

U.S. DEPARTMENT OF LABOR
Pension and Welfare Benefit Programs
Washington, D.C. 20216



AUG 26 1977

Mr. William D. Hager
First Deputy Commissioner
Insurance Department of Iowa
Lucas State Office Building
Des Moines, Iowa 50319

OPINION 77-59 A
3 (1)
3 (4)

Re: Mutual Medical Employees Benefit Association

Dear Mr. Hager:

In your letter of August 11, 1977 you requested that the Department of Labor issue an Advisory Opinion as to whether the Mutual Medical Employees Benefit Association (MMEBA) is an employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001, et seq. For the reasons set forth below, it is the Department's view that neither MMEBA nor the program of benefits it offers constitute an employee benefit plan.

We have reviewed the Association's LM-1 Form (with attachments) which you have forwarded to us, and which you have advised us was provided to the Insurance Department by counsel for MMEBA.^{1/} We have also reviewed the complaint filed in Mutual Medical Employees Benefit Association v. Anderson, Case No. CE 7-3859 (Iowa District Court, Polk County).

From these documents it appears that MMEBA is an unincorporated association which maintains a program of health care benefits financed by payments ^{2/} to the Association from its members. Members of the Association, whose participation is solicited by agents of MMEBA, include Group Representative Members, who are employers; Affiliate Members, who are employees of Group Representative Members;

^{1/} We have thus far been unable to locate MMEBA's LM-1 Form or any other filing by MMEBA in this Department's files.

^{2/} At some points in the MMEBA documents and literature these payments are referred to as "contributions;" at other times they are denominated "dues."

and Regular Members, who are employed individuals.. The By-laws of MMEBA specifically indicate that any individual who is an employee of any employer may be a Regular Member. You have indicated to us that it is the practice of agents representing MMEBA in Iowa to solicit the participation of employed individuals without regard to whether such persons are employees of any particular employer or members of any recognizable group or class of employees.

We note that MMEBA has denominated itself as an "employee welfare benefit association" in the above-mentioned complaint, and that its articles of association recite that it is intended to be an employees' beneficiary association under §501(c)(9) of the Internal Revenue Code.

In order for the program of benefits offered by MMEBA to be subject to ERISA, it must in the first instance satisfy the definition of employee welfare benefit plan found at ERISA 3(1), 29 U.S.C. 1002(1).^{3/} We conclude

^{3/} That definition provides:

Sec. 3. For purposes of this title:

- (1) The terms "employee welfare benefit plan" and "welfare plan" mean 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, 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).

that MMEBA's program of benefits does not satisfy the statutory definition because an ERISA-covered plan must be established or maintained by an employer or by an employee organization (or by both) as those terms are defined in the Act. While MMEBA asserts that it is an employee organization, more specifically an employees' beneficiary association, it is our view that MMEBA does not constitute such an entity within the meaning of ERISA §3(4), 29 U.S.C. 1002(4). That section defines an employee organization as follows:

- (4) The term "employee organization" 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.

Not every group of persons who happen to be employed constitute an employees' beneficiary association. Rather, an organization is an employees' beneficiary association, for purposes of the ERISA definitions relating to plans, only where the members of the organization share some commonality of interest with respect to their employment relationships. The requirement of commonality preceded ERISA, as it had long been the view of the Department in the interpretation of identical language found in the Welfare and Pension Plans Disclosure Act, 29 U.S.C. §302(a)(3), as evidenced by Department of Labor interpretation and opinions.

The concept of commonality means, in general, that membership in the association is conditioned not only on the fact of employment, but also employment in a common working unit, e.g., employees of a single employer or members of one labor union.

The requirement of a commonality of interest among members is present in respect to both employee organizations and employees' beneficiary associations within the meaning of ERISA §3(4).

As the members of MMEBA share no commonality of interest with respect to an employment relationship we conclude that MMEBA is not an employee organization within the meaning of ERISA §3(4). Accordingly, the program of health care benefits MMEBA offers does not constitute an employee benefit plan subject to ERISA, as the requirement that such a plan be "established or maintained by an employer or by an employee organization or by both" is not satisfied. ERISA therefore confers no regulatory authority on the Department of Labor over MMEBA or its benefit program; and the individual states are free to exercise such regulatory authority with respect to that organization as they may possess.

I hope the forgoing will be of assistance.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions