U.S. Department of Labor Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210

AUG 22 1985

OPINION NO. 85-30A
Sec. 3(4), 3(14)(C), (D), (E), & (H)
406(a)(1)(B)

Mr. F.A. LeSourd
LeSourd & Patten
3900 Seattle-First National Bank Building
Seattle, Washington 98154

Re: Alaska Teamster-Employer Welfare Trust (WT)
Identification Number F-2942A

Dear Mr. LeSourd:

This is in reply to your letter of July 17, 1984, concerning the status of WT as a party in interest or a disqualified person with respect to the Alaska Teamster-Employer Pension Trust (PT) for purposes of the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code of 1954 (the Code).[1] Specifically, you request an advisory opinion on the following questions:

1. At the time of certain loans by PT to WT in 1977 and 1978, was WT an employee organization with members covered by PT and therefore a party in interest with respect to PT under section 3(14)(D) of ERISA?

2. At the time of said loans, was WT a contributing employer with respect to PT and therefore a party in interest under section 3(14)(C) of ERISA?

Regarding the first question, you state that WT provides medical, hospital, disability, life insurance and other benefits and that contributions to WT are made by various employers pursuant to a collective bargaining agreement between those employers and the Alaska Teamsters Union (the Union) on behalf of its members. WT is jointly administered by employer trustees and trustees representing members of the Union. PT is a multiemployer pension plan

[1] Under Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) effective December 31, 1978, the authority of the Secretary of the Treasury to issue rulings under section 4975 of the Code, with certain exceptions not here relevant, has been transferred to the Secretary of Labor. Therefore, the references in this letter to specific sections of ERISA refer also to corresponding sections of the Code.

generally covering participants employed in over-the-road and local transportation, as well as related industries, in Alaska.

The term "employee organization" in section 3(4) of ERISA means "…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." Under section 3(14)(D) of ERISA, a party in interest with respect to a plan includes an employee organization any of whose members are covered by such plan.

WT is not an "employee organization" within the first part of the definition in section 3(4) of ERISA because it does not exist for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships. Instead, it is a plan which exists to provide benefits to participants. Furthermore, WT is not an "employees' beneficiary association" within the meaning of the second part of the definition in section 3(4). Although the term "employees' beneficiary association" is not defined in ERISA, the Department of Labor (the Department) has previously indicated that it will apply the definition of the same term developed under the Welfare and Pension Plans Disclosure Act (WPPDA), which preceded and was repealed by ERISA. That definition sets forth the following four criteria for qualification as an "employee beneficiary association":[2]

(1) membership is limited to employees of a certain employer or members of one union;

(2) the association has a formal organization, with officers, bylaws, or other indications of formality;

(3) the association generally does not deal with an employer (as distinguished from organizations described in the first part of the definition of "employee organization"); and

(4) the association is organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

Although WT may have some characteristics of an "employees' beneficiary association" (for example, it was organized for the purpose of providing welfare benefits), WT does not have all the characteristics of an "employees' beneficiary association." WT is not an "association" of employees with membership requirements and a formal organization with officers, bylaws, or

[2] See WPPDA Interpretive Manual §315.100 (1965).

other similar indications of an “employees' beneficiary association.” Accordingly, it is the Department 's position that WT is not an employee organization within the meaning of ERISA section 3(4) and therefore was not a party in interest, within the meaning of section 3(14)(D) of ERISA, with respect to PT during the period in question.

Regarding question 2, you state that WT purchased the Teamster Mall Pharmacy, Inc. (the Pharmacy) in 1974, for the purpose of filling prescriptions for the beneficiaries of WT and that Pharmacy employees were covered by PT prior to April 1, 1977, when they “were transferred” to the Alaska Teamster-Employer Service Corporation (ESC), a wholly owned subsidiary of PT. You represent that for periods after April 1, 1977, ESC paid contributions to PT for Pharmacy employees and also paid all social security and unemployment taxes for such employees. You advise that the Internal Revenue Service (the Service) has suggested that WT was an employer of PT participants because WT owned all outstanding stock of the Pharmacy, which, according to the Service, contributed to PT through July 15, 1977. You state that between April 1977 and April 1978, PT made loans to WT.

According to section 3(5) of ERISA, an “employer” is “any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan.” An employer any of whose employees are covered by an employee benefit plan is a party in interest, pursuant to section 3(14)(C) of ERISA, with respect to such plan. Similarly, a direct or indirect owner of 50% or more of the stock of a corporate employer of plan participants is also a party in interest, within the meaning of section 3(14)(E) of ERISA, with respect to such plan.

Our advisory opinion procedure (ERISA Proc. 76-1, 41 FR 36281, August 27, 1976) explains that there are certain areas where, because of the inherently factual nature of the problem involved, or because the subject of the request for opinion is under investigation for a violation of ERISA, the Department ordinarily will not issue advisory opinions. We believe the question of whether WT was an employer, and therefore a party in interest pursuant to section 3(14)(C) of ERISA with respect to PT, falls into this category both because the answer depends upon the inherently factual nature of the problem involved and also because this question is under investigation by the Service, in cooperation with the Department, for a violation of ERISA.

Therefore, the Department is unable to issue an opinion on this question.

We note that information submitted to this office in exemption application number D-3356 shows that, during the period when PT made loans to WT (as well as before and after such period), ESC provided administrative services to WT and other entities. As the sole owner of ESC, PT was a party in interest by reason of ERISA section 3(14)(H) with respect to WT while ESC was providing such services. Please note further that if PT or ESC employees were also

covered by WT, PT would also be a party in interest to WT, pursuant to section 3(14)(C) or (E) of ERISA. Therefore, PT's loans to WT were prohibited under section 406(a)(1)(B) of ERISA.

As a final matter, you ask at what point during a loan is the relationship of the parties examined to determine whether a party in interest relationship exists. It is the Department's position that a loan is a transaction continuing from the time it is made until all amounts due are paid because the creditor-debtor relationship continues throughout the existence of the extension of credit.[3] Therefore, the relationship of the parties must be examined throughout the course of the loan to determine whether a party in interest relationship exists.

This letter constitutes an advisory opinion under ERISA Proc. 76-1 regarding question l only. Accordingly, the portion of this letter regarding question l is issued subject to the provisions of that procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations

[3] The Department has expressed a similar opinion in the preamble to the Class Exemption involving Bank Collective Investment Funds, (45 FR 49709, 49713, July 13, 1980), and Advisory Opinion #84-44A (November 9, 1984).