

**U.S. Department of Labor**

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



Reply to the Attention of:  
**OPINION NO. 82-46A**  
Sec. 503

SEP 3 1982

Ms. Mary Swenson  
727 Bellingham Towers  
Bellingham, Washington 98225

Dear Ms. Swenson:

This is in reply to your letter of June 16, 1981, supplemented by letters dated July 7, 1981 and August 5, 1981, on behalf of an unnamed client, for whom you are requesting the Department of Labor (the Department) to determine whether an arbitration provision of the Washington-Idaho-Montana Carpenters-Employers Retirement Trust (the Trust) is consistent with the requirements of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you question whether the provision in section 503 of ERISA requiring plans to provide for full and fair review of claims for benefits is consistent with the Trust's procedure for arbitration on appeal of claim denials insofar as the procedure requires a plan participant to share the expenses of arbitration and does not provide for de novo review by the arbitrator of the trustees' decision.

The arbitration provision in the portion of the trust document submitted provides as follows:

Section 13.02 Appeal by Arbitration If the Participant or beneficiary is dissatisfied with the written decision of the Board of Trustees on such appeal he shall have the right to request a further appeal by arbitration of the matter in accordance with the labor arbitration rules of the American Arbitration Association, provided that the Participant or Beneficiary submits a request for arbitration to the Board of Trustees, in writing, within 60 days of the receipt of the written appeal decision of the Board of Trustees.

Section 13.03 Question for the Arbitrator The question for the arbitrator shall be whether, in the particular instance, the Board of Trustees:

- a. were in error upon an issue of law, or
- b. acted arbitrarily or capriciously in the exercise of their discretion; or
- c. whether the Board of Trustees findings of fact were supported by substantial evidence.

The expenses of arbitration shall be borne equally by the appealing party and by the Trust Fund. The decision of the arbitrator shall be final and binding upon the Board of Trustees and upon the appealing party.

**Section 13.04 Sole and Exclusive Procedure** The procedures specified in this Article XIII shall be the sole and exclusive procedure available to a Participant or Beneficiary who is otherwise adversely affected by any action of the Board of Trustees.

The written decision of the trustees referred to in the provisions for arbitration appears to be the decision a participant may obtain under section 13.01 of the Trust which provides as follows:

**Section 13.01 Right of Appeal.** Any Participant, Former Participant or Beneficiary of a Participant or Former Participant who has applied for benefits and is ruled ineligible by the Board of Trustees, or who believes that the full amount of benefits due have not been received, or who is otherwise adversely affected by any action of the Board of Trustees, shall have the right to appeal to and request the Board of Trustees, to conduct a hearing in the matter, provided that request is made in writing, within 60 days after the date of the mailing to the Participant of notification of such ruling or decision. The Board of Trustees shall then conduct a hearing, at which the Participant or Beneficiary shall be entitled to present their position and any evidence in support thereof. The Participant or Beneficiary may be represented at any such hearing by an attorney or by any other representative of his choosing. Thereafter, the Trustees shall issue a written decision reaffirming or modifying or setting aside their former action.

Section 503 of ERISA concerns claim procedure requirements applicable to employee benefit plans covered by title I of ERISA. Regulation 29 C.F.R. §2560.503-1 (copy enclosed) sets forth minimum standards applicable to claims procedures established by employee benefit plans. Paragraph (b) of that regulation provides that every employee benefit plan shall establish and maintain reasonable claims procedures. The requirements of regulation sections 2560.503-1(g) and (h) with regard to review procedures after denial of a claim apply to collectively bargained plans which are jointly administered. Among other requirements specified in the regulation, an employee benefit plan must allow the participant or his or her representative to request a review in writing, allow them to review pertinent documents, and allow them to submit comments and issues in writing. The regulation also requires plans (1) to provide for a time period of not less than 60 days after receipt by the claimant of a written notification of denial of a claim during which requests for review must be made, (2) to render decisions, except under special circumstances, no later than 60 days after the plan's receipt of the request for a review, and (3) to give written notice to claimants when extensions of time for review are needed. In addition, the written decision on review must contain specific reasons for the decision. Because you have not questioned whether the trust document meets requirements of the above regulation with respect to pre-arbitration claims review procedures, this letter does not discuss application of the regulation to the terms of the Trust which set forth those procedures.

We note that, in enacting ERISA, Congress mandated certain minimum rules for employee benefit plans, rules which should be applied to insure fairness to plan participants and beneficiaries, including a requirement of full and fair review of all claim denials. In view of the above, it is the Department's position that if the Trust meets all ERISA requirements specified in the regulation referred to above while a claimant is at the pre-arbitration stage of the Trust's claims procedure and if the Trust allows, but does not require, arbitration as a prerequisite to the claimant initiating a civil action (thus, giving the claimant an election with regard to arbitration), ERISA's full and fair review standard would not be contravened if the trust documents provide for the equal sharing of the expenses of arbitration by the Trust and the claimant. However, if the Trust does not otherwise provide for full and fair review by means of a claims procedure employed in a pre-arbitration stage or if the Trust intends the arbitration procedure to be compulsory and, therefore, a prerequisite to a claimant initiating a civil action regarding denial of a claim, then a requirement by the Trust that a participant bear an equal share of the expenses of arbitration along with the Trust contravenes the reasonableness standard set forth in regulation section 2560.503-1(b).

With respect to your second question, as to whether a provision for compulsory arbitration can be considered to be in compliance with the "full and fair review" standard of section 503 of ERISA if it does not provide for de novo review of the trustees' decisions, it is the Department's view that a limitation on an arbitrator's review in a compulsory arbitration proceeding would not be in conflict with section 503 of ERISA if it is the review standard the courts would employ under the same or similar circumstances in reviewing the denial of a claim.

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,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs

Enclosure

cc: The Board of Trustees of the Washington-Idaho-Montana Carpenters-Employers Retirement Plan