

U.S. Department of Labor

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



Reply to the Attention of:
Paul Kelty (202) 523-8971

OPINION NO. 83-7A
Sec. 408(c)(2), 3(4)

JAN 24 1983

Mr. Barry J. Levine
Gruenberg, Souders & Levine
Suite 905 Chemical Building
721 Olive Street
St. Louis, Missouri 63101

Re: Cap Makers Local 17 Health Benefit Fund and Pension Fund (the Plans)
Identification Number: F-2124

Dear Mr. Levine:

This responds to your letter of September 24, 1981, concerning an application of the prohibited transaction rules of the Employee Retirement Income Security Act of 1974 (ERISA). You ask whether the international representative of an international union may be compensated for services as administrator of the Plans in the situation described below.

You represent that the Plans are multiemployer plans established by various headware manufacturers in the St. Louis area and Cap Makers Local 17 of the United Hatters, Cap and Millinery Workers International Union (the International Union). The administrator of both Plans is a full-time international representative of the International Union. Her duties as international representative include assisting local unions in various locations to negotiate and execute collective bargaining agreements and representing the International Union at state and local labor councils.

The international representative has asked the Plan trustees for compensation in the amount of \$100 to \$200 per month for her services as administrator of the Plans. Her work as Plan administrator is performed in addition to her duties as international representative and is not part of those duties.

You ask whether section 408(c)(2) of ERISA precludes the payment of compensation by the Plans to the international representative for services as Plan administrator, even though membership in the International Union is incidental to membership in the local union on the part of Plan participants.

Section 406(a)(1)(C) of ERISA prohibits a furnishing of services between an employee benefit plan and a party in interest, while section 406(a)(1)(D) disallows a use of plan assets for the benefit of a party in interest. Under section 3(14) of ERISA, a plan fiduciary, such as an administrator, as well as an employee or officer of a union whose members are plan participants is a party in interest in relation to the plan. Section 406(b) prohibits certain acts of self dealing or conflicts of interest involving plan fiduciaries.

Section 408(b)(2) of ERISA provides a statutory exemption for the provision of services to a plan by a party in interest, so long as the arrangements and compensation are reasonable and the services are necessary for the operation of the plan. Section 408(c)(2) of ERISA permits the payment of reasonable compensation to a fiduciary for services to a plan, provided the fiduciary is not already receiving full-time pay from an employer or employee organization whose employees or members are plan participants.

You do not state whether the international representative is paid full-time by the International Union. However, since you state that the person is a full-time representative of the International Union, we assume for purposes of this ruling that she is paid full-time in that capacity. For your information, we are enclosing a copy of ERISA advisory opinion 79-59, which discusses the issue of what constitutes full-time pay within the context of the section 408(c)(2) provision.

An “employee organization” is defined in section 3(4) of ERISA to include 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.

Based on the representations in your letter, we conclude that the International Union is an employee organization described in section 3(4), even though membership in the International Union may be incidental to membership in the local union. Since Plan participants are members of that employee organization, we conclude further that section 408(c)(2) would preclude the payment of compensation by the Plans to the full-time representative of the International Union for services as Plan administrator.

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the procedure explains the effect of an advisory opinion.

Sincerely,

Alan D. Lebowitz
Assistant Administrator for Fiduciary Standards
Pension and Welfare Benefit Programs

Enclosure