

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION

Pension and Welfare Benefit Programs
Washington, D.C. 20216



MAR 17 1978

OPINION 78-9 A

Mr. Paul S. Berger
Arnold & Porter
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

3 (1)

Dear Mr. Berger:

This is in reply to your letter of July 30, 1976, and your supplementary letters of March 30, 1977, May 24, 1977, December 7, 1977 and December 19, 1977, concerning coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you requested an advisory opinion that the fully-insured group health and accident policy (the Program) held by the Cooperating Railway Labor Organizations Health and Welfare Committee (the Committee) is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You state that the Committee is the policy-holder of the Program. The Program offers health and accident insurance to individuals who have previously been covered by a collectively-bargained industry plan for active railroad employees but who are no longer covered under the plan because they are retired, furloughed, disabled, temporarily suspended or dismissed, or on strike. Participation in the Program for all eligible persons is voluntary, and no commission or other remuneration is paid to the Committee, to any affiliated employee organization, or to any individual other than the insurer. The Program is made available directly by the insurer, and the Committee and its affiliated unions permit the insurer to publicize the policy in the same manner as they permit other insurers to do so. All matters pertaining to any claims under the Program are handled directly between the individual insured and the insurer, and the claim process does not involve the Committee or any employee organization in any way. The insurer performs all functions relating to billing, collection, and processing of premiums for all participants in the Program, with the exception of those who are on strike. With regard to strikers, the employee organization deducts the premium costs from participating individuals' strike benefits and forwards all such amounts in a single check to the insurer. The only additional involvement of the employee organization with regard to striker participation in the Program is to notify the insurer that insurance under the collectively-bargained policy has terminated due to a strike or lockout, and to identify the individuals affected.

-2-

However, until December 31, 1974, the insurance company combined the Program for experience rating purposes with two other group policies issued by the same insurance carrier to the Committee as policyholder. The two other group policies covered employees of the unions affiliated with the Committee, and the unions pay the premiums on these policies. Rate credits attributable to the combined experience rating of the three policies were credited to a special account which could then be allocated by the Committee to the payment of future premiums under any of the three policies. In fact, only the Program generated rate credits, and these credits were applied to the premiums for the two other policies. Although this practice was discontinued on December 31, 1974, rate credits for the period June 1, 1974 to December 31, 1974, will be paid by the insurance company after December 31, 1974, and will be subject to allocation by the Committee as described above.

Section 3(1) of ERISA defines an employee welfare benefit plan 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).

Section 2510.3-1 of regulations issued by the Department on August 15, 1975, clarifies the definition of the term "employee welfare benefit plan" for purposes of title I of ERISA. Subsection (j) of that section indicates that the term "employee welfare benefit plan" will not include group or group type insurance programs offered by an insurer to members of an employee organization if the programs satisfy certain criteria. As indicated therein, the criteria are that the arrangement must be one in which (1) no contributions are made by an employee organization, (2) participation is voluntary, (3) the sole function of the employee organization is, without endorsing the program, to permit the insurer to publicize the program and to collect and remit premiums, and (4) the employee organization receives no consideration other than reasonable compensation for administrative services actually rendered.

-3-

From the information submitted with your request, it appears that there is no involvement of the Committee or the unions in the Program of such a nature to cause the Program not to be deemed "offered by an insurer" within the meaning of section 2510.3-1(j). You represent that contributions to the Program are made by an employee directly or through authorized deductions from strike benefits, and that participation is completely voluntary, thereby satisfying the requirements of section 2510.3-1(j) (1) and (2), respectively. Assuming the absence of other facts which would tend to show additional involvement in the Program by the Committee or the unions, the Program related activities of the Committee and the unions described in your submissions do not appear to go beyond those permitted by section 2510.3-1(j) (3). Finally, because it will not be possible for experience-rating credits generated under the Program after December 31, 1974, to be used toward premiums under other policies, and because of your representation that no commission or remuneration is paid to the Committee, to any affiliated employee organization, or to any individual other than the insurer, it appears that the Program meets the conditions of section 2510.3-1(j) (4). It is therefore the position of the Department that the Program, as described, meets the criteria described in section 2510.3-1(j) and is not an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA.

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