

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-9A
3(1), 3(5)

JAN 14 1981

John Van Wijk, Esq.
The Great Western Sugar Company
Post Office Box 5308
Denver, Colorado 80217

Dear Mr. Van Wijk:

This is in response to your request for an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). You ask whether a group insurance plan covering domestic sugar beet workers employed by beet growers contracting with The Great Western Sugar Company (G.W.S.) and paid for by G.W.S. is covered by ERISA as an employee benefit plan.

The facts as stated in your letter are as follows. G.W.S. is engaged in the business of processing sugar beets. Pursuant to this business, G.W.S. deals with sugar beet growers in several western states, selling them seeds and buying sugar beets from them on a participating contract basis. In the past, G.W.S. has recruited migrant workers for these growers. The workers are employed directly by the growers, and G.W.S. no longer recruits workers. G.W.S. maintains a group insurance plan covering the domestic sugar beet workers employed by the growers. This insurance plan provides life insurance, accidental death benefits, occupational weekly benefits, and medical benefits. G.W.S. pays all the premiums on this insurance, but is not contractually obligated to maintain the plan.

Section 3(1) of ERISA defines an employee welfare benefit plan as any plan, fund, or program established or maintained by an employer, an employee organization, or both, to the extent it provides "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment ..." for participants. The benefits provided by the G.W.S. program fall squarely within the language of section 3(1). Thus, if G.W.S. is an "employer" or an "employee organization," the program is an "employee welfare benefit plan" and is covered under ERISA.

Section 3(5) of ERISA defines an employer as "... any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan;" Thus, if a

person is acting in the interest of an employer, that person is considered to be an employer for purposes of section 3(1).

You assert, in your letter, that G.W.S. is under no legal or contractual obligation to provide the health benefits described above. If, in addition, there neither is, nor previously has been, any arrangement or understanding between G.W.S. and any beet growers with whom it contracts, regarding G.W.S.' providing or not providing that program (a fact we assume, without deciding, solely for purposes of this letter), then it is the opinion of the Department that G.W.S. has not established and is not maintaining the program described above in the capacity of an "employer" or of an "employee organization" for purposes of section 3(1) of ERISA. In that circumstance, the program would not be an employee welfare benefit plan covered by title I of ERISA. If the facts are other than those assumed above, your submissions do not provide a sufficient basis for us to render an opinion with respect to coverage of the program under title I.

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

Sincerely,

Ian D. Lanoff
Administrator of Pension and Welfare Benefit Programs

Enclosure