

U.S. Department of Labor

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



Opinion 80-45A

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Mr. Guy Blackwell
Assistant U.S. Attorney
201 U.S. Post Office & Courthouse
Greeneville, Tennessee 37743

Dear Mr. Blackwell:

This is in reply to your request for an opinion concerning the coverage of the Central States, Southeast and Southwest Areas Health and Welfare Fund (the 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).

Filings made for the Fund with the Department under ERISA, identified as File No. 362154936-501 and under the WPPDA, identified as File No. 110-776, were examined, as well as filings made for the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (the International) with the Department under the Labor Management Reporting and Disclosure Act, identified as File No. 000093.

The documents on file with the Department indicate that the Fund was established and/or maintained jointly by employers contributing thereto and Central States Drivers Council, Southern Conference of Teamsters, and their affiliated local unions (the Union) pursuant to collective bargaining, for the benefit of union members 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 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).” The term “employee pension benefit plan” is defined in ERISA title I, section 3(2) as “... 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.”

Coverage under the WPPDA was the same as under ERISA for many plans. There are three areas of exception. The WPPDA provided more exemptions from coverage under WPPDA section 4(b) than does ERISA section 4(b), there were fewer benefits covered under the WPPDA definition of the term “employee welfare benefit plan,” and the WPPDA definition of the term “employee pension benefit plan” is more limited than the ERISA definition. 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 term “employee pension benefit plan” was defined in WPPDA section 3(2) 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, by the purchase of insurance or annuity contracts or otherwise, retirement benefits, and includes any profit-sharing plan which provides benefits at or after retirement.”

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”;
- (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 the Fund.

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

The Fund was established and/or maintained jointly by employers and an employee organization (the Union) 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 members of the Union which contribute to the Fund as a result of collective bargaining with the Union 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.”

The Union meets the definition of “employee organization” in both laws. The Union is a 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. The Constitution of the International adopted in convention June 14 – 17, 1976, and filed with the Department under the Labor Management Reporting and Disclosure Act, indicates the nature of the organization (employee organization) and its objects. Article I, section 2 provides in relevant part that “[t]he objects of this International Union are also to secure improved wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining....” Article XXII, section 1 provides also that “[e]ach local union shall adopt its own separate Bylaws which must comply, and may not conflict, with the provisions of the International Constitution.”

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. This Fund clearly falls within this requirement of coverage.

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 benefit plan” includes “... any plan, fund, or program ... established or ... maintained for the purpose of providing ..., through the purchase of insurance

* 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.”

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 annual report (Form 5500) filed with the Department, the Fund provides such benefits as health insurance and life insurance. Thus, the 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 or otherwise, medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death, or unemployment.”

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

Thus, the Fund provides benefits specified in ERISA section 3(1) and WPPDA section 3(1).

4. Provisions 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. Therefore, 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) defined 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.

The Fund provides benefits to employees of employers with which it was collectively bargained who are represented by the Union and to their beneficiaries. Thus, the Fund provides benefits to participants and beneficiaries as defined in both ERISA and the WPPDA definitions.

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-1 filed under the WPPDA for the Fund indicates that it was mentioned in collective bargaining agreements, was described in booklets for members, etc., and thus was communicated in writing to employees.

6. Not Exempt Under Section 4(b).

ERISA section 4(b) and WPPDA section 4(b) exempt certain benefit plans from coverage. The Fund does not fall under any of the section 4(b) exemptions.

Conclusion.

Therefore, the Fund is covered by title I of ERISA and was covered by the WPPDA.

Sincerely,

Wayland B. Coe
Acting Assistant Administrator
Office of Reporting and Plan Standards
Pension and Welfare Benefit Programs