

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



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85-29A

Mr. Mark S. Prosperi
Special Attorney
U.S. Department of Justice
Room 1402
219 South Dearborn Street
Chicago, Illinois 60604

Dear Mr. Prosperi:

This is in reply to your request for an opinion concerning the coverage of two funds, the Structural Ironworkers Local No. 1 Annuity Fund (the Annuity Fund) and the Structural Ironworkers Local No. 1 Pension Fund (the Pension Fund), under title I of the Employee Retirement Income Security Act of 1974 (ERISA).

Filings made for the Annuity Fund with the Department under ERISA, identified as File No. 366551011-003 and for the Pension Fund, identified as File No. 362872442-001, were examined, as well as filings made for Local Union No. 1 of the International Association of Bridge, Structural and Ornamental Iron Workers (Local No. 1) with the Department under the Labor-Management Reporting and Disclosure Act, identified as File No. 027977.

The documents on file with the Department indicate that the Annuity Fund and the Pension Fund were established and/or maintained jointly by employers contributing thereto and Local No. 1 pursuant to collective bargaining, to provide retirement income to members of the union employed by the employers.

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 terms "employee pension benefit plan" and "pension plan" are defined in ERISA title I, section 3(2) 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."

The elements of coverage under 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/or beneficiaries as defined;
- (4) the plan provides benefits specified in the definition of "employee welfare benefit plan" or "employee pension benefit plan"; and
- (5) the plan is not exempt under section 4(b).

The following is a discussion of each of these points with respect to the Annuity Fund and the Pension Fund.

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

The Annuity Fund and the Pension Fund were established and/or maintained jointly by employers and an employee organization (Local No. 1) 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."

The employers of the employees of Local No. 1 which contribute to the Annuity Fund and the Pension Fund as a result of collective bargaining with Local No. 1 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."

Local No. 1 meets the definition of "employee organization" in section 3(4). Local No. 1 is a local labor union in which employees participate and a purpose for which it exists is dealing with employers on matters incidental to employment relationships, including concerning employee benefit plans. The Bylaws of Local No. 1 (adopted August 22, 1977), filed with the Department under the Labor Management Reporting and Disclosure Act, indicate the nature of the organization (labor union) and its objects. The Preamble states that the objects of Local No. 1 shall be, in part, to:

- (b) Secure, by all legal and proper means, adequate wages, working conditions and opportunities of employment
- (c) Encourage its members to register and vote in the interest of obtaining higher standards of citizenship and secure adequate legislation which will safeguard and promote the principles of free collective bargaining....

Article III, Section 3 provides that the duties of Local No. 1's officers shall be those provided for in Article XXVI of the International Constitution. Article XXVI, Section 11 of the Constitution of the International Association of Bridge, Structural and Ornamental Ironworkers provides, in pertinent part:

Par. 1... [The Executive Committee] shall meet at least once in every month ... and be subject to the call of the President to adjust all labor troubles appertaining to the Local Union and enforce the rules and agreements adopted by the Local Union...

Par. 2 They shall endeavor to settle all differences and avoid strikes and have the power to negotiate agreements between employers and the Local Union....

2. Commerce Clause.

With respect to the commerce clause, ERISA section 4(a) provides that ERISA title I applies 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." 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 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. 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 Local No. 1 are included within the commerce clause of ERISA.

3. Provision of Benefits Specified in Law.

Under ERISA, 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(2) definition of "employee pension benefit plan" includes "... any plan, fund, or program ... 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."

According to the Form 5500 (for the 1982 fiscal year) filed with the Department, the Annuity Fund is a deferred compensation plan. The total amount to be paid out of an individual's account depends on the amount contributed, investment results, and the cost of operating the annuity fund. Contributions to the fund are made solely by employers in accordance with a collective bargaining agreement between Local No. 1 and the Associated Steel Erectors of Chicago. Participants are eligible for benefits upon retirement, departure from the industry, permanent disability, or death.

According to the Form 5500 (for the fiscal year ending August 31, 1982) filed with the Department, the Pension Fund provides to participants at age 62 with 10 "pension credits" a regular pension benefit which is based on the hours worked per calendar year after 1966 and on the number of pension credits prior to 1967. Benefits are also payable upon early retirement and disability and a deferred pension is payable with 10 years of vesting service.

Thus, the Annuity Fund and the Pension Fund provide benefits specified in ERISA section 3(2).

4. Provision of Benefits to Participants or Beneficiaries.

ERISA title I covers 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) defines 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."

ERISA section 3(8) defines a beneficiary as a person designated by a participant or by the terms of an employee benefit plan who is or may become entitled to a benefit thereunder.

The Annuity Fund and the Pension Fund provide benefits to employees of employers with which the Annuity Fund and the Pension Fund were collectively bargained who are represented by

Local No. 1. Thus, the Annuity Fund and the Pension Fund provide benefits to participants as defined in ERISA.

5. Not Exempt Under Section 4(b).

ERISA section 4(b) exempts certain benefit plans from coverage. The Annuity Fund and the Pension Fund do not fall under any of the section 4(b) exemptions.

Therefore, the Annuity Fund and the Pension Fund are covered by title I of ERISA.

Sincerely,

Helene A. Benson
Chief, Division of Coverage
Office of Regulations and Interpretations