



November 10, 1994

Mr. Stephen M. Saxon
Groom and Nordberg
1701 Pennsylvania Avenue, N.W.
Washington, DC 20006

94-37A
ERISA SECTION
3(1),3(5),3(40)

Dear Mr. Saxon:

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). Specifically, you ask whether the Missouri Pacific Employees' Health Association (MPEHA) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You advise that MPEHA was the subject of Opinion 90-1 IA (issued April 25, 1990), which concluded "MPEHA is not an employee welfare benefit plan within the meaning of section 3(1) of [T]itle I of ERISA." You advise that MPEHA now has made certain changes in its structure and operations, and you assert that MPEHA now constitutes an employee welfare benefit plan, as a result of those changes. Although you advise that participation in MPEHA is now limited to the employees and former employees of Union Pacific Corporation a/k/a Missouri Pacific Railroad and certain of its subsidiaries and affiliates (the Union Pacific group) under the restated trust agreement under which MPEHA currently operates (the Trust Agreement), you have also submitted two proposed amendments to the Trust Agreement that further clarify how MPEHA currently operates and intends to operate in the future. The Trust Agreement does not limit which subsidiaries or affiliates of Union Pacific may become participating "employers" in MPEHA. The proposed amendments would alter section 1.1, defining the term "employer," and section 2.4, defining "Membership," to read, respectively:

1. Employer means the Union Pacific Corporation and certain of its subsidiaries or affiliates, in which the Union Pacific Corporation has at least an 80 percent ownership interest, that have adopted the plan.
2. Membership. The Members of the Trust shall be the individuals who satisfy the terms and conditions of eligibility as set forth in the Plan, who elect to participate in the Plan and who are employees, dependents or former employees of an employer participating in the Plan. Upon compliance with the terms and conditions of membership, Members shall be entitled to receive the benefits offered under the Plan. Members shall have no voting rights on any matters affecting the management, administration, or existence of the Trust.

Under the Trust Agreement, which was restated effective January 1, 1993, MPEHA is operated by a Board of Trustees composed of seven trustees. Five labor unions that represent employees of Union Pacific each appoint one trustee (a Regular Representative) to the Board of Trustees, and Union Pacific appoints the other two trustees (Representatives-at-Large) to represent the officers and employees of the employer who are not represented by the five labor unions. MPEHA provides group health benefits to participants (Members) and their beneficiaries.

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 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).

MPEHA clearly provides benefits identified in section 3(1)(A). In addition, based on the terms of section 1.1 of the Trust Agreement and your representation that the participating employers comprise a "control group" under ERISA section 3(40), the participating employers comprise an employer within the meaning of ERISA section 3(5). Therefore, the focus of your inquiry is whether MPEHA is "established or maintained by an employer, an employee organization, or by both."

It is the position of the Department that the Union Pacific group and the five labor unions have jointly established and maintain MPEHA.¹ The manner in which these entities have divided among themselves the ability to control the benefit program does not affect the conclusion that together they jointly exercise such control.²

Moreover, based on the representation that all persons eligible for benefits are employees or former employees of employers of the Union Pacific group, the Department concludes that MPEHA is maintained for the purpose of providing benefits for persons who are participants or beneficiaries under ERISA sections 3(7) and 3(8). Therefore, it is the position of the Department that, as currently operated, and as reflected by the proposed amendments to be adopted by the MPEHA Board of Trustees, MPEHA is an employee welfare benefit plan within the meaning of section 3(1).³

This letter constitutes an advisory opinion issued 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

¹ We note that, in order to receive employer contributions, certain trust funds may be required to comply with section 302(c)(5) of the Labor Management Relations Act of 1947 (the LMRA), 29 U.S.C. § 186(c)(5), including provisions requiring equal representation of employers and union representatives in the administration of the fund. In arrangements not covered by the LMRA, the proportion of employer and union representatives may be different from that required by the LMRA. See the Railway Labor Act, 45 U.S.C. § 152; U.S. v. Davidoff, 359 F. Supp. 545 (EDNY 1973). We recognize that, in such arrangements, the employer may actively support and participate in the establishment and maintenance of a plan, even though the employer neither dominates nor has equal representation in the administration of the plan. Nothing in this opinion, however, is intended as an interpretation of any provision of the LMRA or the Railway Labor Act.

² To the extent that this opinion is inconsistent with statements in Opinion 90-11 A, the earlier opinion is superseded.

³ You also advise that it is your belief that MPEHA is not a multiple employer welfare arrangement (MEWA) within the meaning of section 3(40)(A) of Title I of ERISA because it is maintained pursuant to one or more collective bargaining agreements and because it is maintained by a control group within the meaning of section 3(40)(B). The Department agrees that MPEHA, as currently operated and described above (including the proposed amendments), provides only benefits to employees of a control group within the meaning of section 3(40) and, therefore, MPEHA would not be a MEWA within the meaning of section 3(40)(A). Accordingly, it is not necessary to determine whether or not MPEHA is maintained under or pursuant to one or more collective bargaining agreements within the meaning of section 3(40)(A)(i).