

U.S. Department of Labor

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



Reply to the Attention of:

OPINION #82-28A

JUN 21 1982

Mr. William D. Hyatt
Special Assistant U.S. Attorney
U.S. Department of Justice
c/o Miami Strike Force
77 South East 5th Street, Suite 401
Miami, Florida 33131

Dear Mr. Hyatt:

This is in reply to your request for an opinion regarding coverage of four employee benefit plans 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).

These plans are: (1) the Massachusetts Laborers Health and Welfare Fund, (2) the Rhode Island Laborers Health and Welfare Heavy Construction Trust Fund, (3) the Rhode Island Laborers Health and Welfare Fund, and (4) the Broward County Carpenters Health and Welfare Fund (hereinafter referred to as the Plans).

We have examined, for each of the respective Plans, filings made for the Plans with the Department of Labor (the Department) under ERISA, identified respectively by the Nos. 042214296-501, 050368197-501, 050368200-501, and 596161814-501 and under the WPPDA, identified respectively by the Nos. WP-057817, WP-003179, WP-003100, and WP-194596. The documents on file with the Department indicate that the first three Plans were established and/or maintained by local unions affiliated with the Laborers' International Union of North America (the Laborers') and by employers contributing thereto, pursuant to collective bargaining agreements, for the benefit of members of the locals employed by the employers as well as their families. Similarly, the fourth Plan was established and/or maintained jointly by local unions of the United Brotherhood of Carpenters and Joiners of America (the Carpenters) and by employers contributing thereto, pursuant to collective bargaining agreements, for the benefit of the members of the affiliated local unions employed by the contributing 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)(A) 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 -- (i) provides retirement income to employees, or (ii) 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 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 the Plans.

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

All of the Plans were established and/or maintained jointly by employers and employee organizations 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 participants in the Plans which contribute to the Plans as a result of collective bargaining with the union locals 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".

The local unions affiliated with the four subject plans all meet the definition of "employee organization" in both laws. The locals are all labor organizations in which employees participate and a purpose for which they exist is dealing with employers on matters incidental to employment relationships, including matters affecting employee benefit plans. Articles I and II of the Uniform Local Union Constitution of the Laborers' International Union of North America, as amended by the 17th Convention, September 13-17, 1976, filed with the Department under the Labor-Management Reporting and Disclosure Act, indicate the nature of the organization (employee organization) and its objectives. Article I, section I states, "Each affiliated Local Union ... is created ... to accomplish the goal of gathering under one banner all those that work at the craft and calling of said International Union " Article II, section I lists among the objectives of the union "(a) To establish proper wages, conditions and hours of employment through the process of collective bargaining with employers and to fulfill and require observance thereof."

Section 2 of the Constitution and Laws of the Carpenters provides that it is the object of the Carpenters to organize workers employed within the trade, "... to discourage piece work; ... to assist each other to secure employment, to reduce the hours of daily labor, to secure adequate payment for our work, ... and by legal and proper means to elevate the moral, intellectual and social conditions of all our members and to improve the trade in every way possible." Section 15H authorizes the General Executive Board of the Carpenters, "To make agreements with employers covering our jurisdiction; In negotiating pension, health and welfare and other fringe benefit agreements, Local Unions and Councils shall whenever possible provide for participation therein by contractors and their employees working in the area under agreements with the United Brotherhood." Section 10L states, "No two subordinate bodies of the Brotherhood shall negotiate for the same contract with the same employer" Section 59 provides rules for conduct during general strikes and lockouts in a dispute or in negotiating an agreement with an employer.

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.¹

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 (12) of ERISA and sections 3(10) and (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 the local unions whose members participate in the Plans 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".

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

¹ 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."

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.)

According to the EBS-1s and the annual reports (Form 5500) filed with the Department, the Plans provide benefits described 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 Plans, according to the Form D-1s filed with the Department under the WPPDA, provide benefits specified in WPPDA section 3(1).

Thus, the Plans provide benefits specified in section 3(1) of title I of ERISA and section 3(1) of the WPPDA.

4. Provision 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. Thus, 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 Plans provide benefits to employees (and their beneficiaries) of employers with which the Plans were collectively bargained and who are represented by the union locals. Thus, the Plans provide benefits to participants and beneficiaries 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 Form D-1s filed under the WPPDA for the Plans indicate that all 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 employee benefit plans from coverage. None of the Plans fall under any of the section 4(b) exemptions.

Conclusion

Therefore, the Massachusetts Laborers Health and Welfare Fund, the Rhode Island Laborers Health and Welfare Heavy Construction Fund, the Rhode Island Health and Welfare Fund, and the Broward County Carpenters Health and Welfare Fund are covered by title I of ERISA and were covered by the WPPDA.

Sincerely.

Jeffrey N. Clayton
Administrator
Pension and Welfare Benefit Programs