

3(4)  
3(5)  
3(9) ✓  
3(12)

November 1, 1976

Dear :

This is in further response to your letters of August 14, 1975, June 29, 1976, and July 1, 1976. In your letters you have requested a ruling as to whether a pension plan (the Plan) maintained by the ( Name ) is subject to the Employee Retirement Income Security Act of 1974 (the Act). Your letters state that ( Name ) is a labor organization representing employees of the State of ( Name ) and of political subdivisions of that state, but is not itself a governmental agency or instrumentality. In your July 1, 1976, letter you indicate that you are unable to find anything in the Act which specifically covers pension plans of organizations such as ( Name ).

This response deals solely with the coverage of the Plan under Title I of the Act. Questions regarding the applicability of provisions contained in Title II of the Act, which, in general, sets forth certain amendments to the tax qualification provisions of the Internal Revenue Code of 1954, should be addressed to the Internal Revenue Service, while questions regarding coverage of Title IV of the Act, relating to plan termination insurance, should be addressed to the Pension Benefit Guaranty Corporation.

The coverage of Title I of the Act is set forth in Section 4, which provides, in relevant part, that Title I applies to any employee benefit plan if it is established and maintained by an employer engaged in commerce or in any activity or industry affecting commerce. The term "employer" is defined in Section 3(5) of the Act to include "any person acting directly as an employer", while the term "person" is defined in Section 3(9), to include unincorporated organizations, associations and employee organizations. In Section 3(4), the term "employee organization" is defined, in relevant part, as any labor union or any organization of any kind, or any employee representation association, in which employees participate and which exists for the purpose of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships.

2

P/O-76-101

Thus, a voluntary employees' association such as ( Name ), which serves as a labor organization representing employees, is a person within the meaning of Section 3(9) and, with respect to its own employees, constitutes an employer within the meaning of Section 3(5) of the Act. Under Section 4(a) of the Act, therefore, an employee benefit plan established by such an organization which is engaged in commerce or in any industry or activity affecting commerce is subject to Title I, unless specifically excluded from coverage under Section 4(b). Given the broad definition of "industry or activity affecting commerce" in section 3(12) of the Act and the Supreme Court's interpretation of this concept over the last three decades, it is unlikely that a pension plan maintained by ( Name ) would fail to meet the coverage requirements of Section 4(a). Further, your letters do not indicate ( Name ) would be subject to any of the exclusions from coverage set forth in section 4(b). Accordingly, we have concluded that the Plan is subject to Title I of the Act.

Sincerely,