

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 80-12A

3(1), 3(2), 3(5), 3(4), 3(11), 3(12), 3(6), 3(7), 4(b)

FEB 29 1980

Mr. Michael B. Himmel
Special Attorney
U.S. Department of Justice
Room 635 Federal Building
970 Broad Street
Newark, N.J. 07120

Dear Mr. Himmel:

This is in reply to your request for an opinion concerning the coverage of the Pension Plan of the Welfare and Pension Fund, Mid-Jersey Trucking Industry, Local 701, International Brotherhood of Teamsters (the Pension Plan) 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 Pension Plan with the Department under ERISA, identified as File No. 221594458-001, and under the WPPDA, identified as File No. 9637, were examined, as well as filings made for Local 701, International Brotherhood of Teamsters (Local 701) with the Department under the Labor-Management Reporting and Disclosure Act, identified as File No. 002101.

The documents on file with the Department indicate that the Pension Plan was established and/or maintained jointly by employers contributing thereto and Local 701 pursuant to collective bargaining, to provide retirement income to members of the union employed by the employers and to employees of the union and fund office.

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 methods 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/or 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 Pension Plan.

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

The Pension Plan was established and/or maintained jointly by employers and an employee organization (Local 701) 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 employees of Local 701 which contribute to the Pension Plan as a result of collective bargaining with Local 701 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 virtually identical to the ERISA definition except for the use of the term "employee welfare or pension plan" rather than "employee benefit plan".

Local 701 meets the definition of "employee organization" in both laws. Local 701 is a local 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. Section 4 of the Bylaws of Local 701 (effective June 1, 1964), filed with the Department under the Labor-Management Reporting and Disclosure Act, indicate the nature of the organization (labor union) and its objects. Section 4(A) states, "The objects of this Local Union shall be: ... (c) To secure improved wages, hours, working conditions and other economic advantages through organization, negotiations and collective bargaining ... [and] (j) To carry out the objectives of the International Union as an affiliate thereof; and its duties as such an affiliate...."

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.¹

The term "industry or activity affecting commerce" has been given a liberal interpretation by the courts. The Supreme Court has held that the jurisdiction of the National Labor Relations Board under the Labor Management Relations Act definition is as broad as the jurisdiction of Congress over interstate commerce. See NLRB v. Fainblatt, 306 U.S. 601, 607, and cases cited therein (1939). Therefore, court decisions under the Labor Management Relations Act are useful in determining the application of sections 3(11) and (12) of ERISA and sections 3(10) and (11) of the WPPDA. In the case of NLRB v. Bank of America, 130 F.2d 624 (9th Cir. 1942), cert.

¹ 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."

denied 318 U.S 791 (1943), the court pointed out that such normal business activities as correspondence with other banks and business institutions, use of telegraph or telephone facilities involved the use of channels of interstate communications so that the bank was "engaged in interstate activities not describable otherwise than as commerce."

Therefore, the employers and Local 701 are included within the commerce clause of the WPPDA and ERISA.

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(2) definition of "employee pension benefit plan" includes "... any plan, fund, or program ... 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."

According to the Form 5500 (for the fiscal plan year ending on May 31, 1976) filed with the Department, the Pension Plan provides to participants at age 60 with 20 years service a monthly benefit of \$500. Benefits are also payable at early retirement, death, and disability. Thus, the Pension Plan provides benefits described in ERISA section 3(2).

The WPPDA section 3(2) definition of "employee pension benefit plan" includes "... any plan, fund, or program ... established ... for the purpose of providing ... 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 Form D-1 filed with the Department under the WPPDA indicates that the Pension Plan provides monthly pension and disability retirement benefits upon satisfaction of specified age and/or service requirements.

Thus, the Pension Plan provides benefits specified in ERISA section 3(2) and WPPDA section 3(2).

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. Thus, 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) defines 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 Pension Plan provides benefits to employees of employers with which the Pension Plan was collectively bargained who are represented by Local 701 and employees of the union and fund office. Thus, the Pension Plan provides benefits to participants as defined in both ERISA and the WPPDA.

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's filed under the WPPDA for the Pension Plan indicate 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 Pension Plan does not fall under any of the section 4(b) exemptions.

Conclusion

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

Sincerely,

Helene A. Benson
Chief
Division of Coverage
Office of Reporting and Plan Standards
Pension and Welfare Benefit Programs