U.S. Department of Labor

Office of the Solicitor
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OPINION NO. 82-1A
Section 404(a)(1)(D)

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Re: Donovan v. Carlough, et. al., Civil Action No. 81-1988 (D.D.C.)

Dear Harry:

At the Status Conference on November 3, 1981, we promised to set forth by letter the position which the Secretary of Labor will take with respect to the applicable standard the Court should apply in deciding whether the trustee defendants violated ERISA §§404(a)(I)(A), (B), and (D) in making their interpretation of and applying the SASMI Plan's rule on forfeiture of benefits. In order to present our position in the context of this case, we will first summarize the relevant facts.

The SASMI Plan provides underemployment benefits for participants of the Plan. Under the Plan's documents, a participant's benefits are forfeited when he discontinues working pursuant to a collective bargaining agreement that requires his employer to make contributions to the Plan.[1]

[1] Article VI, Section 2(d) of the Plan's Rules and Regulations effective January 1, 1979 provides in relevant part that "all Benefits which would have been payable shall be forfeited under the following conditions: … (d) By an Employee of an Employer in an area where the Contract has been terminated or the provisions of a Contract relating to SASMI have been terminated so that such Employee no longer is working under a Contract containing SASMI within such Local Union's jurisdiction." The term "Contract" is defined in Article I, Section 2 of the same Rules and Regulations as "a collective bargaining agreement in effect between a Local Union and/or International Union and an Employer requiring the Employer to make contributions to the National SASMI Fund either directly or to or through a Local Fund which has entered into a Local Fund Agreement with the Trustees of the National SASMI Fund." The Plan's Rules and Regulations which were in effect during 1978 contained similar provisions.

Members of Local 16 participated in the Plan pursuant to a collective bargaining agreement effective April 1, 1974. In November, 1978, the membership of Local 16 voted to amend their collective bargaining agreement, effective January 1, 1979, to eliminate the obligation of their employers to make contributions to the SASMI Plan. This decision, however, was expressly conditioned on the approval of the trustees of the SASMI Plan. The trustees subsequently advised Local 16 that it would be inappropriate for them to act upon a proposed amendment to the collective bargaining agreement, and the proposed amendment did not become effective.

Beginning in January, 1979, the Local 16 participants filed claims for benefits which had accrued during the period July 1, 1978 through December 31, 1978. In March, 1979, the membership of Local 16 again voted to amend their collective bargaining agreement to eliminate the obligation of their employers to make contributions to the Plan, this time to be effective April 1, 1979.

Employers of the Local 16 participants continued to make contributions to the SASMI Plan until April 1, 1979, when the new Local 16 collective bargaining agreement, which no longer required the employers to contribute to the Plan, became effective. We understand that the trustees, however, have taken the position that, under the Plan's forfeiture rule, the Local 16 participants' benefits under the Plan became forfeit in November, 1978, based on the membership's conditional vote to withdraw, notwithstanding the fact that the collective bargaining agreement remained in effect, in every respect, until April 1, 1979.

We also understand your position to be that the Court must let stand the trustees' interpretation of the Plan's documents unless the Secretary persuades the Court that their interpretation was "arbitrary and capricious."

As you know, the "arbitrary and capricious" standard was formulated in cases arising under §302(c)(5) of the Labor Management Relations Act. That section, which sets forth an exception to the general criminal prohibition of employer payments to employee representatives, permits payments made to "a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer …." Because of the lack of legislative guidance, there has been some disagreement and even some confusion as to the proper role of the judiciary in applying that section to the substantive provisions of documents governing employee benefit plans. The majority of the courts have drawn a distinction between "structural deficiencies" – which may be remedied under §302(c)(5) – and "day-to-day administration of funds" – which may not be challenged under §302(c)(5). The case law subsequently developed that a court could set aside a trustee's decision with respect to a substantive provision of a plan document if it were persuaded that the trustee had acted "arbitrarily and capriciously," on the theory that arbitrary and capricious conduct is not for the "sole and exclusive benefit" of employees and is, therefore, "structurally deficient." But the judicially evolved §302(c)(5) standards are no longer the principal guide to the lawfulness of substantive plan provisions.

ERISA, unlike §302(c)(5) law, generally provides legislative answers to the structural requirements of employee benefit plans. In enacting ERISA Congress mandated which specific rules should be applied to ensure fairness to the participants and beneficiaries of the plans who have a right to rely on the plan documents. Pension plans are required to meet a variety of structural minimum standards, such as those set forth in §202 (participation) and §203 (vesting),

while welfare plans are permitted much greater flexibility so that their respective purposes may be achieved. ERISA §404(a)(1)(D) expressly requires that each fiduciary

> shall discharge his duties with respect to the plan … in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title.

By mandating a literal compliance with plan documents, Congress responded to the need to provide notice to participants of exactly how their benefits are to be provided. See "ERISA's Findings and Declaration of Policy," ERISA §2(a). ERISA §404(a)(1)(D) requires plan fiduciaries to discharge their duties in accordance with the plain meaning of the plan documents; if the meaning of the plan documents is unambiguous, the fiduciaries may not attribute any other meaning to the documents. Snyder v. Titus, 513 F.Supp. 926, 935 (E.D. Va. 1981).

If Policy reasons exist for changing a plan rule, such reasons are not relevant in construing the rule, although they may, of course, be relied upon as a basis for amending the rule in any fashion which is permitted by the plan documents and consistent with ERISA.

If a plan provision is genuinely ambiguous (which we believe is not the case here), it is our view that the courts may honor the construction given to it by the trustees if that construction is reasonable under the circumstances. The common law courts which dealt with traditional kinds of trusts adopted this view (see Bogert on Trusts, §559 and the Second Restatement of Trusts §187), and it is consistent with the best reasoning of the courts which have applied the "arbitrary and capricious" standard in cases arising under §302(c)(5) (e.g. Roark v. Lewis, 401 F.2d 425, 527 (D.C. Cir. 1968), and Miniard v. Lewis, 387 F.2d 864, 865 (D.C. Cir. 1967)). Thus, the trustee's construction must both have a rational basis and be reasonable under all the circumstances.

However, these considerations are inapplicable under ERISA where, as here, there is no ambiguity in lawful provisions of plan documents. In our view, the SASMI Plan's rule on forfeiture of benefits is unambiguous, and the Plan's trustees were required to discharge their duties towards the Local 16 participants in accordance with the plain meaning of that rule.

We hope that this statement is sufficient to allow you to plan your discovery in this case. We, of course, expect to brief this issue more fully in the course of the litigation.

Sincerely,

Norman P. Goldberg
Counsel for Litigation
Plan Benefits Security Division

cc: Judge Penn