U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216

Reply to the Attention of:

OPINION 80-27A
3(32), 4(b)(1)

NOV 30 1979

Kevin McGarvey
Director, Transport Workers Union
NYC Transit Authority
MABSTOA Health Benefit Trust
1995 Broadway
12th Floor
New York, NY 10023

Dear Mr. McGarvey:

This is in response to your letter of September 28, 1979 to Secretary of Labor Ray Marshall, which has been referred to my office for reply. Your letter concerns the question whether the Transport Workers Union of America (TWU) - New York City Transit Authority (NYCTA) - Manhattan and Bronx Surface Transit Operating Authority (MABSTOA) Health Benefit Trust (the Plan) is a "governmental plan," within the meaning of section 3(32) of the Employee Retirement Income Security Act of 1974 (ERISA).

Your letter contains the following representations. MABSTOA is a subsidiary of NYCTA and they both are "public benefit corporations" created pursuant to Article 5, Title 9 of the New York Public Authorities Law, SS1201 ff., which, among other things, state that these organizations are performing governmental functions in carrying out their corporate purposes. The Plan was established pursuant to collective bargaining agreements between the TWU and both NYCTA and MABSTOA (collectively referred to herein as the Authorities), all Plan participants are employees of the Authorities, contributions from the Authorities provide the sole source of funding for the Plan, and the Plan is administered by a board of trustees to which the TWU and the Authorities appoint members in equal numbers. Deadlocks between the TWU and Authority trustees are to be resolved through arbitration. You also indicate that the New York State Department of Insurance has requested the Plan to comply with certain New York State laws.

In ERISA opinion 79-36A (letter of June 11, 1979 to Harold Baer, Jr.), which you mention in your letter, the Department concluded that four plans were governmental plans within the meaning of section 3(32) of ERISA. Each of the plans was established in accordance with a collective bargaining agreement between a labor union and an employer which was either a town or public school district and the employees of the respective town or public school district. In all

cases, employer contributions were the exclusive source of funding. Each plan was jointly administered by trustees appointed by the union and the employer in equal numbers. The terms of each plan provided that in the event of a deadlock between the employer and union trustees, the matter was to be submitted to an arbitrator for decision.[1]

On the basis of your representations, it appears that NYCTA and MABSTOA are agencies or instrumentalities of a State or of a political subdivision thereof. It is the view of the Department of Labor that, in accordance with ERISA Opinion 79-36A, the Plan is a "governmental plan" within the meaning of section 3(32) of ERISA. Accordingly, it is our view that, under section 4(b)(1) of ERISA, the provisions of Title I of ERISA do not apply to the Plan.

Sincerely,

Ian D. Lanoff
Administrator

[1] Feinstein, et al. v. Lewis, No. 79 Civ. 2204 (HFW) (S.D.N.Y., October 12, 1979).