

U.S. Department of Labor
Pension and Welfare Benefit Programs
Washington, D.C. 20216



MAR 13 1978

OPINION 78-7 A

Mr. Richard C. Linquanti
Ireland, Stapleton, Pryor
and Holmes
1700 Broadway
Denver, Colorado 80202

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Dear Mr. Linquanti:

Your letter of November 18, 1976, addressed to Mr. Karl Heckman of the Office of the Solicitor, has been forwarded to this Office for reply. I regret that our heavy workload has prevented us from responding to your letter earlier.

In your letter you request a determination that the Electrical Industry Benefit Vacation and Paid Holiday Fund (the Fund) is not an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (the Act). In the alternative you request that the Fund be exempted from title I of the Act.

Your letter contains the following material representations relating to the Fund. The Fund consists of employees' wages withheld, under the terms of a collective bargaining agreement, to provide them with vacation and holiday pay. Each employee is credited with the amounts withheld from such employee and the interest earned thereon, except that 1/9 of the interest earned is used to defray the operating and administrative expenses of maintaining the Fund. All of these funds are maintained in interest-bearing bank accounts and certificates of deposit. Each year during the first week of May an employee is mailed a check representing the employee's accrual for paid holidays for the 12-month period ending on the preceding March 31. An employee may withdraw certain amounts for vacation pay as vacations are scheduled but must retain a minimum balance of \$5.00 in the Fund while active in the trade. An employee is fully vested in the balance credited to the employee and is the legal and beneficial owner of such balance. The Fund is administered by a committee consisting of employer and union representatives.

On the basis the representations set forth above, we are unable to conclude that the Fund is not an employee welfare benefit plan within the meaning of section 3(1) of the Act. The definition of the term

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"employee welfare benefit plan" set forth in section 3(1) of the Act includes "any . . . fund . . . 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 . . . fund . . . was established or is maintained for the purpose of providing for its participants or their beneficiaries (A) . . . vacation benefits . . . 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 representations contained in your letter indicate that the Fund was established under the terms of a collective bargaining agreement and is administered by a committee consisting of employer and union representatives. Thus, the Fund was established and is maintained by both an employer, as defined in section 3(5) of the Act, and an employee organization, as defined in section 3(4) of the Act. Further, vacation benefits are explicitly mentioned in the definition of the term "employee welfare benefit plan" set forth in section 3(1) of the Act, and vacation and holiday benefits are included among the benefits described in section 302(c)(6) of the Labor Management Relations Act, 1947 (LMRA). Thus, the Fund meets the definition of the term "employee welfare benefit plan" set forth in section 3(1) of the Act.

In your letter you refer to regulations issued by the Department of Labor under section 3(1) of the Act, 29 CFR §2510.3-1. In paragraph (a)(2) of that section it is stated that a payroll savings program under which an employer makes payroll deductions for deposit in savings accounts owned by the employer's employee is not an employee welfare benefit plan within the meaning of section 3(1) of the Act because it does not provide benefits described in section 3(1)(A) of the Act or section 302(c) of the LMRA. The Fund, by contrast, provides by its terms vacation and holiday benefits. As noted above, vacation benefits are among the benefits described in section 3(1)(A) of the Act and vacation and holiday benefits are among the benefits described in section 302(c)(6) of the LMRA.

With regard to your request for an exemption from title I of the Act, you should note that the Secretary of Labor is not authorized to grant exemptions from title I as a whole. Instead, the Secretary has limited authority to grant exemptions from various individual provisions of title I.

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Specific exemption authority applicable to welfare plans is found in Act sections 104(a)(3) (relating to reporting and disclosure requirements), 403(b)(4) (relating to the trust requirement), 408(a) (relating to prohibited transactions), and 412(e) (relating to bonding requirements). The Department of Labor has issued final regulations under section 104(a)(3) providing exemptions for certain classes of welfare plans (see 29 CFR 2520.104) and has issued procedures under section 408(a) governing applications for individual and class exemptions (see ERISA Procedure 75-1). The Department has not issued final regulations or procedural requirements under sections 403(b)(4) or 412(e), although regulations under the former section have been proposed (copy enclosed). Because the Department has not determined the conditions under which it would issue individual exemptions under sections 104(a)(3), 403(b)(4), and 412(e), it is not possible to consider your request at this time. If you wish to pursue an exemption under section 408(a), you should follow ERISA Procedure 75-1 (copy enclosed).

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosures