

U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Administrator of Pension and Welfare Benefit Programs
Washington, D.C. 20216



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Theodore R. Groom, Esq.	OPINION 78-21 A
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Dear Mr. Groom:

This is in response to your letter of July 8, 1977, requesting an advisory opinion regarding the crediting of service under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the method of crediting hours of service used by the Western Conference of Teamsters Pension Trust Fund (WCT Plan) meets the requirements of regulation 29 CFR § 2530.200b-3(d) under ERISA. You state that the WCT Plan is a defined benefit pension plan and a multi-employer plan.

Under section 203(b) (2) (A) of ERISA, the term "year of service" is defined generally to mean a year during which the participant has completed 1,000 hours of service. The method of determining "hours of service" for this purpose is to be determined pursuant to regulations issued by the Department. 1/

The Department's regulation 29 CFR §2530.200b-3 under ERISA provides, in paragraph (a), that for all purposes for which hours of service are required to be determined, such determination shall be made (1) from records of hours worked and hours for which payment is made or due; (2) by means of one of the equivalent methods for determining hours of service described in paragraphs (d), (e), and (f) of the regulation; or (3) by any method which results in the crediting of no less than the actual number of hours of service required to be credited under 29 CFR § 2530.200b-2(a).

1/ See sections 203(b) (2) (B) and 202(a) (3) (C) of ERISA.

One of the equivalent methods for determining hours of service under that regulation is set forth in paragraph (d)(2) thereof. Under paragraph (d)(2), a plan may determine service to be credited to an employee on the basis of only regular time hours, provided that 750 regular time hours are treated as equivalent to 1,000 hours of service and 375 regular time hours are treated as equivalent to 500 hours of service. Your letter indicates that, at least for purposes of vesting, the WCT Plan treats 500 regular time hours as equivalent to 1,000 hours of service and 375 regular time hours of service as equivalent to 500 hours of service, except that no credit is given for hours with respect to which employers fail to make required contributions and no credit is given for hours of employment which are not in a covered bargaining unit.

It is the Department's position that in determining an employee's statutory entitlements under the minimum participation, vesting and benefit accrual standards set forth in section 202, 203, and 204 of ERISA, service that must be credited to an employee under those provisions may not be disregarded on account of the failure by the employee's employer to make required contributions to the Plan. 2/ Because the WCT Plan does not credit service with respect to which required contributions are not received, the Plan's method of crediting service is not acceptable under ERISA.

2/ See letter from the Department to Margurita McCaffrey dated August 31, 1976 (copy enclosed), and preamble to the Department's regulation 29 CFR §2530.200b-2 at 41 FR 56464 (December 28, 1976).

Moreover, with respect to the fact that the WCT Plan credits service only for employment in a covered bargaining unit, section 203(b) of ERISA and the Department's regulation 29 CFR §2530.210(a) provide in part that, with certain exceptions specified in section 203(b)(1) of ERISA, all years of service with the employer or employers maintaining the plan must be taken into account for purposes of section 203 of ERISA. To the extent that the WCT Plan's method of crediting service for purposes of vesting excludes some service in circumstances not expressly permitted under section 203(b)(1), that method does not meet the requirements of ERISA.

This letter should not be construed as indicating the Department's views with regard to any matters other than those discussed above.

Because the above discussion raises questions under section 411 of the Internal Revenue Code of 1954 (the Code), which is within the jurisdiction of the Internal Revenue Service (the Service), we have conferred with representatives of the Service and they concur in the analysis and conclusions set forth above as they relate to section 411 of the Code and to the Treasury Regulations thereunder.

This letter constitutes an advisory opinion under ERISA Procedure 76-1, 41 FR 36281. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions. We have considered your request for a conference under section 8 of the procedure and have decided that a conference would not be necessary or appropriate in providing an advisory opinion.

Sincerely,

Edward F. Daly,
Assistant Administrator for
Enforcement

Enclosure