

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



JUN 28 1979

3(2)

Mr. Robert J. Lowen
International Organization
of Masters, Mates & Pilots
39 Broadway
New York, New York 10006

Dear Mr. Lowen:

This is in response to your letter of June 7, 1979 in which you request an advisory opinion that the Masters, Mates & Pilots Health & Benefit Plan Severance Pay Plan (the Plan) is a severance pay plan which is not deemed an employee pension benefit plan under section 3(2) of the Employee Retirement Income Security Act of 1974 (ERISA).

The following is a summary of the representations contained in the documents furnished with your request. There has been a long-term reduction in the number of positions available in the maritime industry, and in the overall size of the industry fleet. Over the past ten years there has been a loss of 354 ships and 1661 positions. As a result, according to your submissions, the ratio of officers to positions available has increased from 2.56 to 3.43. (We assume that this ratio is the ratio of licensed deck officers to positions in the maritime industry for such officers.) In response to this attrition and in order to improve job opportunities for licensed deck officers, and for recent Maritime Academy graduates, the International Organization of Masters, Mates & Pilots (the Union) and certain employers of members of the Union (contributing employers) negotiated the Plan, among other provisions of the collective bargaining agreement ratified by the Union membership effective June 16, 1978.

The Plan is a program to provide benefits to persons who permanently sever employment in the maritime industry during the period January 1, 1979 to July 1, 1980 and who either have worked at least 200 days in each of the ten

calendar years prior to severing employment or are at least age 55 and have accrued at least 20 years of pension credit under the collectively bargained pension plan covering members of the Union. Eligibility for benefits under the Plan is not contingent upon an employee's retirement, and we assume that, on the basis of its terms, the Plan is available to substantial numbers of employees who are not eligible for retirement and that benefits under the Plan will in some instances be paid to such employees. In no event will benefit payments under the Plan continue after June 15, 1984.

Benefits under the Plan have been calculated in a manner that takes into account the pension benefits that would be available to an employee if he were to retire or were eligible to retire. On the basis of the advice of the Plan's actuary, it is contemplated that the sum of the payments by the Plan to any employee will exceed twice that employee's annual compensation during the year immediately preceding the severance of employment for only some 1% or less of eligible employees. We assume that this estimate was made on the basis of reasonable actuarial assumptions, and that the annual compensation on which this estimate is based is an employee's annual compensation during the year immediately preceding his termination of service.

The Plan will be unavailable to employees whose termination of service occurs after the expiration of the current collective bargaining agreement. It is not contemplated that a similar program will be instituted in the future.

The term "employee pension benefit plan" is defined in section 3(2) of ERISA to 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 by its express terms or as a result of surrounding circumstances such plan, fund, or program -

(A) provides retirement income to employees, or

(B) results in a deferral of income by employees for periods extending to the termination of covered employment or beyond, regardless of the method of calculating the contributions made to the plan, the method of calculating the benefits under the plan or the method of distributing benefits from the plan.

A regulation issued by the Department of Labor under section 3(2) of ERISA (44 FR 11761, March 2, 1979) sets forth circumstances in which a severance pay plan is not deemed an employee pension benefit plan. The preamble to §2510.3-2(b) recognizes, however, that the regulation provides guidance by setting forth conditions under which a severance pay plan will not be deemed to be a pension plan, without excluding the possibility that, in appropriate circumstances, a severance pay plan not meeting the conditions of the regulation might also be deemed not to be an employee pension benefit plan.

On the basis of the information furnished in connection with your request for an advisory opinion, and subject to the assumptions expressed herein, it is the Department's opinion that although the Plan might not meet all the conditions set forth in §2510.3-2(b), the Plan is not an employee pension benefit plan within the meaning of section 3(2) of ERISA.

This letter constitutes an advisory opinion as defined in ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of such procedure, including section 10 thereof, relating to the effect of an advisory opinion.

Sincerely,

Ian D. Lanoff
Administrator