

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



JAN 15 1979

Mr. Neil S. Kurlander
Niles, Barton & Wilmer
929 N. Howard Street
Baltimore, Maryland 21201

OPINION 79-3 A

3 (1)

Dear Mr. Kurlander:

This is in response to your letters of August 29, 1978, and September 5, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the STA of Balto.-Baltimore ILA Guaranteed Annual Income Fund (the GAI Fund) is an employee welfare benefit plan within the meaning of ERISA section 3(1).

You advise that, pursuant to a collective bargaining agreement between the Steamship Trade Association of Baltimore, Inc. (the STA) and the International Longshoremen's Association, AFL-CIO (the ILA), the STA and the ILA established in 1978 the GAI Fund. Under the agreement, all covered employees with at least 700 credited hours per contract year are guaranteed an annual income equal to the existing hourly wage times 1900 hours. Each contributing employer makes a payment to the STA which then transfers the necessary funds to the GAI Fund. You advise that, in your opinion, the GAI Fund does not provide benefits among those described in ERISA section 3(1) and that, in any event, the GAI Fund constitutes a payroll practice as described in Department of Labor regulation §2510.3-1(b)(1).

The definition of an employee welfare benefit plan contained in ERISA section 3(1) includes any plan, fund or program established or maintained by an employer, an employee organization, or both which provides benefits in the event of unemployment. In Department of Labor regulation §2510.3-1 (issued August 15, 1975, copy enclosed), the Department described certain practices which would not constitute employee welfare benefit plans. Specifically §2510.3-1(b)(1) excludes:

- (1) Payment by an employer of compensation on account of work performed by an employee, including compensation at a rate in excess of the normal rate of compensation on account of performance of duties under other than ordinary circumstances, such as -
 - (i) Overtime pay,
 - (ii) Shift premiums,
 - (iii) Holiday premiums,
 - (iv) Weekend premiums;

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To the extent that the GAI Fund provides benefits for lack of employment of between 700 hours and 1900 hours of service each year, the GAI Fund does provide benefits in the event of unemployment. Further, the GAI Fund does not provide "compensation on account of work performed." If an employee worked 1900 hours, he or she would not receive any benefits from the GAI Fund for the benefits are based on hours not worked. Therefore, it is the position of the Department of Labor that the GAI Fund does constitute an employee welfare benefit plan within the meaning of section 3(1).

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,

Ian D. Lanoff
Administrator
of Pension and Welfare
Benefit Programs

Enclosure