

MAINE STATE LEGISLATURE

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April 11, 1960

James J. George, Commissioner

Milton L. Bradford, Assistant Attorney Gen'l.

Employee Supplemental Unemployment Benefit Plan of Dragon Cement Company, Division of American Marietta Company and Employee's SUB Trust Agreement

This is in reply to your memorandum of March 28, 1960, same subject, with which was enclosed a copy of the EMPLOYEE SUPPLEMENTAL UNEMPLOYMENT BENEFIT PLAN agreed upon between Dragon Cement Company, Division of American-Marietta Company and United Cement, Lime and Gypsum Workers International Union, on May 1, 1959, and material connected therewith.

You ask that the contents of the agreement be reviewed and a legal opinion be submitted to the Commission as to:

- (1) Whether or not supplemental unemployment benefits are wages as defined in the Maine Employment Security Law; and
- (2) Whether or not the benefits paid pursuant to the terms of the plan constitute remuneration with respect to eligibility for unemployment benefits; during the period of unemployment.

Under date of July 26, 1956, the late Chairman of the Maine Employment Security Commission, L. G. Fortier, advised Prentice-Hall, Inc., as follows:

"This will acknowledge receipt of your letter of June 12, 1956, in which you inquire as to whether or not contributions may be due this agency under terms of agreements; such as, the Ford or General Motors UAW agreements.

"Your question is as follows:

"Will employer contributions be due in Maine upon payments into or out of trust funds created by the employer under a contract with a union (such as the Ford or General Motors-UAW agreements) from which the trustee makes supplemental unemployment benefit payments to an unemployed worker?"

"We have examined several opinions rendered by other states on this question and although we find that the majority of states conclude that no contributions are due upon such payments, we are constrained to conclude to the contrary.

"The applicable portion of our law, Section 3, XIX, provides as follows:

"XIX. "Wages" means all remuneration for personal services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with regulations prescribed by the commission, except that for the purposes of subsection II of section 13, subsection V of section 14, and section 17 such terms shall not include:

"* * *

"B. The amount of any payment made after December 31, 1950, to, or on behalf of, an employee under a plan or system established by an employing unit which makes provision for his employees generally or for a class or classes of his employees, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account or retirement, or sickness or accident disability, or medical and hospitalization expense in connection with sickness or accident disability, or death;"

"In view of the fact that the type of trust mentioned in your question is not included in paragraph B above, we are forced to conclude that payments to such a fund come within the meaning of wages. Also, we consider that since the legislature inserted paragraph B, above, into the law, we are not at liberty to construe other provisions of subsection XIX, above, to exempt the payments mentioned in your question.

"In view of the foregoing, the answer to your question is in the affirmative."

April 11, 1960

The benefit plan which is the subject matter of this discussion provides that to be eligible for benefits thereunder, an employee must be entitled to benefits under a State plan or, if not, that he is not for reasons specified in the plan. He is required to register and report in accordance with State requirements. In short, his right to supplemental benefits depends on his right to collect under a State law.

The Plan provides that if supplementation is not permitted under a State plan, there may be an agreement between the company and the union to change the method of paying benefits under the Plan.

This was done by Amendment No. 1, dated January 4, 1960. In effect the amendment provides that the supplemental benefits shall be paid in a lump sum at the end of the period of unemployment, or at the time State benefits are exhausted, whatever occurs sooner, instead of weekly during the period of unemployment.

It is my understanding that the amount due in a lump sum would be based primarily on the number of weeks the beneficiary draw State benefits, plus such benefits as are due under the Plan after State benefits are exhausted.

As I analyze the Plan, the material provisions are the same as the plan discussed in the letter quoted above. There is a new idea in this plan; namely, to withhold payments until State unemployment benefits have ceased, either because claimant has returned to work or because his benefits have been exhausted.

It is my opinion that the principles set forth in the late Mr. Fortier's letter are sound. He stated that payments into the trust fund are wages and that contributions are due on such payments. He did not say in so many words that payments out of the fund, by way of supplemental benefits, are wages, but such a conclusion is inescapable. If the payments into the fund are wages, the payments out of it must be wages.

Although it is in the nature of repetition to now so state, it is my opinion that payments into the trust fund created to carry out this Plan, are wages. It is my opinion, also, that payments out of the trust fund, to supplement State benefits, are wages whether paid weekly in fact, or paid in a lump sum, retroactively, at so much for each week for which State benefits were paid. Such lump sum payments should moreover be considered as paid weekly in determining a claimant's rights to State benefits for each week involved.

cc - Mr. Cloutier
Mr. Cote