

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA
RALEIGH, NORTH CAROLINA

INTERPRETATION NO. 248

TO: R. Fuller Martin, Director

FROM: Garland D. Crenshaw, Attorney

RE: (ILA) International Longshoremen Association, Guaranteed Annual Income Plan (GAI) - South Atlantic Labor Contract

As part of a labor contract negotiated between the ILA Union and the stevedoring companies within the South Atlantic ILA region, a plan has been devised wherein eligible workers will be guaranteed 1,000 hours' work annually (or 1,000 hours of pay if work is not available) beginning February 1, 1973. An eligible member is defined as one who worked as much as 700 hours during the preceding contract year. The minimum hourly pay involved is \$5.55 per hour (as of February 1973). The plan is called a Guaranteed Annual Income Plan. Each eligible member would be entitled to a maximum of \$5,550 annually which figures out to approximately \$106 per week. Certain benefits, including unemployment insurance, are deducted from the amounts to which the eligible members would otherwise be entitled. Also, the "guaranteed" amount can be further reduced under certain prescribed circumstances; for example, failing to report to work when work is available. There are, I believe, about six other such factors. This plan obviously is not a supplemental unemployment benefit plan inasmuch as eligibility for state unemployment insurance benefits is not a condition precedent to the members' entitlement to GAI payments.

The Plan is financed as follows: The stevedoring (shipping) companies are assessed contributions based upon tonnage and type of cargo moved, which contributions are paid over into a trust fund jointly administered by a number of trustees, half of whom represent the companies, half of whom represent the union. The GAI payments are, of course, paid from this trust fund to the eligible members.

As stated heretofore, the plan guarantees 1,000 hours of work (or pay) annually to each eligible member, which breaks down to 250 hours per quarter. The eligible member, upon application, may receive payment of up to 75% of the guaranteed amount at the close of each calendar quarter (or a reasonable time thereafter). The Plan contains a reimbursement provision in case of an overpayment to a member. Final settlement is made at the end of the contract year. In actual practice then, the member receives a GAI payment only four times a year at the most.

In a memo of February 27, 1973, it was requested that I obtain an IRS ruling on the "Plan." IRS could not, of course, under the law oblige us. They did, however, send us

a copy of Revenue Ruling 7322 as the same appears in Internal Revenue Bulletin 1973-2, page 15. In that case, somewhat similar to the plan in question here, the IRS ruled that the guaranteed annual wage plan in question was not a supplemental unemployment compensation plan as described in Revenue Ruling 56-249, and Revenue Ruling 60-330; that accordingly, GAI payments made to eligible members were held to be “wages” for purposes of FICA, FUTA, and income tax.

It should be pointed out that in Revenue Ruling 73-22, the GAI Plan was administered by an association of employers. In our case, the plan is administered jointly by equal numbers of trustees representing both the union and the shipping companies. I do not believe that the distinction is a significant, however, because the basic purpose of the plan in each case is to provide the employees with a guaranteed annual income. The IRS so stated in Revenue Ruling 73-22.

The following specific questions have been posed:

1. Would payments by employers into the trust fund for payments under the plan be taxable?

I concur with the conclusions that the payments into the fund by the employers are not taxable. It is my opinion that payments from the fund to the employees are taxable as “wages.” As stated in the IRS rulings, it matters not that the payments are disbursed by an association of employers rather than individual employers. That the employers have chosen the device of a trust fund administered by trustees representing both themselves and the union to honor the provisions of the labor contract seems not significant. The basic purpose remains that of providing a guaranteed annual income to its employees.

2. Under the plan, would longshoremen be eligible for unemployment insurance benefits since it is my understanding they must report daily and be available for long shore work continuously?

It is my understanding that they must shape up in the morning just prior to working hours and again after the lunch hour. I do not know whether the “continuous availability” refers to the making of the twice-daily “shapes” or whether they are required to stand around the docks all day. In either event, it seems to me that if checking in, or making the “shape”, prevents his being available to take other work in the area at the time when such workday normally begins, he could not be considered “available for work”. However, such would be a finding of fact to be resolved in each case. Certainly, if he is required to stand around the docks all day, he could not be considered “available.” It is my understanding that in hearings before the Claims Deputy, some of

these individuals have testified that they have to be at “shape” for somewhere between one and two hours each morning.

2. Can we provide New York Shipping Association with the amount of unemployment insurance benefits paid so such benefits may be deducted from payments under the plan?

The Chairman has previously ruled that we cannot supply such information; the ruling was based not only on the “non-disclosure” provisions of our Law but also because such would not have been administratively feasible or desirable.

Adopted as an official Interpretation of the Commission on May 1, 1973.