

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



MAR 15 1979

Mr. James Olds, Jr.
Olds, Olds & Lynett Co. L.P.A.
906 Centran Building
Akron, Ohio 44308

OPINION 79-19 A

3 (1)

3 (2)

Dear Mr. Olds:

This is in response to your letter of November 27, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the program of the Goodyear Relief Association (the Association) constitutes an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that the Association was incorporated in the State of Ohio in the early 1900s for the purpose of providing its members with a program of medical and hospitalization benefits. Membership is restricted to the employees of Goodyear Tire and Rubber Company (the Company) and its subsidiaries. When the Company established its own medical and hospitalization benefits program as a fringe benefit for its employees, the Association developed a supplemental program for its members to provide benefits in areas not provided or deficient in the Company's program. As the Company's program has changed, the Association has adjusted its program accordingly. Membership is voluntary and open to all employees of the Company. You further represent that the Association is unaffiliated with the Company and the Company has no control or input regarding the Association or its program of benefits.

ERISA section 3(1) defines an employee welfare benefit plan as:

(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, 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).

-2-

Although the Association program provides benefits among those enumerated in section 3(1)(A), to be an employee welfare benefit plan, it must, in addition to other criteria, be established or maintained by an employer, an employee organization, or both. Since there is no indication that the Association program was established or is maintained, wholly or partially, by the Company or any other employer, this letter shall only address the issue of whether or not the Association is an employee organization.

Section 3(4) of ERISA defines an employee organization as:

. . . 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.

Substantially identical language was used in the definition of employee organization contained in The Welfare and Pension Plans Disclosure Act (WPPDA), 29 U.S.C. §301 et seq., and has been the subject of long-standing Department interpretations. Specifically, the Department developed certain criteria to be used in construing the term "employees' beneficiary association", for which WPPDA, as in the case of ERISA, provided no definition. Those criteria, which may be found in section 315.100 of The Welfare and Pension Plans Disclosure Act Interpretive Manual (1965), are:

- 1) The membership in the association must be conditioned on one's employment status.

Examples:

- (a) Membership is limited to employees of a certain employer or employers, or
 - (b) All members must be members of one union. Membership is tied to the union which itself is formed and maintained in large part to deal with employment relationships . . .
- 2) The term "employees' beneficiary association" contemplates a group having some degree of formal organization, such as officers, bylaws, rules, or any other indication of some degree of formality. A group of individuals who get together to obtain insurance but who have no formal organization would not constitute an "employees' beneficiary association".

- 3) As distinguished from organizations described in the first part of the definition of "employee organization", an "employees' beneficiary association" does not deal with employers. (If an organization dealt with employers, it would come within the first part of the definition of "employee organization").

In order for the "employees' beneficiary association" to be an "employee organization", . . . it must be organized for the purpose, in whole or in part, of establishing a welfare or pension plan.

In addition, the Department of Labor took the position under the WPPDA that when the employees of the same employer created a welfare fund to supplement sick benefits paid by their employer, the fund (which met the above criteria) was covered as being established by an "employees' beneficiary association." (See section 315.150 of the WPPDA Interpretive Manual.)

Since the Goodyear Relief Association meets all of these criteria, it is the position of the Department of Labor that the Goodyear Relief Association is an employees' beneficiary association within the meaning of ERISA section 3(4). Thus, the Association's program constitutes an employee welfare benefit plan within the meaning of ERISA 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