

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 80-23A

3(1), 3(2), 3(5), 3(4), 3(11), 3(12), 3(6), 3(7), 4(b)

APR 18 1980

Mr. James A. Plaisted
Assistant U.S. Attorney
Office of the United States Attorney
Newark, New Jersey 07102

Dear Mr. Plaisted:

This is in reply to your request for an opinion concerning the coverage of the eleven plans identified below under both title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the predecessor law, the Welfare and Pension Plans Disclosure Act, as Amended (WPPDA).

Filings for each of the following plans were examined as well as filings made for Local No. 478 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Local 478) with the Department under the Labor Management Reporting and Disclosure Act, identified as File No. 001458:

1. Local 478 Trucking & Allied Industries Pension Fund (the General Pension Fund) under ERISA identified as File No. 510160551-001 and under the WPPDA identified as File No. 76936;
2. Joint Welfare Fund of Employers & Local #478 I.B. of T. (the General Welfare Fund) under ERISA identified as File No. 510160551-501 and under the WPPDA identified as File No. 76937;
3. Tenco, Local #478 of International Brotherhood of Teamsters Pension Plan (the Tenco Pension Plan A) under ERISA identified as File No. 580628465-010 and under the WPPDA identified as File No. 175115;
4. Tenco - Local #478 Pension Plan (the Tenco Pension Plan B) under ERISA identified as File No. 580628465-009 and under the WPPDA identified as File No. 164394;

5. Dental Plan for Hourly-Rated Members of IBT, Union Local 478, located at Linden, N.J. 07036 (the Tenco Dental Plan) under ERISA identified as File No. 580628465-505 and under the WPPDA identified as File No. 166832;
6. Hospitalization and Medical-Surgical Plan for Hourly-Rated Members of IBT, Union Local #478, located at Linden, New Jersey (the Tenco Hospitalization Plan A) under ERISA identified as File No. 580628465-506 and under the WPPDA identified as File No. 166833;
7. Eyeglass Plan for Hourly-Rated Members of IBT, Union Local 478, located at Linden, New Jersey 07036 (the Tenco Eyeglass Plan) under ERISA identified as File No. 580628465-507 and under the WPPDA identified as File No. 166834;
8. Group Life, Accidental Death and Dismemberment, Medical Disability Plan for Hourly-Rated Members of IBT, Union Local 478, located at Linden, New Jersey (the Tenco Life Insurance Plan) under ERISA identified as File No. 580628465-508 and under the WPPDA identified as File No. 166835;
9. Hospitalization and Medical-Surgical Plan for Hourly-Rated Members of IBT, Union Local #478, located at Morris Plains, New Jersey¹ (the Tenco Hospitalization Plan B) under ERISA identified as File No. 580628465-509 and under the WPPDA identified as File No. 179135;
10. Major Medical Plan for Hourly-Rated Members of IBT, Union Local 478, located at Linden, New Jersey (the Tenco Medical Plan A) under ERISA identified as File No. 580628465-510 and under the WPPDA identified as File No. 189856; and
11. Major Medical Plan for Hourly-Rated Members of IBT, Union Local #478, located at Morris Plains, N.J. (the Tenco Medical Plan B) under ERISA identified as File No. 580628465-511 and under the WPPDA identified as File No. 273526.

For the purposes of this letter the Tenco Dental Plan, the Tenco Hospitalization Plans A and B, the Tenco Eyeglass Plan, the Tenco Life Insurance Plan, and the Tenco Medical Plans A and B shall also be referred to collectively as the Tenco Welfare Plans. Also, for the purposes of this letter, the Tenco Pension Plans A and B shall be referred to jointly as the Tenco Pension Plans.

The documents on file with the Department indicate that the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans were established and/or maintained jointly by an employer or employers contributing thereto and Local 478 pursuant to

¹ On the WPPDA filings this plan is identified as “Hospital & Medical-Surgical Insurance Plan for Members of Union Local 8-272 Who Are Employees of Tenco, a Division of The Coca-Cola Company.”

collective bargaining, for the benefit of members of the union employed by the employers as well as their families.

ERISA title I, section 4(a) specifies that ERISA title I applies to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

The term “employee benefit plan” is defined in ERISA title I, section 3(3) as “... an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan.” The term “employee welfare benefit plan” is defined in ERISA title I, section 3(1) as “... 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).” The term “employee pension benefit plan” is defined in ERISA title I, section 3(2) as “... 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 -- (A) provides retirement income to employees, or (B) 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.”

Coverage under the WPPDA was the same as under ERISA for many plans. There are three areas of exception. The WPPDA provided more exemptions from coverage under WPPDA section 4(b) than does ERISA section 4(b), there were fewer benefits covered under the WPPDA definition of the term “employee welfare benefit plan,” and the WPPDA definition of the term “employee pension benefit plan” is more limited than the ERISA definition. WPPDA section 4(a), like ERISA section 4(a), specifies that the WPPDA applied to “... any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by an employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or by both ...” except those plans exempt under WPPDA section 4(b). The term “employee welfare benefit plan” was defined in WPPDA section 3(1) as “... any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization,

or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment.” The term “employee pension benefit plan” was defined in WPPDA section 3(2) as “... any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.”

The elements of coverage under both the WPPDA and ERISA are:

1. the plan must be established or maintained by an employer or employee organization, as those terms are defined, or by both;
2. jurisdiction under the commerce clause;
3. the plan provides benefits to participants and/or beneficiaries as defined;
4. the plan provides benefits specified in the definition of “employee welfare benefit plan” or “employee pension benefit plan”;
5. under the WPPDA only, the plan must have been communicated or its benefits described in writing to employees; and
6. the plan is not exempt under section 4(b).

The following is a discussion of each of these points with respect to all plans.

1. Establishment or Maintenance by Employer and/or Employee Organization.

The General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans were established and/or maintained jointly by an employer or employers and an employee organization (Local 478) through collective bargaining.

ERISA section 3(5) defines the term “employer” as “... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity.” WPPDA section 3(4) has a virtually identical definition, defining the term “employer” as “... any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity.”

The employers of the employees of Local 478 which contribute to the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and/or the Tenco Welfare Plans as a result of collective bargaining with Local 478 clearly meet these definitions.

ERISA section 3(4) defines the term “employee organization” as “... 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.” The WPPDA definition of “employee organization” in section 3(3) is identical to the ERISA definition except for the use of the term “employee welfare or pension plan” rather than “employee benefit plan.”

Local 478 meets the definition of “employee organization” in both laws. Local 478 is a local labor union in which employees participate and a purpose for which it exists is dealing with employers on matters incidental to employment relationships, including concerning employee benefit plans. Article II of the Constitution and By-laws of Local 478 adopted and effective February 7, 1965, filed with the Department under the Labor Management Reporting and Disclosure Act, indicates the nature of the organization (labor union) and its objects. Article II provides, in part, “The objectives of this Union are to unite all workers who come under Teamster jurisdiction into a strong, powerful union in order to better protect and advance their economic, social and political interests by: ... B. Establishing constantly higher standards of pay and working conditions... F. It is recognized that the problems with which this labor organization is accustomed to deal are not limited to unionism or to organization and collective bargaining alone, but encompass a broad spectrum of economic objectives as set forth above and as the Union may determine from time to time: we, therefore, determine and assert that the participation of this labor organization, individually and with other organizations, in the pursuit and attainment of the objectives set forth herein are for the sole benefit of the organization, its members, and their families....”

2. Commerce Clause.

With respect to the commerce clause, ERISA section 4(a) and WPPDA section 4(a) provide that ERISA title I and the WPPDA apply to employee benefit plans established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or (3) by both, except for plans specifically exempt under section 4(b).

ERISA section 3(11) defines the term “commerce” as “... trade, traffic, commerce, transportation, or communication between any State and any place outside thereof.” WPPDA section 3(10) defined commerce as “... trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and

any place outside thereof.” The term “industry or activity affecting commerce” is defined in ERISA section 3(12) as “... any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry affecting commerce within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act.” The definition in the WPPDA is virtually identical.²

The term “industry or activity affecting commerce” has been given a liberal interpretation by the courts. The Supreme Court has held that the jurisdiction of the National Labor Relations Board under the Labor Management Relations Act definition is as broad as the jurisdiction of Congress over interstate commerce. See NLRB v. Fainblatt, 306 U.S. 601, 607, and cases cited therein (1939). Therefore, court decisions under the Labor Management Relations Act are useful in determining the application of sections 3(11) and 3(12) of ERISA and sections 3(10) and 3(11) of the WPPDA. In the case of NLRB v. Bank of America, 130 F. 2d 624 (9th Cir. 1942), cert. denied 318 U.S. 791 (1943), the court pointed out that such normal business activities as correspondence with other banks and business institutions, use of telegraph or telephone facilities involved the use of channels of interstate communications so that the bank was “engaged in interstate activities not describable otherwise than as commerce.”

Therefore, the employers and Local 478 are included within the commerce clause of the WPPDA and ERISA.

3. Provision of Benefits Specified in Law.

Under both laws, in order to be covered, a plan must provide benefits specified in the law’s definition of “employee welfare benefit plan” or “employee pension benefit plan.”

A. The General Welfare Fund and the Tenco Welfare Plans

The ERISA section 3(1) definition of “employee welfare benefit plan” includes “... any plan, fund, or program ... established or ... maintained for the purpose of providing ..., 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).” (The effect of section 3(1)(B) is to include within the definition those plans which provide holiday and severance benefits, and benefits which are similar.)

² Section 3(11) of the WPPDA defined the term “industry or activity affecting commerce” as “... any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry ‘affecting commerce’ within the meaning of the Labor Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended.”

According to the EBS-1 and the annual reports (Form 5500) filed with the Department, the General Welfare Fund provides benefits which include temporary disability benefits, dental care, vision care, life insurance, accidental death and dismemberment benefits, and hospital and surgical coverage. Thus, the General Welfare Fund provides benefits specified in ERISA section 3(1).

Further, according to the EBS-1's and the annual reports (Form 5500) filed with the Department, the Tenco Welfare Plans provide dental care, hospital and surgical coverage, vision care, life insurance, accidental death and dismemberment benefits, and/or temporary disability benefits. Thus, the Tenco Welfare Plans each also provide benefits specified in section 3(1) of ERISA.

The WPPDA section 3(1) definition of "employee welfare benefit plan" includes "... any plan, fund, or program ... established ... for the purpose of providing ..., through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment."

The General Welfare Fund, according to the Form D-1 filed with the Department under the WPPDA, provides temporary disability benefits, medical reimbursement for "doctor visits," life insurance, accidental death and dismemberment benefits, and hospital and surgical coverage and thus provides benefits specified in WPPDA section 3(1).

Similarly, the Tenco Welfare Plans, according to the Form D-1's filed with the Department under the WPPDA, provide dental benefits, hospital and surgical medical benefits, vision care, life insurance, accidental death and dismemberment benefits, and/or disability benefits and thus provide benefits specified in section 3(1) of the WPPDA.

Thus, the General Welfare Fund and the Tenco Welfare Plans provide benefits specified in ERISA section 3(1) and WPPDA section 3(1).

B. The General Pension Fund and the Tenco Pension Plans

The ERISA section 3(2) definition of "employee pension benefit plan" includes "... any plan, fund, or program ... to the extent that by its express terms or as a result of surrounding circumstances such plan, fund, or program -- (A) provides retirement income to employees, or (B) 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."

According to the EBS-1 filed with the Department, the General Pension Fund provides to participants at age 64 with at least 25 years of service, a monthly retirement benefit equal to either \$14.80 or \$18.20 per year of service. Benefits are also payable at early retirement, death,

and disability. Thus, the General Pension Fund provides benefits described in ERISA section 3(2).

The Tenco Pension Plan A, according to the EBS-1 filed with the Department, provides a normal retirement benefit at age 65. Currently participants annually accrue 1.4 percent of earnings below \$4800.00 and 1.5 percent of earnings above that level. Benefits are also available at early retirement or disability. Thus, the Tenco Pension Plan A also provides benefits described in section 3(2) of ERISA.

The Tenco Pension Plan B, according to the EBS-1 filed with the Department, provides a normal retirement benefit at age 65 with 15 years service. Currently participants accrue \$9.75 per month for each year of service up to 35 years. Benefits are available at early retirement or disability. Thus, the Tenco Pension Plan B also provides benefits described in section 3(2) of ERISA.

The WPPDA section 3(2) definition of “employee pension benefit plan” includes “... any plan, fund, or program ... established ... for the purpose of providing ... by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.”

The Forms D-1 and D-2 filed with the Department under the WPPDA indicate that the General Pension Fund and the Tenco Pension Plans provide monthly pension and disability retirement benefits upon satisfaction of specified age/or service requirements.

Thus, both the General Pension Fund and the Tenco Pension Plans provide benefits specified in ERISA section 3(2) and WPPDA section 3(2).

4. Provisions of Benefits to Participants or Beneficiaries.

ERISA title I and the WPPDA cover only employee benefit plans; i.e., plans arising out of the employment context. Therefore, in order to be covered, a plan must cover participants who are employees and/or former employees (including members of employee organizations) who are or may become eligible to receive benefits or whose beneficiaries may be eligible to receive benefits.

ERISA section 3(6) and WPPDA section 3(5) define the term “employee” as “... any individual employed by an employer.”

ERISA section 3(7) defines the term “participant” as “... any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit.” WPPDA section 3(6) defines the term “participant” as “... any employee or former employee of an employer or any member of an employee organization

who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit.”

ERISA section 3(8) and WPPDA section 3(7) define a beneficiary as a person designated by a participant or by the terms of an employee benefit plan (employee welfare or pension benefit plan in the WPPDA) who is or may become entitled to a benefit thereunder.

The General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans provide benefits to employees of employers with which the Funds were collectively bargained who are represented by Local 478 and/or to their beneficiaries. Thus, the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans provide benefits to participants as defined in both ERISA and the WPPDA.

5. Communicated in Writing (WPPDA Only).

Finally, the WPPDA covers only those plans which were communicated or their benefits described in writing to the employees. Examples of notification which satisfy the “in writing” requirement are insurance contracts and literature, mention in a collective bargaining agreement, description in a booklet, etc. The Forms D-1 and D-2 filed under the WPPDA for the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans indicate that they were mentioned in collective bargaining agreements, were described in booklets for members, etc., and thus were communicated in writing to employees.

6. Not Exempt Under Section 4(b).

ERISA section 4(b) and WPPDA section 4(b) exempt certain benefit plans from coverage. Neither the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, nor any of the Tenco Welfare Plans fall under any of the section 4(b) exemptions.

Conclusion.

Therefore, the General Pension Fund, the General Welfare Fund, the Tenco Pension Plans, and the Tenco Welfare Plans are covered by title I of ERISA and were covered by the WPPDA.

Sincerely,

Wayland B. Coe
Acting Assistant Administrator
Office of Reporting and Plan Standards
Pension and Welfare Benefit Programs