

U.S. Department of Labor

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



April 20, 1992

92-12A
ERISA SECTION
3(1)

Mr. Erwin A. Peterson
Peterson, Bell, Converse & Jensen
2780 North Snelling Avenue
Suite 327
Roseville, Minnesota 55113

Dear Mr. Peterson:

This is in reply to your letter requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA may provide benefits not specifically set forth in that section.

You advise that you represent the Minneapolis Painting Industry Health and Welfare Fund (the Fund) which is maintained pursuant to a Restated Agreement and Declaration of Trust dated June 14, 1977, by the Minneapolis Chapter, Minnesota Council, Painters and Decorator Contractors of America (the Employer Association) and the Brotherhood of Painters, Decorators and Paperhangers of America, Local Union No. 389, AFL-CIO (the Union) as Trustors and various individuals as Trustees. You further advise that the Fund provides benefits to participants for illness, accidents, hospital and doctor expenses, life insurance and time loss due to accidental disability for participants who are employees of contributing employers to the Fund. In addition the Fund now proposes to provide an employee assistance program. The employee assistance program will help participants address various emotional or mental health, marital and family, addiction, legal and financial problems.

Section 3(1) of title I 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 or insurance or otherwise, (A) medical, surgical, or hospital care 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).

The use of the phrase "to the extent" indicates that it is possible for an entity to provide a combination of both benefits described in section 3(1) and benefits not described in that section. The entity would be an employee welfare benefit plan subject to the provisions of title I of ERISA because of those benefits it provides which are described in section 3(1).

Accordingly, it is the position of the Department of Labor (the Department) that the addition of benefits not described in section 3(1) to those already being provided by an employee welfare benefit plan will not alter the plan's status under title I of ERISA.¹

Finally, we note that the definition of the term "employee welfare benefit plan" in section 3(1) of title I of ERISA is for the purpose of defining what benefit programs are subject to that title. Accordingly, an interpretation of section 3(1) by the Department of whether or not a benefit program provides benefits described in that section is solely for the purpose of determining whether the program must comply with title I of ERISA and should not be generally interpreted as an indication of the program's status under or compliance with any other laws, such as the Internal Revenue Code or the Labor Management Relations Act of 1947.²

The letter is 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,

Robert J. Doyle
Director
Office of Regulations and Interpretations

Enclosure

¹ However, you should be aware that the expenditure of plan assets to provide benefits not described in the documents and instruments governing the plan may violate the fiduciary responsibility provision of section 404(a)(1) of title I of ERISA.

² You have not sought, and this letter does not provide, an opinion as to whether the services offered by the Employee Assistance Program are welfare benefits described in section 3(1) of title I of ERISA. You may wish, however, to refer to ERISA Opinion 91-26A (copy enclosed) for information on this issue. The letter also does not address any issues raised when welfare benefits that are not covered by ERISA section 3(1) are paid from the same trust as welfare benefits that are covered by ERISA section 3(1).