

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 80-24A
104(a)(1), 104(1)(3), 3(4)

APR 23 1980

Mr. John G. Makula
Thomas W. Havey & Co.
105 West Adams Street
Chicago, Illinois 60603

Dear Mr. Makula:

This is in reply to your request of July 5, 1978, on behalf of Local No. 9 of the International Brotherhood of Electrical Workers (IBEW) and its two welfare benefit plans for an advisory opinion on whether the two plans qualify for the limited exemption for certain dues financed welfare plans maintained by employee organizations, provided by regulation 29 CFR §2520.104-26 under the Employee Retirement Income Security Act of 1974 (ERISA).

Section 104(a)(1) of ERISA provides generally, that the administrator of any employee benefit plan subject to Part 1 of ERISA shall file with the Secretary of Labor the annual report for the plan year, the plan description and an updated plan description, a summary plan description, and modifications and changes to the plan. Section 104(a)(3) further provides that "the Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this title, or may provide for simplified reporting or disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans."

Regulation section 2520.104-26 provides that "welfare benefit plans maintained by an employee organization ..., paid for out of the employee organization's assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries" are exempt from the provisions of ERISA that require a plan description and an annual report to be filed and a summary annual report to be furnished to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirements to furnish a summary plan description to participants and beneficiaries and to file a copy of the summary plan description with the Department of Labor.

Section 2520.104-26 generally provides that in lieu of filing the plan description and summary plan description with the Department of Labor, a filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder of the Report Form LM-1 or LM-1A, together with a copy of the employee organization constitution or bylaws in which the

plan is described, and certain documents furnished to plan participants in accordance with paragraph (a)(3) of the regulation. That paragraph provides among other things that if the bylaws "indicate that a certain portion of members' dues . . . will be used only for the payment of benefits, although such portion of dues . . . may be subject to the claims of general creditors" the bylaws may still be used as the summary plan description if they are amended as soon as possible to reflect accurately the status of the plan. The regulation further provides that in lieu of filing the annual report or distributing a summary annual report to participants and beneficiaries receiving benefits, the plan may file Report Form LM-2 or LM-3 pursuant to the LMRDA and the regulations thereunder.

You state in your letter that the Local has filed Form LM-1A, which included a copy of the Local's bylaws incorporating the International Constitution of the IBEW. You state further that the Local annually reports its activities on Form LM-2.

The Local's bylaws provide in section 8(b) of Article XI that: "At no time shall any of the funds of the Local Union be drawn for other than the purpose for which they are intended, unless approved by the Executive Board and the Local Union."

You note in your letter, however, that although assets are segregated in separate funds and the Executive Board is restricted as to uses of certain funds, all assets of the Local, including assets in restricted funds, could be subject to the claims of general creditors. Although the Local's bylaws have been amended to allow the Executive Board full authority to propose administrative rules necessary to comply with federal and State regulatory authorities, the bylaws have not been amended to accurately reflect the fact that the assets of the Local may be subject to the claims of general creditors of the Local.

Based on the representations contained in your letter of July 5, 1978, and on the copy of the bylaws of the Local which you supplied on March 26, 1979, it does not appear that the Local's bylaws may be substituted for the summary plan description pursuant to 29 CFR §2520.104-26(a)(3). Section 8(b) of Article XI of the bylaws quoted above provides that the funds of the Local shall be used only for the purpose for which they are intended, notwithstanding the fact that all assets of the Local may be subject to the claims of general creditors of the Local. Since the Local's amended bylaws do not appear to accurately reflect the fact that the assets of the Local may be subject to the claims of general creditors of the Local, they may not be substituted for the summary plan description.

It is the Department's opinion, however, that the Local has satisfied its obligation to file the annual report and to distribute the summary annual report to participants and beneficiaries by filing Form LM-2.

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,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs