U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210

May 18, 1995

95-05A
ERISA SECTION 3(1)

Mr. Paul A. Green
Beins, Axelrod, Osborne, Mooney & Green, P.C.
The Colorado Building
Suite 700
1341 G Street, N.W.
Washington, D.C. 20005-3105

Dear Mr. Green:

This is in reply to your letter requesting an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the United Mine Workers of America (UMWA) - Bituminous Coal Operators' Association, Inc. (BCOA) Labor Management Positive Change Process (LMPCP) Fund (the Fund) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You represent that the Fund was jointly established by the UMWA and the BCOA, effective as of December 16, 1993, pursuant to the UMWA - BCOA LMPCP Fund Agreement and Declaration of Trust (Trust Agreement), adopted on April 6, 1994, and the National Bituminous Coal Wage Agreement of 1993 (the NBCWA). You further present an amended version of the Trust Agreement, which you represent will be adopted and upon which you request that we base between the UMWA, a labor union primarily representing workers in the coal industry, and the BCOA, an association representing employers in the coal industry for collective bargaining. The Fund is designed to conform to the requirements of section 302(c)(9) of the Labor Management Relations Act, 1947, 29 U.S.C. § 186 (c)(9) (the LMRA).

The purposes and objectives of the Fund are set forth in the NBCWA. The NBCWA states that the Fund was established in order to foster "a new and different relationship . . . between labor and management." NBCWA, Art. II, Part G, sec. 1. Recognizing that "the mutual objectives of the parties can best be obtained by a joint commitment of continuous improvement to working relationships, productivity, health, safety, training, education, and investment in technology and, most importantly, human resources," the NBCWA states that the Fund is intended "to promote joint efforts addressing those needs, and to enhance existing efforts to improve labor-management cooperation, ..." Id.

The NBCWA further provides in Art. II, Part G for the creation, administration, and funding of the Fund. That section states that the Fund was established to promote and support LMPCP programs formulated by local LMPCP committees at eligible facilities[1] and to pay the expenses of the Chairman of the Labor Management Policy Committee (the LMPC).[2] The Fund is jointly administered by two trustees, one appointed by BCOA, and the other

[1] An LMPCP Committee at eligible facilities is comprised of three members of the Mine Communication Committee and three local management representatives, one of whom is the Superintendent. Employee members of an LMPCP Committee will be compensated by their employers. NBCWA at Art. II, Part G, section 2.

[2] The LMPC is a labor management committee within the meaning of section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. § 175(a), and section 302(c)(9) of the LMRA. Pursuant to the NBCWA, the

appointed by the UMWA. Each participating employer contributes to the Fund according to a formula based on hours worked by employees for work defined by the NBCWA.

The Trust Agreement, as amended, provides that a program "may be eligible for support" under the Fund if the program is established to achieve any of the following purposes and objectives:

> (I) To develop and implement more cooperative working relationships through the exercise of a leadership role by both representatives of mine management and elected local union officials;
>
> (II) To develop a working relationship based on honesty, integrity, and mutual trust;
>
> (III) To work to increase respect for the dignity of all individuals covered by the NBCWA;
>
> (IV) To reinforce the shared belief that an ongoing partnership between labor and management is essential to the long-term success and growth of the industry;
>
> (V) To explore additional ways and means to continuously improve productivity, efficiency and competitiveness;
>
> (VI) To promote the development of employee job skills by encouraging the development and utilization of skills and training programs (without actually providing, either directly or indirectly, training or apprenticeship benefits) so as to enhance greater job security and increased productivity and efficiency to meet the competitive challenges of today's global market economy;
>
> (VII) To enhance positive working relationships among all employees at every level of the Participating Employer's operation;
>
> (VIII) To further encourage and allow employees to utilize individual responsibility, skills and ideas to perform their work safely, efficiently and with pride;
>
> (IX) To augment the ability of the Participating Employer's operation to meet or exceed customer requirements;
>
> (X) To further develop mutually acceptable (agreement between local union and local management) ways to reduce the number of job grades and job titles set forth in Appendices A and B of the NBCWA, and to further develop mutually acceptable alternative schedules and continuous operations in addition to those set forth in the NBCWA; and
>
> (XI) To explore non-adversarial processes, including mediation, for settling disputes at the Eligible Facility.

LMPC is comprised of four high-level representatives of the UMWA, four high-level representatives designated by the BCOA, and one neutral Chairman who is selected by the other members of the LMPC. The LMPC's purposes include opening lines of communication that will serve to support and promote the objectives outlined in the NBCWA and seeking to identify and addressing major issues facing the industry, such as legislation, the environment, technological changes, and similar issues. NBCWA at Art. II, Part H.

Trust Agreement, Art. VI, section (2)(A)(VI).

Among other powers, the Trust Agreement authorizes the Trustees "to pay monies from the Trust for the purpose of funding and promoting the activities of the [LMPCP], as described in Article VI, which may include the provision of education materials and the sponsorship of (or payment for attendance at) seminars; . . . ." Trust Agreement, Art. V.

You assert that the references to skills, training and education in both the Trust Agreement and the NBCWA are not intended to permit the Fund to provide any job skill training directly to employees. Rather, the Fund's objective is only to encourage the utilization of local programs for development of skills and training by providing financing to improve employee attitudes towards further training and towards the type of dedication and hard work it will take to improve job skills. For example, the references in Art. V of the Trust Agreement to educational materials and seminars "are not for the purpose of providing job skills or other educational benefits to employees, but to help the representatives of working coal miners and management learn how the ‘collaborative management’ process works and how they can apply it to their mine."

You assert further that "[a]lthough some of [the NBCWA] language refers to ‘training,’ nowhere does the NBCWA, . . . authorize the Fund to train employees (present or future), or to otherwise provide, either directly or indirectly, training or apprenticeship benefits." You state that the language in the NBCWA at Art. II, Part G, sec. 1 (quoted above):

> [R]eferring to a commitment to continuous improvement to training and education was not meant to suggest that the [Fund] would provide training and education benefits. . . . Instead, it was a statement of the parties' intent that the collaborative management process would result in a greater commitment to training and education. Any such training and education, if provided, would necessarily be provided under a different system.

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan" to include:

> [A]ny 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 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 [29 USCS section 186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

On the basis of the information submitted and your representation that the Trust Agreement will be amended as described above, it does not appear that the Fund provides any benefit described in section 3(1)(A) of ERISA. Further, the Fund does not provide any benefit included in section 302(c) of the LMRA within the meaning of section 3(1)(B) of ERISA. It is the Department of Labor's (the Department) position that section 3(1)(B) does not incorporate as a covered benefit every arrangement described in section 302(c) of the LMRA. In the Department's regulation section 29 C.F.R. 2510.3-1(a), the Department clarified the definition of an "employee welfare benefit plan." With regard to benefits described in section 302(c) of the LMRA, regulation § 2510.3-1(a) provides:

> (3) Section 302(c) of the LMRA lists exceptions to the restrictions contained in subsections (a) and (b) of that section on payments and loans made by an employer to individuals and groups representing employees of the employer. Of these exceptions, only those contained in paragraphs (5), (6), (7) and (8) describe benefits provided through employee benefit plans. Moreover, only paragraph (6) describes benefits not described in section 3(1)(A) of the Act. The benefits described in section 302(c)(6) of the LMRA but not in section 3(1)(A) of the Act are " . . . holiday, severance or similar benefits." Thus, the effect of section

> 3(1)(B) of the Act is to include within the definition of "welfare plan" those plans which provide holiday and severance benefits, and benefits which are similar (for example, benefits which are in substance severance benefits, although not so characterized).

Although this regulation was promulgated prior to the amendment of section 302(c) of the LMRA to add subsection 302(c)(9), the principle it articulates remains fully applicable. Only those arrangements described in section 302(c) of the LMRA that provide benefits to participants and their beneficiaries will constitute employee welfare benefit plans. Therefore, in the Department's view, the Fund, as you describe it to operate pursuant to the amended Trust Agreement, does not provide any "benefit" to participants or their beneficiaries within the meaning of section 3(1) of Title I of ERISA. Moreover, the Fund is not an employee pension benefit plan because it does not provide any benefits specified in section 3(2) of Title I of ERISA. Accordingly, the Fund is not covered under Title I of ERISA.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, it is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

ROBERT J. DOYLE
Director of Regulations and Interpretations