

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



MAR 16 1979

Mr. Michael B. Himmel
Special Attorney
U.S. Department of Justice
Newark, New Jersey 07102

Dear Mr. Himmel,

OPINION 79-21 A

4(a)
3(1)
3(4)
3(5)
3(6)
3(7)
3(11)
3(12)

This is in reply to your request for an opinion concerning the coverage of the Local 945 Teamsters Severance Fund (the Severance Fund) and the Local 945 Welfare Fund (the Welfare Fund) under both title I of the Employee Retirement Income Security Act of 1974 (ERISA) and the predecessor law, the Welfare and Pension Plans Disclosure Act, as Amended (WPPDA). The question of whether Local 945 is an "employee organization" within the meaning of both laws is examined in this process.

Filings made for the Severance Fund with the Department under ERISA, identified as File No. 226196390-001, and under the WPPDA, identified as File No. 251937, and filings made for the Welfare Fund with the Department under ERISA, identified as File No. 222122119-501, and under the WPPDA, identified as File No. 041209, were examined, as well as filings made for Local 945 with the Department under the Labor-Management Reporting and Disclosure Act, identified as File No. 015382.

The documents on file with the Department indicate that both the Severance Fund and the Welfare Fund (formerly the United Local 345 Welfare Fund) were established and/or maintained jointly by employers contributing thereto and Local 945 (and, with respect to the Welfare Fund originally United Local 345), pursuant to collective bargaining, for the benefit of members of the union employed by the employers as well as their families.

ERISA title I, section 4(a) specifies that ERISA title I applies to any employee benefit plan if it is established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce, or (3) by both, except for plans specifically exempt under section 4(b).

The term "employee benefit plan" is defined in ERISA title I, section 3(3) as " . . . an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan." The term "employee welfare benefit plan" is defined in ERISA title I, section 3(1) as " . . . any

-2-

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)."

Coverage under the WPPDA was the same as under ERISA for many plans. There are two areas of exception. The WPPDA provided more exemptions from coverage under WPPDA section 4(b) than does ERISA section 4(b) and there were fewer benefits covered under the WPPDA definition of the term "employee welfare benefit plan." WPPDA section 4(a), like ERISA section 4(a), specifies that the WPPDA applied to " . . . any employee welfare or pension benefit plan if it is established or maintained by any employer or employers engaged in commerce or in any industry or activity affecting commerce or by an employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce or by both . . ." except those plans exempt under WPPDA section 4(b). The term "employee welfare benefit plan" was defined in WPPDA section 3(1) as " . . . any plan, fund, or program which is communicated or its benefits described in writing to the employees, and which was heretofore or is hereafter established by an employer or by an employee organization, or by both, for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment."

The elements of coverage under both the WPPDA and ERISA are:

- (1) the plan must be established or maintained by an employer or employee organization, as those terms are defined, or by both;
- (2) jurisdiction under the commerce clause;
- (3) the plan provides benefits to participants and beneficiaries as defined;
- (4) the plan provides benefits specified in the definition of "employee welfare benefit plan" or "employee pension benefit plan";

-3-

(5) under the WPPDA only, the plan must have been communicated or its benefits described in writing to employees; and

(6) the plan is not exempt under section 4(b).

The following is a discussion of each of these points with respect to both plans.

1. Establishment or Maintenance by Employer and/or Employee Organization.

Both the Severance Fund and the Welfare Fund were established and/or maintained jointly by employers and an employee organization (Local 945) through collective bargaining.

ERISA section 3(5) defines the term "employer" as " . . . any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan; and includes a group or association of employers acting for an employer in such capacity." WPPDA section 3(4) has a virtually identical definition, defining the term "employer" as " . . . any person acting directly as an employer or indirectly in the interest of an employer in relation to an employee welfare or pension benefit plan, and includes a group or association of employers acting for an employer in such capacity."

The employers of the employees of Local 945 which contribute to the Fund as a result of collective bargaining with Local 945 clearly meet these definitions.

ERISA section 3(4) defines the term "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." The WPPDA definition of "employee organization" in section 3(3) is identical to the ERISA definition except for the use of the term "employee welfare or pension plan" rather than "employee benefit plan".

Local 945 meets the definition of "employee organization" in both laws. Local 945 is a local labor union in which employees participate and a purpose for which it exists is dealing with employers on matters incidental to employment relationships, including concerning employee benefit plans. Article I of the Local 945 Constitution and by-laws,

-4-

filed with the Department under the Labor-Management Reporting and Disclosure Act, indicates the nature of the organization (unincorporated labor union) and Article II its objects and purposes (among others, " . . . to negotiate contracts for those we represent which will give them fair wages, reasonable hours of work, and satisfactory terms and conditions of employment" (section 2.02)).

2. Commerce Clause.

With respect to the commerce clause, ERISA section 4(a) and WPPDA section 4(a) provide that ERISA title I and the WPPDA apply to employee benefit plans established or maintained (1) by any employer engaged in commerce or in any industry or activity affecting commerce, or (2) by any employee organization or organizations representing employees engaged in commerce or in any industry or activity affecting commerce; or (3) by both, except for plans specifically exempt under section 4(b).

ERISA section 3(11) defines the term "commerce" as " . . . trade, traffic, commerce, transportation, or communication between any State and any place outside thereof." WPPDA section 3(10) defined commerce as " . . . trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and any place outside thereof." The term "industry or activity affecting commerce" is defined in ERISA section 3(12) as " . . . any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce, and includes any activity or industry affecting commerce within the meaning of the Labor Management Relations Act, 1947, or the Railway Labor Act." The definition in the WPPDA is virtually identical.*

The term "industry or activity affecting commerce" has been given a liberal interpretation by the courts. The Supreme Court has held that the jurisdiction of the National Labor Relations Board under the Labor Management Relations Act definition is as broad as the jurisdiction of Congress over interstate commerce. See NLRB v. Fainblatt, 306 U.S. 601, 607, and cases cited therein (1939). Therefore, court decisions

* Section 3(11) of the WPPDA defined the term "industry or activity affecting commerce" as " . . . any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry 'affecting commerce' within the meaning of the Labor-Management Relations Act, 1947, as amended, or the Railway Labor Act, as amended."

-5-

under the Labor Management Relations Act are useful in determining the application of sections 3(11) and (12) of ERISA and sections 3(10) and (11) of the WPPDA. In the case of NLRB v. Bank of America, 130 F. 2d 624 (9th Cir. 1942), cert. denied 318 U.S. 791 (1943), the court pointed out that such normal business activities as correspondence with other banks and business institutions, use of telegraph or telephone facilities involved the use of channels of interstate communications so that the bank was "engaged in interstate activities not describable otherwise than as commerce."

Therefore, the employers and Local 945 are included within the commerce clause of the WPPDA and ERISA.

3. Provision of Benefits Specified in Law.

Under both laws, in order to be covered, a plan must provide benefits specified in the law's definition of "employee welfare benefit plan" or "employee pension benefit plan".

The ERISA section 3(1) definition of "employee welfare plan" includes " . . . any plan, fund, or program . . . established or . . . maintained for the purpose of providing . . . , 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)." (The effect of section 3(1)(B) is to include within the definition those plans which provide holiday and severance benefits, and benefits which are similar.)

According to the EBS-1 filed with the Department, the Severance Fund provides severance benefits, a benefit specified in section 3(1)(B) of ERISA.

According to the EBS-1 filed with the Department, the Welfare Fund provides hospital, surgical, medical, maternity, major medical, dental, diagnostic x-ray and laboratory services, and vision care benefits as well as life insurance and accidental death and dismemberment insurance. Thus, the Welfare Fund provides benefits specified in ERISA section 3(1).

The WPPDA section 3(1) definition of "employee welfare benefit plan" includes " . . . any plan, fund, or program . . . established . . . for the purpose of providing . . . through the purchase of insurance

-6-

or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment."

Severance pay per se is not one of the benefits specified in the section 3(1) definition and a plan providing severance pay would not be covered unless other benefits are provided and such benefits are of the type specified.

According to the Form D-1 filed under the WPPDA and the documents submitted therewith for the Severance Fund, the Severance Fund provided life insurance (a benefit "in the event of death") through Foundation Life Insurance Company as well as according to the Rules and Regulations of the Fund, benefits upon termination of employment, which included upon retirement (section 5.02), upon death (section 5.04), and upon withdrawal from covered employment (section 5.03). In March 1973 the plan was amended. Page 1 of the booklet distributed by the Fund and filed under the WPPDA contains the following statement:

In March, 1973, the Trustees of the Fund decided that it would be more desirable to accumulate all money received in an investment account and credit to each individual covered member his or her share of contributions. The life insurance program was terminated. The plan of benefits was amended in its entirety and resubmitted to the Internal Revenue Service which approved the amended plan on July 18, 1973. The amended plan was also filed with the U.S. Department of Labor as required by law.

According to the amended plan, an employee is eligible to receive benefits if separation from service occurs because of termination of employment (section 4.2) (and "termination of employment" is defined in section 1.10 as " . . . severance of the Employer - Employee relationship which occurs for any reason other than disability or death under circumstances thereby entitling the Employee to a benefit from his Fund."). Section 4.6 provides that benefits are payable upon certification that the employee is totally and permanently disabled. Section 5.1 provides that in " . . . the event an "Employee dies while in active employment, his Accumulated Share shall be paid in one lump sum to his Beneficiary." Section 5.2 provides that in " . . . the event it is determined that any Employee or Beneficiary is unable to care for his affairs because of mental or physical incapacitation, any benefit due to such Employee or Beneficiary . . . may be applied . . . for his maintenance and support or the maintenance and support of his wife and minor children."

-7-

Thus, from the establishment of the Severance Fund until the amendment in 1973, the Fund provided benefits in the event of death (the life insurance), a benefit specified in WPPDA section 3(1). After the amendment of the plan in 1973, the Fund provided benefits in the event of disability and death, benefits specified in WPPDA section 3(1). Thus, the Severance Fund provided benefits specified in WPPDA section 3(1) both before and after the plan amendment in 1973.

The Welfare Fund, according to the Form D-1 filed with the Department under the WPPDA, provides life insurance, accidental death and dismemberment, hospital, medical, and surgical benefits and thus provides benefits specified in WPPDA section 3(1).

Thus, both the Severance Fund and the Welfare Fund provide benefits specified in ERISA section 3(1) and WPPDA section 3(1).

4. Provision of Benefits to Participants or Beneficiaries.

ERISA title I and the WPPDA cover only employee benefit plans, i.e., plans arising out of the employment context. Thus, in order to be covered, a plan must cover participants who are employees and/or former employees (including members of employee organizations) who are or may become eligible to receive benefits or whose beneficiaries may be eligible to receive benefits.

ERISA section 3(6) and WPPDA section 3(5) define the term "employee" as " . . . any individual employed by an employer."

ERISA section 3(7) defines the term "participant" as " . . . any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be eligible to receive any such benefit." WPPDA section 3(6) defines the term "participant" as " . . . any employee or former employee of an employer or any member of an employee organization who is or may become eligible to receive a benefit of any type from an employee welfare or pension benefit plan, or whose beneficiaries may be eligible to receive any such benefit."

ERISA section 3(8) and WPPDA section 3(7) define a beneficiary as a person designated by a participant or by the terms of an employee benefit plan (employee welfare or pension benefit plan in the WPPDA) who is or may become entitled to a benefit thereunder.

-8-

Both the Severance Fund and the Welfare Fund provide benefits to employees of employers with which the Funds were collectively bargained who are represented by Local 945 and their beneficiaries. Thus, both of the Local 945 Funds provide benefits to participants and beneficiaries as defined in both ERISA and the WPPDA definitions of the term "employee welfare benefit plan."

5. Communicated in Writing (WPPDA Only).

Finally, the WPPDA covers only those plans which were communicated or their benefits described in writing to the employees. Examples of notification which satisfy the "in writing" requirement are insurance contracts and literature, mention in a collective bargaining agreement, description in a booklet, etc. The Form D-1s filed under the WPPDA for both of the Local 945 Funds indicate that both were mentioned in collective bargaining agreements, were described in insurance literature, etc., and thus were communicated in writing to employees.

6. Not Exempt Under Section 4(b).

ERISA section 4(b) and WPPDA section 4(b) exempt certain employee benefit plans from coverage. Neither the Severance Fund nor the Welfare Fund fall under any of the section 4(b) exemptions.

Conclusion

Therefore, both the Local 945 Teamsters Severance Fund and the Local 945 Teamsters Welfare Fund are covered by title I of ERJSA and were covered by the WPPDA. This letter constitutes an advisory opinion under ERISA Procedure 76-1.

Sincerely,

J. Vernon Ballard
Deputy Administrator
of Pension and Welfare
Benefit Programs