must have made a minimum monthly contribution of \$25 to the Support Fund for an uninterrupted period of 6 months.

Union officers may apply for assistance any time after the effective date of their removal. To be eligible, the officer must demonstrate financial hardship, have AFGE participation in the representation of his or her case, and have the written endorsement approving the request from the president of the local or council and the appropriate National Vice-President. The officer

must also agree to repay any monies received if he or she is reinstated with back pay. Requests for assistance will be reviewed and decided by the Legal Rights Committee of the NEC.

Sections 3(1) and 3(2)(A) of title I of ERISA define the terms "employee welfare benefit plan" and "employee pension benefit plan" as follows:

Sec. 3. For purposes of this title:

(1) The terms "employee welfare benefit plan" and "welfare plan" mean 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).

(2)(A) Except as provided in subparagraph (B), the terms "employee pension benefit plan" and "pension plan" mean 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--

- (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.

Based on the information you submitted, it appears that benefits under the Support Fund are based primarily upon the financial need of the eligible individuals. The Department has previously indicated that plans based upon the need of former employees or of employee organization members are not plans providing benefits described in section 3(1) or 3(2) of title I of ERISA. See Opinions 79-7A (issued January 23, 1979) and 77-24A (issued February 18, 1977), copies enclosed. Accordingly, it is the view of the Department that, because the Support Fund does not appear to provide benefits described in section 3(1) or section 3(2)(A) of title I of ERISA, the Support Fund is not an employee benefit plan covered by 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,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations

Enclosures