

U.S. Department of Labor

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



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92-01A
ERISA SECTION
3(1), 104

Gary N. Begley, Treasurer
Southern Labor Union
805 East Main Street
P.O. Box Q
Cumberland, Kentucky 40823

Dear Mr. Begley:

This is in reply to your request for an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA) to the Emergency Relief Fund of the Southern Labor Union. Specifically, you ask whether the Emergency Relief Fund is an unfunded dues-financed welfare plan maintained by an employee organization within the meaning of Department of Labor (the Department) regulation section 29 C.F.R. 2520.104-26 and therefore exempt from filing certain reports with the Department or disclosing certain information to participants.

Your correspondence and the materials you enclosed therein (and previous correspondence from Mr. Clifton H. Sexton, then of Phillips & Wilson) include the following facts and representations.

The Southern Labor Union is described as a labor union filing yearly under the provisions of the Labor-Management Reporting and Disclosure Act. In this regard, Report Form LM-2 has been filed by the Union. You submit the Southern Labor Union constitution which mentions the Emergency Relief Fund in Article VI, Section 7. The Emergency Relief Fund receives contributions only from an additional two-dollar dues assessment paid by all Southern Labor Union members. According to the facts presented in your application materials, the Fund's assets are held in a separately-maintained union savings account (Southern Labor Union Emergency Fund Savings Account) and the grants are disbursed through a separately-maintained union checking account (Southern Labor Union Emergency Fund Checking Account). As originally structured, the Emergency Relief Fund apparently paid limited benefits in the event of fire, flood, or acts of God (such as tornados, hurricanes, earth slides, explosions, etc.) where a participating member lost his home or use thereof, and in the event of the death of a member or his/her spouse.

The documents and information submitted pertain to the addition of benefits for authorized work stoppages and state that such benefits were added to the Emergency Relief Fund in 1980.

"Authorized work stoppage" is defined in current and proposed rules and regulations as "any stoppage of work at the expiration of a contract where proper notice has been given to the Company, the Federal and the State authorities; it is also defined as a work stoppage prior to the recognition of the Southern Labor Union as bargaining agent for employees by a company whose employees have by a majority showing of interest indicated their preference of [the] Southern Labor Union as their bargaining agent; it is also defined as any work stoppage during the life of a collective bargaining agreement which occurs after due notice to the International Union pursuant to the Constitution and the failure to call for the cooling-off period provided therein." Under the current rules and regulations, grants are awarded to eligible members (or their dependents/spouse) in the amount of less than one hundred dollars in the event of a covered death.

You have submitted no facts concerning the status of the Southern Labor Union as a bona fide employee organization within the meaning of section 3(4) of title I of ERISA. Accordingly, this opinion does not purport to address the question of whether the Southern Labor Union may be a bona fide employee organization which has established and maintained a program of benefits. Thus, we are assuming, for the purposes of this opinion, that the Southern Labor Union is such an organization. Coverage of the benefits we discuss below may be dependent on whether or not the Southern Labor Union is a bona fide employee organization; never-the-less, without further argument as to the Southern Labor Union itself, this opinion is limited solely to consideration of whether the types of benefits you describe are benefits within the meaning of section 3(1) of ERISA.

Section 3(1) of title I of ERISA provides that the term "employee welfare benefit plan" means ". . . 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 other-wise, (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)." Certain benefits provided by the Emergency Relief Fund in connection with loss of a home or loss of use of a home are not benefits specified in section 3(1) of ERISA; however, both benefits in the event of death and benefits in the event of unemployment are listed in section 3(1) of ERISA.

Regulations at 29 C.F.R. §2510.3-1, issued by the Department August 15, 1975, clarify the meaning of section 3(1) of ERISA with regard to benefits described therein. Regulation section 2510.3-1(g) describes "remembrance fund" benefits as being for the purpose of providing "remembrances such as flowers, an obituary notice in a newspaper or a small gift on occasions such as the sickness, hospitalization, death, or termination of employment of employees, or members of an employee organization, or members of their families."

Regulation section 2510.3-1(h) describes a "strike fund" as "a fund maintained by an employee organization to provide payments to its members during strikes and for related purposes." Neither "remembrance fund" benefits nor "strike fund" benefits are included as benefits described in section 3(1) of ERISA.

It is the Department's position that the death benefits described above constitute "remembrances" within the meaning of regulation section 2510.3-1(g) because of the relatively small amount(s) to be paid to recipients (i.e. no more than one hundred dollars). To the extent that the Emergency Relief Fund provides benefits to members for "strikes" or related purposes, the Emergency Relief Fund would also appear to meet the criteria of regulation section 2510.3-1(h). We note, however, that the term "strike" within the meaning of regulation section 2510.3-1(h) is not equated with unemployment. While it is outside the scope of this opinion to interpret the term "authorized work stoppage" as used in the Emergency Relief Fund rules and regulations, the Department takes the position that regulation section 2510.3-1(h) would not be applicable if the term "authorized work stoppage" refers to mere unemployment rather than strikes.

Accordingly, the Emergency Relief Fund does not appear to be an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA unless the term "authorized work stoppage" is interpreted to refer to mere unemployment rather than strikes. If the term is not so interpreted, the Emergency Relief Fund would not constitute a plan covered under title I of ERISA and would not have to comply with that title, including Part 1 thereof relating to the reporting and disclosure requirements. On the other hand, if the Emergency Relief Fund is interpreted to provide benefits upon unemployment, the Emergency Relief Fund would constitute an employee welfare benefit plan subject to title I of ERISA.

Department regulation section 29 C.F.R. 2520.104-26 provides a limited exemption for certain employee welfare benefit plans. Such plans are exempt from filing a plan description and annual report with the Department or furnishing a summary annual report to plan participants and beneficiaries. Regulation section 2520.104-26(b) provides that this limited exemption is:

. . . available only to welfare benefit plans maintained by an employee organization, as that term is described in section 3(4) of the Act, paid for out of the employee organization's general assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

You represent that the assets of the Emergency Relief Fund are held in a separately-maintained savings account and disbursed through a separately- maintained checking account. There is no evidence that benefits provided through the Emergency Relief Fund are paid out of the Southern Labor Union's general assets or that the assets of the Emergency Relief Fund are subject to the claims of the Southern Labor Union's general creditors. Therefore, we cannot conclude that the Emergency Relief Fund is an unfunded dues-financed employee welfare plan as described in 29 C.F.R. 2520.104-26(b).

Thus, to the extent the Emergency Relief Fund is an employee welfare benefit plan, as previously discussed, it would not be accorded a limited exemption from the filing and reporting and disclosure provisions of ERISA as delineated in 29 C.F.R. 2520.104-26.

To the extent the Emergency Relief Fund is not an employee welfare benefit plan as discussed above, it is not, in any event, covered by title I of ERISA and would not have to comply with the reporting and disclosure provisions of Part 1 of that title.

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

Sincerely,

Robert J. Doyle
Director of Regulations and Interpretations