An Analysis of the Role of Labor, Management and Government in the Administration of Health and Welfare Plans

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AN ANALYSIS OF THE ROLE OF LABOR, MANAGEMENT AND GOVERNMENT IN THE ADMINISTRATION OF HEALTH AND WELFARE PLANS

by

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This thesis postulates the premise that private health and welfare plans have an important function to render in the industrial society of the nation. Their continued success is dependent upon the active and intelligent participation of Labor, Management and Government in the administration of these programs to prevent irregularities in their operation. The present study was chosen to illustrate the abuses and the other improper practices that were found during investigations by Congress and the Insurance Department of the State of New York.

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CHAPTER I

INTRODUCTION

The responsibility for the economic and social welfare of wage earners should not be considered an exclusive obligation of either labor or management or government. Each of these agencies has a responsibility to supplement the efforts of the others in providing some measure of security against the ills and misfortunes that are often found among workers and their dependents in our industrial society.

Reasons for the Existence of Health and Welfare Plans

In the papal encyclical "Rerum Novarum," labor organizations were advised to adapt their structures to assist members to better themselves in mind, body and spirit. Speaking specifically of the welfare of workers, unions were urged to adopt special measures to provide security against the ills that may befall workers: "... and to create a fund from which workers may be helped in their necessities, not only in case of accidents, but also in sickness, old age and misfortune."  

2Ibid., p. 35.
Management has also recognized that its obligation to the wage earner is not static, but must be capable of expansion within the collective bargaining process to include other items than present wages, hours and conditions of employment. One prominent management official in counseling his contemporaries on health and pension plans stated: "We can stand for a program of ever increasing security and personal well being. This means that we recognized the economic and social soundness of health and pension plans."\(^3\)

The introduction of new economic methods and new developments in industry has in the opinion of one authority apparently divided human society into two divisions, namely, those liberally endowed with the comforts of modern inventions and the multitude of working men who are attempting to escape the dire straits that surround them.\(^4\) The condition of the latter group, because of their lack of resources, dictates their dependence upon the state and management for assistance in extreme contingencies.

Collective bargaining has been used in this country to secure measures that would protect workers against the expenses resulting from illness that occur outside of the employment

\(^3\)Theodore E. Houser, Excerpts from Remarks Delivered before the National Retail Dry Goods Association in New York City, January 11, 1954.

relationship. This nation can be justly proud of the number of negotiated health and welfare plans that have been established for the protection of workers and their dependents. 5

History of Plans in the United States

Private health and welfare plans for workers are not a creation of the Twentieth Century. The first organizations of workers in the United States were mutual aid associations. The Philadelphia Typographical Society was established in 1802 as a benevolent and burial society and did not make industrial activities its goal until 1833. 6 The Cabinetmakers, the Iron Molders and the Brotherhood of Locomotive Firemen and Engineers, organized in 1806, 1859 and 1873, respectively, were likewise formed primarily for welfare purposes. 7

Employers also recognized their moral and economic obligations to their employees. The first modern interest in employee benefit plans occurred with the institution of a profit-sharing

5 Health and welfare plans for purposes of this study will include life insurance, accident and sickness benefits, medical and surgical benefits and hospitalization benefits for employees and their dependents and beneficiaries.


7 Ibid., p. 3.
plan by the Brewster Company of New York in 1870. This was followed with the establishment of the first industrial pension plan in 1875 by the American Express Company.

The Federal Government has enacted legislation in this area. The most encompassing activity in social welfare was the passage of the Social Security Act in 1936 and its subsequent amendments. The retirement system of the railroads is administered by the national government.

All of the states provide for workmen's compensation in case of temporary or permanent disability due to occupational accidents and a majority of the states provide such compensation in case of occupational diseases. Four states provide compensation for the loss of income due to non-occupational accidents and sickness. They are California, New Jersey, New York and Rhode Island.

**Characteristics of Such Plans**

An important characteristic of health and welfare plans is the method used in providing benefits. Under insured plans, benefits are purchased from an insurance company or a non-profit

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9 Ibid., p. 3.
medical or hospital service corporation. The plans which are self-insured undertake to provide benefits directly from contributions and income from investments.

The plan may be contributory or non-contributory. Of the 3.7 million workers covered by negotiated health and welfare plans in 1954, nearly 6.9 million workers or 62 per cent were entitled to benefits under a non-contributory program.

The Bureau of Labor Statistics in an attempt to determine the predominant type of benefits in employee welfare programs, conducted a study in 1954 of 173 negotiated agreements. Life insurance was found to be the most popular benefit with 93 per cent of workers receiving this benefit. The other benefits provided and the frequency in which they occurred were: hospitalization, 88 per cent; surgical benefits, 83 per cent; accident and sickness benefits, 73 per cent; accidental death and dismemberment, 54 per cent; and medical benefits, 47 per cent.

Accident and sickness benefits, accidental death and dismemberment benefits and life insurance are generally limited to

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10 Under a contributory plan, the employer and employee contribute to the cost of the program. The employer assumes the entire cost of the program in a non-contributory plan.


12 Ibid., p. 1.
13 Ibid., p. 3.
employees. The remaining benefits are usually available to the dependents of employees, although at an increase in cost to either the employer and/or employee. Of the 5.3 million workers covered under welfare programs that did not include pensions in 1954, 48 per cent were able to include their dependents on a non-contributory basis, while 9.2 per cent paid the entire additional cost. 14

Eligibility for benefits vary with the individual plan. In one study, it was determined that in those plans which provided for accident benefits, a waiting period of from one to four days was required, while an eight day waiting period was generally required for sickness benefits. 15 After eligibility had been established, sick benefits were payable for an entire year under some insured plans. Where benefits were purchased from a non-profit medical plan or hospital service corporation, they were generally restricted to payments for 120 days.

There are two methods available under negotiated agreements by which contributions are obtained to finance benefits. They are on a cents-per hour basis and a level of benefit basis.

14 Ibid., p. 5.
The employer who has contracted for a cents-per-hour arrangement contributes a certain amount per hour to a fund. The fund assets are then used to provide the benefits or to purchase the benefits from an insurance company or a non-profit medical or hospital service corporation. The beneficiary receives benefits according to a specified schedule of payments. The employer may also purchase benefits through direct payment of premiums to the insurance carrier.

The employer who has agreed to provide a level of benefits payment for his employees purchases or grants benefits that will amount to a percentage of earnings for a particular period. The common practice is the purchase of this type of benefit from a commercial insurance company.

The dividends or credits that are granted by the insurance carrier may be used to purchase additional benefits or reduce premium costs. The employee may contribute under both arrangements.

Growth of Health and Welfare Plans

The tremendous growth in the number of health and welfare programs in the last thirteen years may not be attributed to any one factor, but rather to a group of forces that are economic, political and social in nature.

Unions are interested in reforms which will improve the status of their members who possess few or none of worldly goods.
These reforms would of necessity include an ever-increasing share of the profits produced by the economy. The quest for security is typical of the economic and social forces that have contributed to the growth of health and welfare plans.

Political factors have also had a prominent position in the unusual development and growth of benefit programs. The regulation of profits during and subsequent to the Second World War and the Korean Conflict through the taxation of excess profits permitted and encouraged welfare plans. Employers were allowed to deduct their contributions and other costs of such programs as a business expense on their tax returns.

During the two political upheavals previously mentioned, the Federal Government restricted wage and salary increases under wage stabilization programs. Employers were permitted, however, to increase employee compensation through fringe benefits such as health and welfare plans.

The first direct Federal Governmental action in the establishment of private health and welfare programs occurred in 1946. The Federal Government, after seizing the Bituminous Coal Mines, negotiated the Krug-Lewis Agreement. This contract provided for the payment of royalties, based upon production tonnage, to be used in the financing of a welfare and pension plan for the members of the United Mine Workers.

Governmental interest in this area was further indicated by
the establishment of a fact-finding board during a steel strike in 1949. The final report of the board recommended the incorporation of welfare benefits into the negotiated agreements of the industry.

The remaining important governmental action was the affirmation by the courts of the decisions of the National Labor Relations Board that held welfare plans were a negotiable issue in collective bargaining. "We are convinced and find that the term 'wages' as used in Section 9(a) must be construed to include emoluments of value, like pensions and insurance benefits, which may accrue to employees out of their employment relationship."

In the Inland Steel Company v. National Labor Relations Board case which directly involved a welfare issue, the court held that a group insurance program was a proper subject for bargaining. "Wages in Section 9(a) of the Act embraces within its meaning direct and immediate economic benefits flowing from the employment relationship. Wages . . . for so construed . . . covers a group life insurance program."

The number of workers entitled to receive welfare benefits under collective bargaining agreements has steadily increased.


The Bureau of Labor Statistics in tracing this growth, reported that in 1940, less than a million workers were eligible to receive one or more health and welfare benefits.\(^\text{18}\) This number had increased to nearly 3 million workers in 1948 and more than 7.5 million workers in 1950. The number of wage earners covered under negotiated health, welfare and pension agreements in 1954 totaled over 11,292,000 workers.

The Senate Subcommittee that investigated abuses in pension and welfare plans estimated that between twenty and twenty-five billion dollars have been amassed in reserves to meet future contingencies under these programs.\(^\text{19}\) Employers, it was reported, contribute over $4.5 billion dollars annually to the cost of pension and welfare plans. Employees, it was estimated, paid nearly $2.3 billion to the plans yearly.\(^\text{20}\) The effect that these funds have, not only for their ultimate purpose, but also upon the nation's economy clearly indicate a mandate that they be administered efficiently and honestly.

**Events Leading to Investigations of These Plans**

The vast majority of health and welfare plans are operated

\(^\text{18}\) Rowe, Bulletin No. 1187, p. 1.


\(^\text{20}\) Ibid., p. 6.
fairly and in the best interests of their beneficiaries. Unfortunately, in a minority of the plans, the large sums that were accumulated attracted the attention of a small group of corrupt union and insurance officials.

The first indication of possible abuse in health and welfare plans arose during an insurance investigation in New York. An insurance agency corporation had made application for a license to service the welfare fund of Local 32B of the Building Service Employees International Union. 21

The plan was established in 1943 as a result of negotiation between the Bronx Realty Advisory Board, a landlord group, and the Union. Each party was to appoint a trustee to jointly administer the program. Part of the trustee's duties were to keep accurate records and conduct the affairs of the plan in an orderly manner.

The employer trustee completely abdicated his fiduciary responsibilities. This permitted the union trustee, who was also the union president, to select the insurance agent and dominate the operation of the plan.

An agreement was entered into between the union trustees and the insurance agent whereby the former was to receive a management fee of 15 per cent of gross premiums. This allegedly was to

cover the expenses of claim investigations and collecting employer contributions. The agent was reimbursed from the welfare fund, $312,410 for this payment to the union official. The insurance carrier paid the agent a sum in excess of $50,000 for the same services as required by the management fee. This was in addition to commissions of $107,398 received for placing the insurance coverage. A relative of the agent who actually collected the employers' contributions received $36,362. Part of this latter sum was returned for union organizational expenses.

The union president and his wife, using her maiden name, acquired an interest at no cost in the insurance agency that serviced the welfare plan. They received $66,000 as a share of the profits of the agency. Relatives of the union president were employed by the agency at a higher salary than was paid to the qualified employees of the agency. Welfare funds were used to reimburse the insurance agent for his services.

Prior to the completion of the investigation by the Insurance Department of the State of New York, the union president was murdered. The attendant publicity of the crime brought to light the above mentioned facts and numerous complaints of the administration of other plans. The former Governor, Thomas E. Dewey, then ordered an investigation of union welfare plans.

There were two other investigations of irregularities in health and welfare plans. They were conducted by subcommittees
of the United States Senate's Committee on Labor and Public Welfare and the Committee on Education and Labor of the House of Representatives.

Principal impetus to the Congressional investigations were the recommendations of the President to Congress on January 11, 1954. In suggesting legislation in the area of labor-management relations, he advised that existing legislation did not adequately protect the beneficiaries of welfare and pension plans and suggested that Congress initiate a thorough study of the area with a view of enacting protective legislation.

The Act (Labor-Management Relations Act, 1947) presently prohibits an employer from making payments to a union to assist in the financing of union welfare funds unless the fund meets certain standards. These standards are not adequate to protect and conserve these funds that are held in trust for the welfare of individual union members. It is recommended that Congress initiate a thorough study of welfare and pension funds covered by collective bargaining agreements, with a view of enacting legislation as will protect and conserve these funds for the millions of working men and women who are the beneficiaries.22

The rather short history and rapid growth of health and welfare plans has not permitted the development of standards that will prevent all irregularities. It is through the investigations of Congress and the state of New York that certain abuses and defects have been brought to light.

The scope of the examination conducted by the Insurance Department of the State of New York was limited to the following phases in the administration of welfare plans:

1. Evidence of illegal payments of allowances and fees to unauthorized persons.
2. Use of proper administrative procedures.
3. Relation of benefits to contributions.
4. Evidence of misapplication of welfare assets.
5. Analysis of the plans' provisions to determine whether they were in the best interests of the beneficiaries.

The restricted area of the investigation is subject to criticism because of its failure to use accepted auditing procedures in the examination of the records of entities involved in the administration of the plan. Time, the report advised, did not permit the reconciliation of reported income with contributions, insurance income with premium disbursements, and the verification of assets. Failure to include these items hampered the discovery of all evidence of embezzlement.

The Department also neglected to include in its criteria, evaluation of claim procedures, appraisal of the actuarial soundness of self-insured plans and an analysis of investments. The failure to evaluate the claims procedure to determine whether excessive restrictions are placed upon otherwise eligible beneficiaries indicates a disregard of the principal purpose for the

23 Straub, p. 23.
existence of health and welfare plans.

The failure of the Insurance Department to include adequate examinations of investments and actuarial soundness of self-insured plans prevents the development of a sound investment program to insure future adequate income.

The investigation was primarily conceived with the discovery of irregularities in union and jointly administered plans, regardless of the mode of providing benefits. Questionnaires, however, were sent to unilaterally employer administered plans. If the response indicated that the employer's welfare plan was insured, no further attempt was made to include specific details of their operations in the investigation. A full and complete investigation should have included a critical examination of all plans.

The final report of the Insurance Department did not indicate any information that would identify the names of individuals or plans that were critically examined during the investigation. The present Superintendent of Insurance for the State of New York, Leffert Holz, in a letter to the author, advised that it was contrary to the policy of the Department to make such information public. "However, in keeping with the Department policy, this report..., does not identify the unions, employers, insurance companies or agents referred to in the report. We regret to
inform you that we cannot make this type of information public."24

The initial Senate investigation was conducted in the 84th Congress in accordance with Senate Resolution 285, as amended. The principal activities of the Subcommittee consisted of field examinations of the records of welfare plans and the sending of questionnaires to insurance carriers. Public hearings were not held and the only public record available of this investigation is an interim report issued by the Subcommittee on Welfare and Pensions Plans Investigation under the date of January 10, 1954.25

An attempt was made by the writer to secure information that would identify the names of individuals and plans that were designated by number in the aforementioned interim report. In response to a letter written to the Committee on Labor and Public Welfare, the Staff Director, Stewart E. McClure replied: "Other than the published reports and hearings of the 83d and 84th Congresses, there is to my knowledge no other information available to the public."26

24 Personal communication from Leffert Holz, Superintendent, State of New York, Insurance Department, dated December 27, 1956; see Appendix I for total reproduction of this letter.


26 Personal communication from Stewart E. McClure, Staff Director, Committee on Labor and Public Welfare, U.S. Senate, dated December 27, 1956; see Appendix I for total reproduction of this letter.
The Senate's investigation was continued in the 84th Congress pursuant to Senate Resolution 40 as amended. The Subcommittee conducted public hearings and where identifying information was available, it has been included in this study.

The investigation of the House of Representatives was conducted by the Special Subcommittee to the Committee on Education and Labor in accordance with House Resolution 115 of the 83rd Congress. Unfortunately the investigation was not continued in the 84th Congress.

The value of the report issued by the initial Senate Subcommittee is limited because of its failure to indicate the criteria used in its investigation. Welfare plans were designated as "CROSSLY MISMANAGED" and "MARKED WITH QUESTIONABLE PRACTICES." The Subcommittee should have avoided such characterizations and value judgments in the absence of a definite evaluation criteria.


CHAPTER II

IRREGULARITIES DISCOVERED DURING INVESTIGATIONS
BY CONGRESS

Investigation By United States Senate

The continued success of negotiations for health and welfare plans requires sufficient knowledge of their operations by all negotiating parties to enable them to protect the interests of their constituents. The reluctance of one company to disclose such information constituted a major irregularity in a unilateral employer administered plan.

Prior to a negotiated agreement with the United Automobile Workers C.I.O. in 1950, the hourly-rated and salaried employees of the General Motors Corporation paid 75 per cent of the cost of a group life insurance program. Reserves in extended life insurance and rate reserves amounted to about nine million dollars, of which $3,665,000 was properly applicable to hourly-rated employees.30 The entire reserve was left for possible use of the salaried group after a non-contributory plan was negotiated for the hourly-rated employees.

The company attempted to justify this action in testimony before the Subcommittee on the basis that since it was responsible for the balance of the cost of the plan, any accumulated reserves came from its contributions. Hence it could dispose of the reserves in any manner it thought desirable. General Motors, however, deducted its entire cost as employee compensation on its income tax return.

The first major improper practice found in a jointly administered welfare plan was a conflict of interest. The attorney for the employers' association, in addition to active participation in the administration of the plan, acted as its insurance broker. The commissions he received in the latter capacity were based upon a separate computation of each insured benefit, rather than on the complete coverage. Benefits payable under the plan were reduced by the increased expense of these commissions.

Absolute refusal of the members of an employers' association to participate in the administration of another plan, permitted such abuses as failure to prepare required financial reports and the operation of the benefit program without a trust agreement.

The strict control of a jointly administered plan by the union trustees provided the situation for the misapplication of assets. After voting to pay themselves a salary and purchase annuities from the fund's assets, they instituted an illegal share-the-work scheme under the guise of vacations. Union
members were required to take "vacations" ranging from 3 to 5 weeks during which time the plan paid each member at the rate of $115.00 per week. The basic rudiments of internal auditing were neglected or ignored. Actuarial unsoundness of the plan may be illustrated by the existence of a liability for past service credits for pensions and death benefits amounting to $4,500,000 at a time when assets totaled $650,000.31

Abdication of responsibility by several employers permitted union officials to select the broker and insurance carrier in another plan. The favored broker engaged in "switching."32 This unethical conduct deprived the beneficiaries of a higher level of benefit payments.

The highly improper conduct of a union business agent in another investigated plan resulted in the commingling of welfare funds with union funds. This official, who was responsible for the purchasing of insured benefits, allowed the carrier to retain 37 per cent of premiums paid over a six-year period.33

Evidence was disclosed during the investigation of union interference with the right of employers to participate in


32"Switching" is the transferring of insurance coverage from underwriter to underwriter for the purpose of securing the higher commission rates paid for new business.

jointly administered plans. The contractual provision of one plan completely eliminated the functions of trusteeship: "The union shall have the ultimate right to designate the source of such insurance, and the kind and amount of benefits under such insurance." 34

The participation by employer representatives, it was discovered in another jointly administered plan, was limited to making eligibility determinations. The fund had its principal office in the union headquarters. Benefits were paid by a committee of union officials. Another abuse that was revealed in this plan was the restriction of benefits to union members.

Malfeasance of both union and employer trustees was indicated in one investigated welfare plan. The interests of the beneficiaries were subordinated by a provision in the trust indenture which permitted the members of other unions in the area to maintain eligibility and receive benefits from the plan.

Employer delinquency in paying contributions were found in several welfare plans. In one investigated plan, the liability for delinquent payments amounted to 4 per cent of annual contributions. 35 The firm of the employer trustee owed a considerable portion of this liability.

The investigation of the Senate Subcommittee also disclosed

34 Ibid., p. 14.
35 Ibid., p. 17.
the use of welfare assets for the rental and insurance costs of automobiles used for union business.

The investigation, in addition to negotiated plans, was directed at "plans and funds subject to collective bargaining." This amendment permitted the Subcommittee to expand its investigation to include union-administered welfare plans.

The welfare plan of the Painters, Cleaners and Caulkers, Local 52 of Chicago, Illinois, consisted of a welfare fund for the purpose of paying health and welfare benefits and a defense fund which was instituted to provide legal defense for union members.

The union president, Edward J. Gallagher, exercised complete control over both funds. Employers paid the entire cost of the welfare plan, while contributions to the defense fund came from deductions from employees' salaries. There was no written authority for the latter deductions. In the absence of an agreement and a schedule of benefits, Mr. Gallagher's discretion was the motivating force of the welfare program.

The investigators of the Subcommittee were unable to substantiate from the incomplete records of the plan, any payment of benefits for welfare purposes. All of the financial transactions revealed, were taken from bank records.

The employer contributions were deposited in the bank account designated for the welfare fund. The union president
transferred funds from this account to the defense and general union accounts. After the transfer, funds were expended for a union convention, trips to an international union convention, purchase and repair of luxury automobiles used by union officials, union banquets, loans to another union, expenses of a public official, a tailoring bill of the union president and his other personal expenses. There was an expenditure for rent in connection with the welfare plan. This was a waste of funds as the office was rarely used and was rented only after several employers objected to sending their contributions to the union office.

Section 302(c)(5) of the Taft-Hartley Act permits the establishment of a welfare fund only after the signing of a detailed agreement and upon equal representation of employer and employees in the administration of the plan. The attorney, and members of the employers' association, known as the Tuck, Pointers, Cleaners, Caulkers, Concrete Restoration, Gummite and waterproofing Association of Illinois, attempted unsuccessfully for four years to obtain a written agreement and financial reports of the welfare program. They were rebuffed by the union president, Mr. Gallagher, on each of these occasions. After the subcommittee began its investigation into the plan, an attempt was made by Mr. Gallagher to obtain a written statement that the employer's remittances were a wage increase and hence an employee contribution.
Mr. Leece: Did he make any request of you or your counsel?

Mr. Lundgren: Yes. He asked us to submit a letter stating that the wage was $3.60 per hour rather than $3.52-1/2 an hour.

Mr. Leece: Which would make the 7-1/2 cents contribution by the employers actually a wage increase if you had accepted his proposal.

Mr. Lundgren: Well, I believe that the purpose was to show that it was an employee contribution rather than an employer contribution.36

This same situation was found to exist in the welfare plan of the now defunct Amalgamated Local 286, United Automobile Workers, A.F. of L. which was also located in Chicago, Illinois. The president of the union, Angelo Inciso, testified during the public hearings that employer remittances were union dues.37

The investigation disclosed that: (1) the collective bargaining agreements indicated that the remittances were insurance premiums, (2) per capita tax payments to the international union were based upon a sum much lower than the alleged dues, and (3) the official union records differentiated between union dues and insurance premiums in the receipt of employer remittances.

The adoption of a welfare program is a notable aspiration of

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36 U.S. Congress, Senate, Senate Resolution 40, Welfare and Pension Plans Investigation, Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, Pt. II (Washington, 1955), p. 251. Mr. Leece was the legal counsel for the Subcommittee. Mr. Lundgren was president of the employers association.

a union and should be encouraged. The investigation found in two instances a deliberate subterfuge conducted under the guise of a sickness benefit plan, for the purpose of enriching union treasuries. This action, in addition, violated the international constitution of the unions.

Local Union 102 and Local Union 211 of the Plumbers Union located in Knoxville, Tennessee and Houston, Texas, respectively, collected "doby" from members of other locals for the privilege of working in the area of their jurisdiction. The International Constitution of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, specifically prohibits such payments to local unions: "... that when a member deposits a clearance card in the proper sister local... he shall not be subject to waiting lists... Nor shall any monetary contributions be accepted from him for the privilege of working." 39

The fees collected were allegedly for the establishment of a sick and welfare fund. In actual practice they were used for union organizational expenses. Union stewards who collected the funds were not required to give a strict accounting of their collections. Ironically, where benefits were granted, they were

38 Ibid., pp. 286-292. The term "doby" is a colloquial contraction of "give me the dough, boy."

39 Ibid., p. 288.
restricted to regular members of the two unions who did not have to make contributions.

Several national plans were investigated by the Senate Sub-committee. The welfare plan of the Laundry Workers International Union welfare fund 40 clearly illustrates the abuses and other improper practices that were discovered in these national plans.

The Fund was established in 1951 at the headquarters of the parent union in Indianapolis, Indiana to provide a central office for the numerous local union welfare funds. A special department known as the Social Security Department was established to receive the funds from these locals. It then transmitted these funds through Louis B. Saperstein, a broker in Newark, New Jersey, to the carrier. The Security Mutual Life Insurance Company of Binghamton, New York was the underwriter of the plan.

The carrier was selected by the broker after it agreed to pay him abnormally high commissions for the underwriting privilege. The employer trustee testified at the hearings that the carrier was selected after competitive bidding. The carrier, through its representatives, stated that they had never submitted a bid.

The broker received over the thirty-seven months of the

insurance contract, commissions of $238,076.28 from gross premiums of $3,868,563.09. Under the decremental scale devised by the staff of the Subcommittee, the broker would have received $20,500.

The carrier, in addition to the excessive commissions, permitted the broker to deduct from premiums, a 5 per cent increment for service fees. This action was taken because it did not have sufficient personnel and facilities to handle the covered group. This money was to be used to process and screen claims.

The international union president with approval of an employer trustee divided the nation into areas and appointed 33 deputies to process and screen claims. The deputies, who were appointed on a "patronage" basis, were not required to account

41Ibid., pp. 297-317.

42The term "Decremental Scale" is used to designate the gradual reduction in commissions paid to a broker over the period of the contract. Payments are based upon premiums.

43Hearings Before a Subcommittee of the Committee on Labor and Public Welfare, Welfare and Pension Plans Investigation, 1955, Pt. 1, p. 309. The scale used provided for the payment of 20 per cent on the first $5,000; 15 per cent on the next $15,000; 1-1/2 per cent on the next $10,000; 10 per cent on the next $10,000; 5 per cent on the next $20,000; 2-1/2 per cent on the next $50,000; 1 per cent on the next $50,000; .50 per cent on the next $350,000; .25 per cent on the next $500,000; and .10 per cent above a million. On renewal business: 5 per cent on the first $10,000; 3 per cent on the next $4,000; 1-1/2 per cent on the next $5,000; $10,000 and $20,000 successively; 1 per cent on the next $50,000; .50 per cent on the next $50,000 and $350,000 successively; .25 per cent on the next $500,000, and .10 per cent above a million.
for their expenses. The total charge against premiums for this scheme was $238,076.28. 44

After the welfare plan had been in effect for several months, the Acting Secretary Treasurer of the Laundry Workers International Union demanded and received from a carrier, a monthly administrative fee of $3,500. This was allegedly to reimburse the union for expenses in promoting the program. The investigation failed to trace the payments which amounted to $3,500 after this amount reached the official. 45

The insurance company received premiums of $2,356,172.44 from the Social Security Department. 46 The remaining $912,390.95 which was transmitted to the broker was never forwarded to the carrier. Investigators for the Subcommittee were able to trace a substantial portion of the unaccounted funds to the Acting Secretary Treasurer of the parent union. 47 This same union


45 Mr. Eugene C. James, the Acting Secretary-Treasurer of the Laundry Workers International Union took extensive use of the 5th Amendment during the public hearings. Hence the disposal of the administrative fee is unknown.


47 The broker, Louis B. Saperstein was under investigation for alleged defalcation of funds from a welfare fund in New York. His records were transferred to Chicago, Illinois. These records which dealt with the Distillery Workers Union Fund as well as the Laundry Workers Union Fund were stolen before the Senate Subcommittee began its investigation.
official also failed to account for a cash dividend received from the carrier.

The Insurance Department of the State of New York, after the plan was in effect for three years, advised the carrier that the commissions would have to be reduced and the administrative fee eliminated. A vice-president of the carrier and the broker, without the approval or knowledge of the trustees, cancelled the coverage.

The broker was able to persuade the trustees of the welfare plan to transfer the insurance coverage to the California Life Insurance Company. The insurance official resigned his position with the initial carrier and became associated with the new underwriter the day after the insurance coverage was transferred.

Commissions paid by the California Life Insurance Company were excessive, although they were less than those of the original carrier. The division of premiums continued and the service fee for welfare deputies was also paid.

The employer trustee, acting as agent for several union officials, the broker, several insurance officials and himself, purchased the California Life Insurance Company. The spurious methods used by the group were termed by the Senate Subcommittee as "one of the worst phases in a case replete with shocking abuses and complete disregard for the interests of the employee-
beneficiaries of the fund." Control of the carrier was later transferred to the Social Security Department of the Laundry Workers International Union.

Investment of reserves by health and welfare plans were in some instances commended by the Subcommittee, after investigation revealed no ulterior motives were involved, a satisfactory yield was realized and the investment was reasonable and sound. The investment policies of the United Mine Workers Union, the Amalgamated Clothing Workers Union and the International Ladies Garment Workers Union welfare funds were found to be in the best interests of the employee-beneficiaries. Certain other union and jointly administered plans were found to be replete with ulterior motives and devoid of soundness.

In one investigated plan, the Subcommittee found the investment of assets to settle a strike. The union official, Angelo Inciso, attempted to justify his action by testifying that it was amenable to the best interests of the striking employees. "I told him [the employer] that we would be more than glad to make him a loan, but it would have nothing to do with the strike, and the conditions of the people would have to be gotten. When I got those conditions and the people were back to work, then we gave him the money."
The soundness of investment in one self-insured plan was considered secondary to the assistance of a communist-dominated organization.50

The International Workers Order was established ostensibly as a fraternal organization and issued insurance to its members. It was declared a subversive entity in 1954 by the Supreme Court of New York and the Insurance Department of the State of New York was ordered to liquidate its assets.

The Philadelphia Fur Workers Union, Local 53 borrowed money from its health insurance fund and welfare fund to be transmitted to the Fifty-Three Holding Corporation of New York. This company then purchased a series of mortgages that were held by the Order. Title to the mortgages was held in the name of the corporation rather than the name of the union or its welfare or pension fund.

In the Laundry Workers International Union welfare fund, several local unions invested a portion of their welfare funds in a corporation established to make loans to distressed employees. The propriety of this action is questionable because of the discretion of union officials in the making of loans.

Certain insurance carriers, in addition to the improper and unethical practices previously mentioned, engaged in activities which violated reasonable competitive practices.

50Ibid., pp. 281-285.
One improper practice occurred in the "re-aging" process of group insurance. It was discovered during the investigation that certain carriers were either delaying the process needlessly, incorrectly applying higher premium rates or reducing premiums, in an attempt to retain the insurance coverage.

The payment of contingency commissions was the most insidious insurance practice revealed by the Senate investigation. Brokers were paid additional compensation if the loss claims ratio of the policy holders were favorable to the carrier. In addition to the rejection and restriction of legitimate claims, the practice permitted a reduction of dividends and experience rating refund credits to the policy holder.

The treatment that a welfare plan received from the insurance carrier was found in several instances to be dependent upon the aggressiveness of the broker or its officials. The principal method used to discriminate between policyholders was the broker's insistence upon a recalculation of the retention formula to permit a dividend or credit even though a loss claims ratio indicated they could not be paid. This was done to prevent the

51 The insurance statutes of certain states require that the premium must be identical for each member of the insured group for the first year of coverage. In subsequent years, carriers are permitted to re-examine such factors as race, nationality, occupational hazards and claims experience for the purpose of adjusting premiums to reflect the actual conditions of the group.

52 The term "retention" is used to designate the portion of
loss of the placement and underwriting privileges.

Another revealed practice that was prejudicial to the beneficiaries was the improper use of the annual operation statements of the welfare plan. The statements were sent to the broker instead of the policy holder. If a loss to the carrier was indicated, the broker was to use the report as a basis for requesting higher premium rates. This failing, the broker was expected to adopt a more restrictive method in approving claims.

Investigation by United States House of Representatives

The investigation of the House of Representatives was primarily concerned with the operation of union-administered welfare plans. The Special Subcommittee to the Committee on Education and Labor, which was the investigating agency, attempted to determine, specifically, improper conduct of welfare officials misapplication of assets and improper insurance practices.

The first evidence of the misuse of welfare funds was their use to defend a collective bargaining agreement. The Labor contract, which provided for the welfare plan of the Culinary and Bartenders Local of San Bernardino, California, was legally attacked by an employer.53 The basis for his suit was that

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the premium retained by the carrier. The retention is intended to cover commissions and other costs of obtaining the coverage, administrative costs, risk charges, taxes, reserves and profits of the carrier.
illegal methods had been used to obtain his consent to the contract. The trustees voted to use monies intended for welfare benefit payments for the payment of legal costs to defend the agreement.

Prior to the establishment of the above-named plan the union had used union dues to purchase insurance for retired and unemployed members. The only prerequisite for this benefit was the maintenance of union membership. After the welfare plan was instituted insurance for these members was purchased from welfare assets. This action was taken in the absence of contributions for the additional insurance.

The investigation disclosed that domination by union officials in the administration of several plans resulted in the payment of fraudulent claims.

In the welfare plan of the Sheetmetal Workers Local Union 103 of Los Angeles, California, the administrator, who was also a union trustee, accepted the benefit programs of other unions into the plan. This was done without the consent of the full board of trustees. Although eligibility requirements were not as

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54Hearings Before a Special Subcommittee of the Committee on Education and Labor, Pt. 1, pp. 89-308.
stringent and the new programs were not legally established, all claims were paid.

The administrators of this plan accepted, processed and paid two fraudulent claims submitted by union officials. One claim was for the alleged illness of a dependent of an employee representative. Subsequent investigation disclosed that the claimant did not have a relative with the name of the beneficiary. The second fraudulent claim paid by an administrator of the plan was presented by a union official. The claim had several major defects. The illness for which payment was sought occurred prior to eligibility in the welfare plan. Further investigation disclosed that the claimant lived outside of the jurisdiction of the plan, and a portion of the claim related to expenses accrued prior to the establishment of eligibility. The insurance carrier granted its approval of the claim.

Members of the employers' Association in this plan were required, by the negotiated agreement, to contribute to the plan for transient workers whom they employed. These workers, except for rare occasions, were unable to fulfill the eligibility requirements for benefits. Contributions were also mandatory for permit workers. The permit workers were ineligible for benefits under the welfare plan.

55 The plans which were instituted during the Korean conflict had not received the approval of wage stabilization authorities.
A union official who was not associated with the welfare plan of the Central States Teamsters Union, was able to "pressure" the employers of the Southeastern States Conference welfare plan to join the former plan. The purpose of this action was to create "a better atmosphere of industrial relations." 56

The House Investigation also found evidence of a strike to force the employer and employees of the Santa Monica Taxi Company of Santa Monica, California, to accept a welfare plan they had previously voted not to accept. 57 The employer was able to obtain a quotation for insurance coverage of a better quality than the union plan. The carrier withdrew the quotation after determining that the union was involved. The carrier had several lucrative insurance contracts with the union at the time of the withdrawal of the offer.

The Subcommittee found that in several instances, strikes were used to gain the right to select the insurance broker and carrier.

Payments, prohibited by law, were made by American Casualty Insurance Company to the broker in several plans of the hotel and


Restaurant Employees and Bartenders International Union. This was done even though the carrier acknowledged that such payments were illegal. "As you know, it is illegal in the State of New York and some other states to enter into a retention agreement. For this reason, we would not prefer to issue a letter on each of these cases. However, this will confirm that it is our intention to return in the form of a retrospective premium adjustment in each of the cases mentioned in your letter . . . ."58

This same carrier was an active competitor for the privilege of underwriting union welfare funds and participated with the broker and several union officials in the premature opening of insurance bids to obtain the coverage of one plan. So intent was the company in obtaining the coverage, that its representative carried two bids to a meeting conducted before the official awarding of the insurance contract. The bid advantageous to the insurance company was submitted. 59

The actions of several brokers were found to be detrimental to the best interests of beneficiaries of union welfare plans. It was disclosed during the investigation that gifts were made to union officials in attempts to obtain the privilege of placing the insurance contracts.

59 Ibid., pp. 442-443.
One broker, Earl C. Liever, at the conclusion of a policy year, demanded an increase in commission payments. The carrier, American Casualty Insurance Company, realizing that he was a good insurance producer and not wanting to risk the loss of the insurance contract, agreed to pay the broker a "retrospective commission." Such an arrangement would permit him to share in the profits that accrue to the carrier from the coverage. In this instance, the agreement granted the difference between actual claims and claims up to 62-1/2 per cent of premiums. The carrier was thus able to retain 37-1/2 per cent of the premiums. 60

The final irregularity revealed by the investigation was the highly improper conduct of the administrator of several craft unions welfare plans in Washington, D. C.61

Although there were trustees involved, the administrator was permitted to make eligibility determinations for benefits. In one period, it was found that almost half of the claims processed and paid were made to ineligible members.

The same welfare official conducted a law practice and an insurance agency at the principal office of the welfare plan. The expenses of operating these two ventures were charged to the welfare plan. The clerical employees of the plan also performed

60 Ibid., p. 345.

61 Ibid., pp. 444-544.
certain services in connection with the two personal enterprises.

The administrator, Arthur A. Feisner, paid commissions to two representatives of the Laborers International Union. Payments of $45,000 were made after the union officials used their influence to obtain the administrative functions of several union welfare plans for the administrator.62

62Ibid., p. 481.
CHAPTER III

IRREGULARITIES DISCOVERED BY A STATE AGENCY

The most comprehensive investigation of abuses in health and welfare plans, other than the investigations conducted by Congress, was conducted under the supervision of the Insurance Department of the State of New York. Under the direction of the then Deputy Superintendent of Insurance, Adelbert G. Straub, Jr., a special staff of the Department examined the records of 162 welfare plans.

The Department found that 91 of the 162 investigated welfare plans were administered in the best interest of their beneficiaries. Minor criticism was directed at practices in 37 plans and serious abuses were discovered in the remaining 34 plans. The public hearings which were held from September 13 to September 16, 1954, in New York City, dealt with thirteen of the plans in which serious abuses were revealed.63

Inimical Contractual Provisions

The wording of contractual provisions in several plans, were in the opinion of the Department, a hindrance to the successful operation of the plan and an invitation to irregularities.

63 Straub, p. 23.
One agreement permitted the administrator to receive payments from third parties who have an interest in the plan: "... receive commissions or fees or other payments from insurance carriers, brokers or agents or other persons or entity for services rendered in connection with the fund."\textsuperscript{64}

Strict interpretation of the collective bargaining agreement establishing a investigated non-contributory plan would result in the disciplining of union members through the withholding of benefits. The administration of the plan was supervised exclusively by union trustees. Employer contributions pursuant to the agreement, "... will be segregated and used exclusively as a welfare fund to provide members of the Union, in good standing, with benefits by way of death benefits, hospital and medical expenses, sickness and disaster cases, on the part of the employees or their families."\textsuperscript{65}

The provisions of a third plan permitted the administrator, who was also the union president, to perpetuate himself as executive officer of the fund, "... such appointment once made shall be irrevocable and shall be terminated only by the death or voluntary resignation of the administrator."\textsuperscript{66} The trustees of this plan were limited in their duties to the consideration of

\textsuperscript{64}Ibid., p. 49.
\textsuperscript{65}Ibid., p. 43.
\textsuperscript{66}Ibid., p. 58.
the annual report and filing of objections thereto within ninety days. After the expiration of the specified period the administrator was released from any liability or accountability for his actions. ". . . the administrator shall be forever released and discharged from any liability or accountability to anyone as respects the propriety of his acts or transactions shown in such statement and report."67

The purpose of a health and welfare plan were evidently overlooked in another plan investigated by the Department. The trust indenture establishing the fund granted authority to the union business agent to make non-interest bearing loans from the plan's assets. Welfare funds could also be used by the union for strikes and other organizational expenses, to purchase insurance for union personnel and payments of up to 50 per cent of contributions for services rendered by the union in connection with the welfare plan.

**Improper Administrative Procedures**

The inadequacy of existing accounting procedures was a common factor in the plans that were subject to critical examination. Lack of supporting documents permitted indirectly the charging of the costs of strikes, country club dues and the personal expenses of union officials against welfare funds.

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67Ibid., p. 58.
Surplus funds of one plan amounted to $818,507. The investigation revealed that almost $400,000 of this surplus was kept in non-interest bearing bank accounts.68

Failure of employer trustees to discharge even simple fiduciary obligations was found to be prevalent during the investigation. One trustee consistently signed blank checks and gave them to the administrator of one plan. This trustee later testified that he considered his principal task in the administration of the plan was to prevent strikes.

The employer trustees in still another plan were unaware of even the fundamental details of the plan's insurance program. They had attended only one meeting in the six years of the fund's existence.

Records of another investigated plan were altered to conceal the true nature of a cash expenditure. The union president who was also chairman of the trustees of the welfare plan, borrowed $5,800 from the fund to finance the purchase of private homes for himself and a relative. The cash disbursement ledger originally indicated the president as payee of the check. This was later changed to show the payment of an insurance premium.69

The union in another plan was able to sell ten parcels of real estate to the welfare fund at a profit of $59,534. It had

68Ibid., p. 46.
69Ibid., p. 34.
originally purchased the land to build a hotel for its members. The trustees of the welfare plan agreed to assume sponsorship of the project and authorized the wholly union owned building corporation to purchase additional tracts of land. The total cost to the corporation was $125,416. The administrator, who was later appointed an employer trustee, was unaware that a profit had been made. The other employer trustee stated he had not heard of the project. 70

Neopotism was also found to be a contributing factor to irregularities that were revealed. The presence of relatives of union and welfare fund officials and financially interested third parties often resulted in excessive expenditures and collusive practices.

The union president in one plan that was under examination entered into an agreement with the insurance carrier whereby the union was to receive any refunds or pay additional premiums in connection with the plan. He then contracted with a relative whereby the latter was to receive the refunds due to the union. The consideration for the second contract was the assumption of any liability for additional premiums. The sole source of income of the guarantor was his salary as a signal mechanic.

This relative also accepted the position of insurance agent

70 Ibid., p. 31.
for the agency seeking placement of the coverage of the plan. He received as commissions $19,787 for the period of October 20, 1951 to May 31, 1954, or 50 per cent of the commissions paid on the accident and health insurance coverage of the plan. Included in this commission was $7,395 paid after the expiration of his insurance license.71

The board of trustees in another plan was to consist of three representatives of employers and the union. The local union president was a union trustee and his brother was an employer trustee.

A management fee of 15 per cent of gross premiums had been paid to the broker since the inception of one health and welfare plan. The business was transferred to a broker who happened to be the son of the union president and the fee was continued. The services which were performed were of the type for which no compensation other than commissions are normally paid.

Failure of the welfare fund officials to keep adequate records in one plan resulted in the underpayment of employers' contributions of nearly $31,000. Examination disclosed that 137 of the 207 employers involved in the plan had neglected to make the required payments to the fund.72

71 Ibid., pp. 29-30.
72 Ibid., p. 28.
The final detrimental practice in the administrative phase of health and welfare plans investigated by the Department was the discrepancy in the ownership of welfare assets. The title of such assets as expensive automobiles were registered in the individual capacity of union and welfare officials rather than in their fiduciary capacity.

**Misapplication of Welfare Assets**

It was discovered during the investigation that higher benefits were granted to union and welfare officials than to the intended beneficiaries. The only result of such a practice is the payment of a much lower level of benefits to the wage earners.

The officials of one plan were granted insurance contracts for $5,000. The rank and file membership of the union received only $1,000 in life insurance. In another plan, welfare funds were used to purchase $5,000 in insurance for three union officials. The total insurance coverage normally granted was $500.

The cost of annuity contracts for three union trustees of one welfare fund exceeded the annual insurance premium for 500 union members. Consideration for the annuity contracts amounted to $16,640, while the insurance premiums expended for the members

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toted $11,925. Two of these same trustees were granted annuity contracts in still another plan for which there was an expenditure of $6,572. Total premiums for life insurance for approximately 400 members amounted to $31,901.\(^{75}\)

Investment of welfare plan reserves were discovered in three instances to be highly prejudicial to the interests of the beneficiaries.

The assets of one plan were used to purchase a parcel of real estate to be used in the construction of a resort hotel. The original purchaser, who happened to be a relative of the administrator, sold it to the welfare plan for $85,000. Additional improvements to the property resulted in expenditures of $76,248. The improved property was assessed for tax purposes at $10,500 and testimony by the local tax assessor indicated that a maximum of $25,000 could be obtained if the property was sold.\(^{76}\)

The welfare fund of the second plan invested $27,000, without collateral and non-interest bearing, in a building to be used for union offices and a public bar and grill. An additional $110,000 was obtained for this purpose from the union's pension fund and assessments of union members. Several union members instituted legal action against the union and officials of the

\(^{75}\text{Ibid.}, \text{pp. 51-52.}\)

\(^{76}\text{Ibid.}, \text{pp. 25-26.}\)
union and welfare fund after a loss of $30,000 in less than two years on the operation of the bar and grill.\textsuperscript{77}

Assets of a third plan were used to subsidize a cafeteria operated by a union for its unemployed members. In a two year period $303.00 was expended on the assumption that at least 500 unemployed members were fed at each meal. The Insurance Department's investigation disclosed that $102,000 had been overpaid in subsidies to the cafeteria.\textsuperscript{78}

The investigation also disclosed expenditures for professional services which were not rendered or disproportionate to the performed services.

Medical fees of one plan amounted annually to $2,500.\textsuperscript{79} The payments were made to a physician who examined claimants to see if they were capable of employment. His services were cancelled as they did not justify the expenditure.

The accountant for another plan was paid an annual fee of $1,200 to prepare reports.\textsuperscript{80} The only statement ever prepared during a four year period was made after the Department began its investigation.

\textsuperscript{77}\textit{Ibid.}, p. 27.
\textsuperscript{78}\textit{Ibid.}, p. 31.
\textsuperscript{79}\textit{Ibid.}, p. 54.
\textsuperscript{80}\textit{Ibid.}, p. 42.
The excessive demands for rendered services by unions in connection with welfare plan activities were responsible for undue burdens against welfare funds. One union, for example, charged a plan $1,500 rent per week. This space which was a part of the union recreational area had previously been granted without charge.

The specified maximum annual rent for space occupied by another investigated welfare plan was $4,000. The administrator of the plan, however, used welfare funds in the amount of $7,200 annually for rent. The trustees of the plan agreed to permit such an expenditure providing that the administrator and his two law partners would reimburse the fund for the difference because of the space they occupied. Although the administrator collected and kept for his own use $1,800 from sub-tenants, he never paid the additional rent expense.

Assets were also misused because of the charging of union organizational expense and the personal expenses of union and welfare officials to the welfare plan. A prevalent practice was the use of funds for trips to union conventions and purchase of expensive automobiles.

The administrator of one plan established his salary and

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81 Ibid., p. 31
82 Ibid., pp. 41-42.
expense allowance as 15 per cent of annual contributions. The fund was charged an additional sum for his personal expenses at a resort hotel and long distance phone calls.

The union in another investigated plan was able to borrow from the welfare fund an amount sufficient to purchase an expensive automobile and defray the cost of a trip to a union convention. The same fund had earlier purchased an automobile for the local union president. The loans were unsecured and non-interest bearing.

The investigation also disclosed that certain union officials were guilty of fraudulent activities in the claim procedures of one welfare plan. These officials were able to obtain approval for payment of medical and dental care which were not authorized by the welfare fund. The doctors who were alleged to have rendered the services asserted that only nominal charges had been made for their services.

The union president of this plan received a large sum of money for several trips to California where allegedly he consulted a physician regarding a heart condition. He also was reimbursed for a trip to a Southern resort area for treatment of an arthritic condition. This official was unable to furnish the name of any doctor who treated him for either of these illnesses.
Lack of Adequate Statutory Regulation

The abuses and improper practices that were disclosed by the three investigations were the result of a myriad of reasons. Lack of adequate statutory regulations, however, was the principal cause of a majority of the irregularities. This defect may be found on the federal and local levels.

There are two Federal statutes that have a direct relationship to the operations of health and welfare plans. They are the Labor-Management Relations Act of 1947 (Taft-Hartley Act) and the Internal Revenue Code of 1954.63

Employers and employee representatives are prohibited under the provisions of the Taft-Hartley Act from either paying or receiving any compensation in the Collective Bargaining Process to which they are not legitimately or legally entitled. Section 302(c)(5) of the Act, however, exempts employer contributions to a fund established for employee benefits providing certain

63Excerpts from these statutes are found in Appendix II, p. 107.
conditions are fulfilled. The statute was found to be totally ineffective in the prevention of abuses and other improper practices that were revealed during the federal investigations.

Inapplicability of the law was established by two judicial decisions that held if a fund was established under a trust agreement, it was an independent entity, and exempt from the provisions of the Act:

These representatives were not, in our judgment, representatives of the employers' association and the union. But we think that when set up as a board, as they were in this case, these individuals are not acting as representatives of either union or employees. They are trustees of a fund and with fiduciary duties in connection therewith as do any other trustees.84

Payments made to a corporation formed to provide medical care for union members, their families and dependents did not come within the provisions of the Act as they were also not contributions to a "representative of employees."85

It has been held by one court that an increase in wages for welfare fund purposes and the remission of this sum to the union welfare fund are exempt from the provisions of the Act as they became union funds. "The record leads to only one sound conclusion; namely, that the insurance coverage under the circumstances of this case was a benefit incidental to union membership and not a condition of employment. Its threatened withdrawal of the


85Rice-Stix Company v. St. Louis Institute, 22 LRRM 2049 (1949).
rights of the complaining employees as a disciplinary measure was in full conformity with the respondent's right to regulate its internal affairs." 86

The courts have also held that employer contributions to a unilaterally administered plan established by a union before January 1, 1948, are exempted from the provisions of the Act prohibiting such payments unless there is joint participation: "It appears, however, to have been the congressional intent to make establishment of a fund prior to January 1, 1948, the sole basis for exemption, regardless of the date any one or more additional employers might contract to make contributions to such fund. 87

The veil of secrecy surrounding many of the investigated plans prevented revelations that could have hindered the growth of abuses. The annual audit of welfare funds as provided for in the Act was found to be ineffective because it failed to specify the extent of the examination. Submission of a statement, for example, that consolidated all expenditures into general captions would satisfy provisions of the Act, but would not necessarily be in the best interests of the beneficiaries.


There is a provision of the Act that requires the results of the annual audit to be available for inspection at the principal office of the welfare plan. This clause, however, fails to protect the interest of the intended beneficiaries because of the:
(1) geographical nature of welfare plans, (2) indifference of employers and employees, and (3) the over-all weakness of Section 302 (c)(5).

Section 211 of the same Act provides for the filing of all available negotiated agreements with the Department of Labor. There are no effective enforcement requirements for this procedure and often this filing is done at the discretion of the negotiating parties. The information, if it is filed, is confidential and this would preclude the disclosure of essential information to individuals in a position to effectively prevent abuses and other improper practices. 88 Also the negotiated agreements of an intrastate nature need not be filed and therefore any welfare plan established thereunder is exempted from the Act.

The duties of the trustees are not defined in the Act and in the absence of local statutes are left to their own devices in administering the plan as long as it is established in accordance

with the provisions of the law. The indifference of trustees has been attributed to the inadequacy of Section 309 (c)(5). "One reason for the apparent indifference may be in the law itself. It lays down no standard by which the trustees are to be guided."39

The Commissioner of the Bureau of Labor Statistics stated the policy of dissemination of information under Section 511. The information is available only to: (1) Members of a particular labor organization or of the national or international labor organization of which it is an affiliate or constituent unit, but only with respect to information filed for such organizations, (2) National Labor Relations Board or courts in proceedings under the Labor-Management Relations Act, and (3) Members of Congress, through the Senate Committee on Labor and Public Welfare or the House Committee on Education and Labor.

The law does not concern itself with abuses after contributions have been deposited with a legally established plan and unless another federal statute is violated, the only judicial remedy is available to beneficiaries or employees would be the institution of a civil suit in a state court against the trustees for malfeasance or nonfeasance. If funds are embezzled or

intentionally misused, it would be a matter of criminal prosecution which is conducted by public officials.

Finally, the Act concerns itself with only jointly administered health and welfare plans. The investigations clearly indicated that abuses were to be found in unilaterally administered plans.

The second Federal statute that has specific application to the regulation of health and welfare plans is the Internal Revenue Code of 1954, and specifically, Sections 162 (a)(1), 404 (c), 501 (a) and 501 (c)(9).

Section 162 (a)(1) of the Code authorizes as deductions for employee compensation, salaries and wages paid to employees. It is under this section that employers are permitted to deduct as a legitimate business expense, contributions to a welfare plan.

Section 404 (c) of the Internal Revenue Code provides for the deduction as expense, contributions made to an employee trust fund established as the results of a collective bargaining agreement between the Government of the United States and a labor organization. The fund must have been instituted prior to January 1, 1954. This provision is intended to establish a tax exempt status for welfare plans that were established under a presidential seizure order.

Section 501 (a) provides that certain organizations shall enjoy a tax exempt status because of their beneficial nature to
the public. Section 501 (c)(9) grants such a status to employee benefit association, if net earnings do not insure to any individual and 85 per cent of the income is used for the purpose of paying benefits and administrative expenses. It is under these sections that most welfare plans are established and operated.

A welfare plan to qualify for a tax exempt status must file an application for such an exemption. This application requires the listing of such information as purpose of the plan, qualifications for membership, sources of revenue and schedules of benefits. After the tax exempt is granted, an annual information return must be filed. This return requires the listing of expenses, changes in benefits and the financial condition of the welfare plan.

The major weakness is that there are no mathematical or actuarial limitations on welfare deductions as there are with regard to funded pension deductions. Also, the returns, if filed, are considered confidential and the statute prohibits the dissemination of information to unauthorized persons.

Thus, with the exception of the ineffective sections of the Labor-Management Relations Act of 1947, and the Internal Revenue Code of 1954, there exists no Federal statutes to adequately protect the interests of beneficiaries of health and welfare plans.

Regulation of health and welfare plans by the various states was also found to be ineffective. This weakness is illustrated
by the absence of adequate statutory regulations, inapplicability of existing laws and the failure to enforce statutes that would protect welfare programs and their assets for the intended beneficiaries.

The majority of abuses and other improper practices were found in insured plans. The Federal Government, except in certain instances, is prohibited by law from regulating the insurance industry: "The Congress hereby declares that the continued regulation and taxation by the several states is in the public interest, and that silence on the part of Congress shall not be construed to impose any barriers to the regulation or taxation of such business by the several States." 90

Later in this statute, Congress specifically delegated the regulation of the insurance aspects of health and welfare plans to the states: "Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act." 91

An attempt was made in 1954 to determine the extent of

90U.S. Statutes 33. The Federal Government is permitted to regulate the industry to the extent of anti-trust violations and misleading advertising in interstate commerce. Insurance companies are also subject to the Internal Revenue Code of 1954.

91Excerpts from this statute are found in Appendix II, p. 111.
regulation of health and welfare plans by the several states. A questionnaire which was sent to the insurance regulatory agencies of the States and Territories asked:

1. Do the laws of your state in any way regulate employee welfare funds or insurance programs administered by a labor organization?

2. Do the laws of your state in any way regulate employee benefit programs established and administered by an employer?

The results of the study indicated that only one state, Indiana, had specific legislation regulating employer and union administered welfare plans. This control was effected under the laws regulating fraternal organizations.

North Carolina regulated only union administered welfare plans. West Virginia provides for regulation of employer administered welfare plans if they arise from a contractual obligation. Massachusetts forbids such plans, if not insured with an independent carrier, as the illegal practice of insurance. Eleven states exercise jurisdiction over the insurance contracts of insured plans, while the remaining 28 states who answered the questionnaire indicated a lack of specific statutes.


93Ibid., p. 2.

94Ibid., pp. 1-4.
Certain insurance practices which are either required or allowed by insurance regulatory agencies, permit a reduction of benefits to the insured group.

Typical of such a practice is the mandatory charging of commissions. This was enacted into law to prevent discrimination in underwriting insurance contracts. Insurance companies are required to include in their retention rates, a reasonable commission charge to be paid to the broker. The carrier must retain this charge if the insurance business was obtained directly from company.

It is a practice of the Insurance Industry to assign general agents to a specific area and pay them commissions on all insurance written in the area. These payments are known as overwriting commissions and are paid even though the general agent does not perform any services in connection with the contract.

The insurance statute of the various states require that insurance companies file with the appropriate authority, their schedules of commissions payable to brokers and agents. The rates are not subject to regulation and the schedule may depend upon only the selling ability of the broker or agent. In rare instances the insurance regulatory agency may request the excessive commissions be reduced. The penalty for failure to comply with such a request is revocation of the right to transact the business of insurance in the state. If the welfare plan is in
interstate commerce, this control may be ineffective.

The failure of the state to effectively control retention rates, service fees, activities of brokers and agents, contingency bonuses and other unethical practices of the insurance industry, permit undue burdens on health and welfare plans. The only possible results of these activities is a reduction of benefits payable to the beneficiary.

The regulations of self-insured welfare plans is also within the jurisdiction of the several states. This is indicated by the situation that the institution of civil suits for malfeasance and nonfeasance of welfare officials must be in state courts. Also the regulation of trusts is within the jurisdiction of the states.

One authority has stated that welfare funds are Charitable Trusts.95 This opinion was confirmed in the Van Horn v. Lewis case. "Now in a fund of this kind, in addition to the fact that the Bituminous Wage Agreement of 1947, specifically gives each trustee equal power both in the establishment of the Fund and its administration, it is a Beneficial Fund, and the rules applicable to Charitable Trusts undoubtedly apply."96

The effect of the aforementioned authority requires in most states, the institution of legal action, by the Attorney General,

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who is the legal representative of the people, to obtain enforcement of the trust indenture. One legal treatise on Charitable Trusts states: "Strictly speaking, the State is the only one party having a legal interest in enforcement, and the human beings who are favorably effected by the execution of the trust are purely the media through whom the social advantages flow to the public." 97

Several states permit an individual or group of individuals to institute legal action to enforce a Charitable Trust. The principal deterrents to such action, where permitted, are the litigation expenses, reasonable knowledge of the operations of the trust and a responsible attitude by the prospective plaintiff.

There is also a question as to whether the intended beneficiaries have a vested interest in welfare plans inasmuch as they are Charitable Trusts. One court held that if the intended beneficiary had fulfilled the eligibility requirements of the trust, but had violated the union constitution, he was entitled to the scheduled benefits: "If the appellants can assert some omnipotent power to stop him from receiving benefits . . . then the purposes of the trust can be readily frustrated at the whim or caprice of the trustee . . . and a court of equity can always

intervene to control such unreasonable exercise of discretion." 98

At the present time there seems to be an absence of supervision by all of the States to assure the effective operation of health and welfare plans. There can be reasonable concurrence with the position of the Senate Subcommittee that existing laws do not assist in attaining the goals of welfare plans: "It is the consensus of the subcommittee that current state insurance, investment and trust laws, in their general application, do not afford the means for effective regulation of private employee welfare and pension funds as separate and distinct legal entities." 99

**Employer Disinterest in Management of Funds**

The indifference of employers may be considered as another cause for the abuses that were disclosed by the three investigations.

The most frequent reason indicated by employers for their lack of interest in the administration of a welfare program, was the erroneous opinion that after the contributions were made, they became union funds. The realization that the best interests of their employees and contemporaries could be served by their active participation did not seem evident to these employers.

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Another reason indicated in the Senate investigation for the abdication of employers of their obligation of participating in the administration of welfare plans was the uneven bargaining power in negotiations with unions. "Frankly, there are some situations where employers do not feel they can assert themselves in such a way as to exert any meaningful restraining influence on the union trustees."\(^{100}\) This attitude was attributed to the many small employers in the distributive services and casual industries.

The opinion that improper intervention by government or what is euphemistically called "Creeping socialism" was inherent in health and welfare plans was expressed by several employers during the investigations. Employers who stated this view felt that it would be more equitable and just to grant higher wages.

There was also the fear, real and imaginary, that industrial strife and physical violence would appear if employers asserted their legal and moral obligations as trustees of the plan. The use of concerted economic activity and coercion to force an employer to accept the union's welfare plan was revealed during the investigations.\(^{101}\)

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The cost aspect of a multi-employer welfare plan is another cause of employer disinterest. Members of the employer association that employ a large number of workers resent the use of their contributions to purchase benefits for smaller employers. Active resistance by these large employers would render the plan ineffective by their failure to join or participate in the plan.

**Employee Disinterest in the Funds**

The non-contributory aspect of some negotiated plans was indicated by one source as a cause of employee disinterest: "... there is less likelihood of waste and careless administration when employees themselves contribute to the fund. It is human nature to demand careful handling of one's own money."\(^2\)

The realization by employers that contributions, benefits, and other details are fixed by contractual provisions and schedules may be considered another cause of their disinterest. The assumption of administrative duties in insured plans by the underwriter to the extent of relieving the negotiating parties of their responsibilities could preclude active employee interest and participation.

**Improper Union Activity**

Prevention of inter-union dissention was expressed by one

union representative as a reason for not participating actively in all phases of a jointly administered plan. "We do not think that it is right, for example, that our union ought to participate in the denial of sick benefits to an employee." The union's responsibility would be limited to reviewing of financial reports and operations, grievance procedures and the negotiation of supplemental agreements.

The dual administration of welfare plans usually infers joint participation in the establishment and continued operation of the program. Yet in certain insured plans, selection of the broker, underwriter and administrative officials were dictated by union officials. The receipt of contributions, investment of surplus funds and payment of benefits solely by union officers is not in all instances conducive to the successful operation of the plan.

The misapplication of welfare funds by corrupt union officials resulted in the payment of a much lower level of benefits to employees and their dependents. The use of welfare assets for such purposes as union organizational expenses, worthless investments and personal expenses represents a disregard of the welfare of wage earners and moral responsibilities of stewardship.

The employment of relatives of union officials to administer

a health and welfare plan is not necessarily an improper practice. It was found, however, that payment for their services was not commensurate with their ability and the job content. The practice of Neopotism is also irregular in some instances because of possible waste and collusive activities.

Failure of parent unions to exercise their authority and leadership may also be deemed an improper union activity. Lack of such fundamental standards as auditing of union funds, supervision of local union offices and other internal controls contributed to the irregularities in health and welfare plans.
CHAPTER V

RECOMMENDATIONS TO PROTECT BENEFICIARIES
OF HEALTH AND WELFARE PLANS

The irregularities disclosed by the three investigations clearly indicate a mandate that measures be adopted that will protect the interests of the beneficiaries of health and welfare plans and the general public. Several recommendations were advanced by individuals and organizations to prevent future irregularities and to assist in the achievement of the purposes for which the programs were established.

Public Disclosure

The principal recommendation submitted by most organizations to prevent future irregularities involved the use of publicity.

The Senate Subcommittee stated: "The Subcommittee is convinced that complete disclosure provides the most effective deterrent to malpractices, mismanagement and waste." 104

The Commerce and Industry Association of New York City in relating its position on welfare fund regulation during a panel discussion conducted by the Senate Subcommittee advised: "The

most promising avenue of approach to a lasting improvement in welfare administration ... is through public disclosure of all the essential facts bearing on the operations of such fund. 105

Labor organizations also agreed that disclosure was an effective measure in the elimination of irregularities in welfare plans. The Congress of Industrial Organizations, in presenting its statement to the Senate Subcommittee in 1955, stated: "We believe that the disclosure principle properly implemented would in itself provide a major deterrent against wrongdoing." 106

Several individuals and organizations disagreed with the recommendation of disclosure. Their principal objection was to the enactment of legislative provisions to compel the reporting of the operations of employer unilaterally administered plans.

Senator Gordon Allott (Colorado), a member of the Subcommittee, expressed the opinion that level-of-benefit plans administered by employers should not be required to disclose details of operation. His principal argument was that disclosure in the past had not applied to bargaining for welfare plan on a level-of-benefit basis. Negotiators, he felt, were aware that the cost, operations and management of the fund were within the jurisdiction of the employer. "Therefore, in the approach that all pension and

106 Ibid., p. 107.
welfare funds be included in registration, reporting and disclosure . . . would, in effect, deprive the manager of the fund of long-existing legal rights."

The National Association of Manufacturers advanced a similar recommendation. A report of a subcommittee designated to study irregularities in health and welfare plans stated: "While full disclosure of information on negotiated programs financed on a fixed contribution basis could have salutary effects, no evidence of abuse available today suggests that any important purpose would be served by requiring full disclosure of information on unilaterally established programs."

The opinion that the costs of an employer administered plan are a part of ordinary business expenditure and not a proper subject for disclosure to prevent irregularities was expressed during the Senate Investigation. "It therefore seems entirely inappropriate to say that a particular section of those expenditures by the employer should be subject to a detail of disclosure that is not applied to any other one so far as the prevention of dishonesty of his employees and their malpractices is concerned."


109 Hearings Before a Subcommittee of the Committee on Labor
A similar point of view was advanced in a published article by Russell H. Hubbard, Jr. The principal basis of his position was that since the costs were a part of production costs, it was a prerogative of the employer "In that case [where the employer establishes and administers the fund] costs of administration are of no more concern to the employees or labor union officials than is the costs of the raw materials in his product."110

There are two other arguments that have been expressed in support of the contention that disclosure is unnecessary for employer administered welfare plans. The prevention of arbitrary union demands in the administrative phase of the program is a most important tenet of this position. The second argument is based upon the prevention of employee dissatisfaction in multi-union plants.

Labor objected strenuously to this position and considered it untenable primarily because of the inference that dishonesty is an attribute of unions. The Standing Committee on Ethical Practices of the Congress of Industrial Organizations clearly enumerated this contention: "Virtue is not a monopoly of any particular section of the population and it is intolerable to

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argue that disclosure should be limited to those plans in which unions are administratively involved and unwarrantedly to assume thereby that employer administered plans are intrinsically beyond possible reproach."

The view that all plans be required by law to disclose details of operations to a public agency was expressed by one other organization. A committee of the New York City Bar Association stated in their legislative recommendations: "...To the extent constitutionally possible, statutes be enacted covering ... all funds whether resulting from collective bargaining or unilaterally established by a union or employer."lll

Federal Vs. State Regulation

The proper level of government to receive reports and otherwise regulate health and welfare plans was another area of disagreement.

One individual who indicated a need for action at the national level to prevent wasteful regulation was Professor Sumner H. Slichter of Howard University. In a speech at Cleveland, Ohio in March, 1955, he said: "It would be wasteful to leave regulation to the forty-eight states. Regulation should

be promptly provided by the federal government..."\112

The late Senator Taft, during Congressional debate on Section 302 of the Labor Management Relations Act, stated: "It seems obvious that if these funds grow rapidly, as they are growing—which is perfectly proper—they should be regulated by the federal government."\113

At least one labor organization has proposed federal legislation. The Standing Committee on Ethical Practices of the Congress of Industrial Organizations in proposing a disclosure act, advanced this recommendation: "Federal legislation is more desirable than a conglomeration of state legislation in order to provide uniform treatment of a problem that goes beyond state boundaries."\114

The Senate Subcommittee in recommending federal legislation recognized the national implications of employee benefit programs: "To propose purely state action is to suggest that a problem of national scope be chopped into 48 sections, to be treated as each state legislature may be disposed. Public

\112Sumner H. Slichter. Excerpts from Remarks Presented before the Associated Industries of Cleveland, March 12, 1955.


interest directs that such a serious problem not be treated in a piecemeal fashion."115

The Commerce and Industry Association of New York City, aware of a similarity between welfare plans and insurance operations, expressed the opinion that the relationship permitted regulation at the state level. Speaking specifically of the New York State Insurance Department, a committee of this organization advised: "Its accustomed responsibilities and functions in the insurance field, its proximity to the operations and problem areas involved, and its staff facilities and experience logically equip it to exercise the kind of supervision contemplated..."116

A compromise was advanced by the Committee on Labor and Social Security Legislation of the New York City Bar Association. Federal legislation would be the initial action in the regulation of all welfare plans. There would be a statutory provision ceding the power of regulation to those states which enacted comparable legislation: "The federal act should provide that jurisdiction shall be ceded to the state where a fund has its headquarters as principal office in a state which has enacted a statute containing provisions substantially the same provisions as those contained

in the federal act." 117

**Proposed Federal Legislation**

Several measures have been proposed for enactment of federal legislation in this area. The principal feature of this prospective legislation is the disclosure of welfare plan operation to a federal agency.

The Senate Subcommittee recommended the passage of a 3-year act which would require the registration, reporting and disclosure of all types of employee welfare plans. Trustees and administrators would file reports of the operations of their plans with the Securities and Exchange Commission. This agency was recommended because: "its administrative machinery is particularly adapted to the area of administration of disclosure, factfinding, detecting frauds and irregularities in complicated financial operations." 118

All employee welfare plans covering 25 or more employees would register pertinent information with the Securities and Exchange Commission within 90 days after passage of the act or establishment of a plan. This registration would include identifying information such as type and size of the plan and whether it was negotiated.

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117 Report with Recommendations Concerning the Control of Pensions and Welfare Funds, p. 17.

118 Final Report, 84th Cong., 2nd Sess., 1956, p. 76.
The recommendations of the Subcommittee would exempt certain welfare plans from the provision requiring the filing of annual reports. The proposed act would make mandatory the submission of reports of private plans covering 100 or more employees and of plans which cover less than 100 employees when they are operated or administered on a common basis with another plan. The Commission would have the discretionary authority to require the submission of statements from welfare plans covering 25 to 100 employees if it effectuated the purposes of the Act.

There is a distinction in the filing period for insured and self-insured welfare plans. Reports of insured plans would be filed annually within 120 days after the anniversary date of the policy. The annual statement of self-insured plans would be filed within 120 days after the end of the fiscal year, but not later than April 1. This procedure would permit an orderly flow of reports.

The annual report must consist of an audit conducted by an independent public accounting firm in accordance with generally accepted auditing principles. Such items as receipts, expenses, benefits and reserves, would be the minimum information required.

In addition to general information, provision is made for detailed information about the operations of the employee welfare plan. This data would depend upon the source of benefits. Insured plans must submit such information as premium rates, total
premiums and complete information of payments of commissions and fees and retention rates. If the plan is self-insured or if an agency other than a commercial insurance underwriter is used, a financial statement of the employer plan, fund, or agency would be required.

The reserve policy of employee welfare plans would be subject to the scrutiny of the Securities and Exchange Commissions. A complete statement of all investments and loans would be an integral part of the annual report. Investments in the securities or properties of the trustor or a particular entity in excess of 5 per cent of the total investment would be listed in detail.

The annual audit and other financial reports would be made available at the principal office of the plan and offices of the Securities and Exchange Commission. Provision is made for the furnishing of the report or a summary thereof to the beneficiaries and other interested parties.

A special advisory council composed of representatives of Labor, Management, Insurance and Banking Industries and the general public would be created to act in an advisory capacity to the Commission and to make recommendations to Congress for permanent legislation. The Secretaries of the Labor Department and Health, Education and Welfare and the Commissioner of Internal Revenue would serve as ex-officio members of the advisory council.

Penalties are provided for the failure to register and not
filing required reports. The unique feature of the penalty provision is its imposition of a fine and/or imprisonment for the willful misuse of assets.

Three other measures of a disclosure nature have been proposed for enactment. Two of the proposed measures would amend the Labor Management Relations Act of 1947. The remaining bill would provide for an independent statute.

The first bill proposed was introduced originally by Senator Hubert Humphrey in the 83rd Congress, 2nd Session as Senate Bill 3649. It was proposed as Senate Bill 1717 in the 2d Session of the 84th Congress.

The proposed bill would amend Section 302 (c) of the Labor Management Relations Act to require unions and employers to file with the Secretary of Labor, detailed information of any negotiated welfare program. Continued use of the facilities of the National Labor Relations Board would be dependent upon the submission of such data. It would also prohibit investments in securities other than those permitted for insurance companies in the state where the welfare plan is domiciled.

The second Senate Bill was introduced by Senator Irving M. Ives (New York) and Gordon Allott (Colorado), both of whom participated in the Senate probe of welfare plans. The proposed law is known as Senate Bill 3051 and would provide for an independent statute. The law would be based upon the Federal tax authority
and General Welfare clause of the Constitution.

The Secretary of Labor would be responsible for the administration and enforcement of the proposed disclosure act. He would have the discretionary authority to exempt any class or type of welfare plan if the purposes of the act are thereby not impeded. Another such authority is to determine the extent of information that will be filed under provisions of the act.

The third bill of a disclosure nature was introduced by Representative Ralph W. Gwinn (New York) in the 2d Session of the 83rd Congress as House of Representatives Bill 9705. It was re-introduced in the 1st Session of the 84th Congress as House of Representatives Bill 1132.

This bill would amend the Labor-Management Relations Act to prohibit employer contribution to a plan in which a union official of the negotiating union is an officer, director, trustee or administrator. The neutral trustee must be appointed by a federal district court. Union, employer and welfare officials are prohibited from accepting commissions and other fees because of their status in connection with the fund. These officials are further barred from owning an interest in, or serving as an officer of, any underwriter or agency dealing with the plan.

The required financial and other data would be submitted to the Department of Health, Education and Welfare. This agency is empowered to require the mailing of annual statements to
interested parties within 30 days after the initial filing of the information.

Two additional measures have been proposed to Congress that have a definite relationship to the regulations of health and welfare plans. Representative Clare Hoffman (Michigan) introduced House of Representatives bills 7437 and 39 in the 83d and 84th Congress, respectively.

The bill introduced in the 2d session of the 83d Congress would amend the Labor-Management Relations Act of 1947. Employer contributions to welfare plans would be permissible only if such plans were supervised by the insurance regulatory agency of the state in which the plan is domiciled.

The latter bill would amend the McCarran Act (Public Law 15) and the Clayton Anti-Trust Act to provide for the regulation of health and welfare plans. Public Law 15 would be amended to permit the states to regulate trust funds in the same manner as they regulate the business of insurance.

The Clayton Act under House of Representatives Bill 39 would be amended so that the anti-trust laws would be applicable to any contract, combination, conspiracy or activity who delivers or agrees to deliver any assets to a trust fund established in contravention of the Labor-Management Relations Act of 1947. 119

119 Excerpts of this statute may be found in Appendix 11, p. 110.
In addition the payment of anything of value to an illegal trust fund would subject both parties to the anti-trust laws.

The legislative recommendations of the American Federation of Labor-Congress of Industrial Organizations urged the enactment of a permanent independent federal statute. All employee welfare plans would be required to register and report information concerning their operations. There is no provision for the exemption of plans that would be required to report to a local agency. The information to be filed is similar to the data suggested by the proposed disclosure act recommended by the Senate Subcommittee on Welfare and Pension Plans Investigation.

The principal distinction between the recommendations of the two aforementioned organizations and the Senate Subcommittee are the agencies to be utilized. The employee welfare plan, under the legislative suggestions of the American Federation of Labor-Congress of Industrial Organizations, would register and report to the Internal Revenue Service and the Department of Labor. The former agency would use the submitted data in its normal enforcement operations. The Department of Labor would make available analytical studies and statistical summaries as a guide to collective bargaining.

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Proposed State Activity

The enactment of state legislation was also recommended by the American Federation of Labor-Congress of Industrial Organizations. The special committee designated to study health and welfare plans urged the amending of laws regulating insurance and trusts to properly reflect the importance of employee benefit programs.

Repeal of laws that require the mandatory charging or payment of commissions to agents and brokers in the absence of rendered services was the first recommendation of the Committee. Where their services are utilized, it was suggested that a code of standards prohibiting the payment of excessive commissions and service charges be adapted and enforced.

Insurance regulatory agencies were urged to assume a greater degree of control over the action of licensed insurance officials. Legislation would be enacted to permit the examination of records of brokers and agents. The payment of illegal and unethical fees for the purpose of retaining insurance coverage would result in the revocation of the license to transact the business of insurance.

The refusal of a number of states to permit the operation of consumer-sponsored non-profit medical service prepayment plans was attacked by the committee. Repeal of these laws so that alternatives to cash indemnity programs would be available to
employee welfare plans was also recommended.

Trust laws would be expanded to include employee welfare plans under another recommendation of the Committee. This legislation should specify the responsibilities of welfare fund trustees.

The opinion was advanced that state insurance regulatory agencies are dominated by the special interests of the industry. It was therefore a firm recommendation of the Committee that these agencies be made more representative of the policy holders and public.

The New York State Insurance Department recommended legislation and voluntary action to prevent future irregularities in health and welfare plans.121

The Insurance Law of New York would be amended to require the filing of a schedule of allowances and fees that would be paid to administrators of employee welfare plans. The Department, in its administrative discretion, would publicize this information.

Once this phase was accomplished, the Superintendent of Insurance and representatives of the industry would draft a voluntary code of fair practices regarding the payment of commissions, fees and allowances. This code would contain a decremental scale of commissions that would reflect ethical insurance practices. The payment of allowances and fees would be restricted to persons

121 Straub, pp. 143-149.
who rendered services that the carrier could not possibly have performed. Payment of monies to interested union and welfare fund officials, employees and their relatives would be prohibited.

Passage of a disclosure act was also recommended by the Insurance Department. The prospective statute would regulate union welfare plans and entities administering employer welfare plans. The Superintendent of Insurance would supervise the administration of the law.

The first requirement of the proposed act would be the registration of the covered employee welfare plan. General information such as name of the plan and its trustees, copies of all agreements, compensation paid to officials and a detailed report of the financial condition would be submitted at the time of registration.

Each welfare plan would file annual statements with the Insurance Department. This report, subscribed to under oath by the trustees, must show the financial operations and condition for the fiscal year. The submitted report would be available for inspection by interested parties.

The Superintendent would be empowered to examine each plan as often as he deemed expedient, but at least once every five years. Trustees of the plan would be responsible for establishing and maintaining accurate records. The records of any other persons involved in the administration of the plan would also be subject to this examination.
Trustees would also be required to make available to the contributors and covered employees, an annual comprehensive report of the affairs of the plan. The Department would have the authority to designate the form of this report.

The responsibilities and obligations of the trustees would be specified in the proposed disclosure act. It is the intention of the Department that these officials be held responsible in a fiduciary capacity for their positions in the welfare fund.

**Recommendations for Union Action**

It was also a recommendation of every individual and organization that Labor should take a more active role in the administration of health and welfare plans. The American Federation of Labor, recognizing its lack of authority to direct the internal affairs of its affiliated organizations, urged international and national unions to adopt remedial measures: "It is incumbent upon every organization affiliated with the American Federation of Labor to take every step that may be available to it to clean up any such situations that may exist within its province, to take appropriate action against any official guilty of abuses, and to establish a system of standards, methods and procedures in the administration and policing of health and welfare program that will prevent the recurrence of such abuses."122

The Federation in its report recommended the adoption of certain principles to insure the successful operation of a welfare program. These principles include:

1. The services of a salaried union official in a welfare plan's administration should not require additional compensation.

2. Union officials and employers who exercise any responsibility or influence in the administration of a plan should be free of any ties with brokers, agents and carriers.

3. Any official found to have participated in unethical or illegal activities with insurance officials should be prosecuted. The local union should press charges against the insurance official before the state insurance authorities.

4. Complete records should be maintained in accordance with accepted accounting practices. Annual audits should be made by an independent public accounting firm.

5. A full annual report on welfare fund operations should be furnished on request to individual members.

6. All methods of providing health and welfare benefits should be explored, including self-insurance and fully prepaid direct medical services prior to the establishment of the welfare program.

7. Where the plan is insured, competitive bids should be solicited and the coverage not granted until the practices of the successful bidding carrier are reviewed.

8. The plan should keep complete records of claims experience so that a continuous check can be maintained on the relationship between claims, premiums and dividends, and on the utilization of the various benefits.

9. Investment of welfare fund reserves in the business of the employer, carrier or agency doing business with the fund or in any enterprise in which any trustee or employee has a personal financial interest in such an amount to impede the operations of the plans should be prohibited.
10. The eligibility requirements of the plan should, if possible, include all workers for whom a contribution has been made.

11. Every program should provide appellate procedures for individual members.\textsuperscript{123}

The recommendations of the Standing Committee on Ethical Practices of the Congress of Industrial Organizations were similar to those of the Federation. Notable exceptions, however, include such suggestions as:

1. All welfare funds should be audited semi-annually by an independent public accounting firm.

2. The carriers should be required to furnish to the trustees or administrators of the welfare plan, statements indicating claim experience of the plan, commissions paid and to whom paid, retentions and amounts of dividends and to whom paid.\textsuperscript{124}

**Recommended Employer and Employee Activity**

The American Federation of Labor emphasized that it was the obligation also of every union member to police and enforce the principles previously mentioned. It cautioned, however, against permitting efficiency in the administration of the health and welfare plan to be so rigid as to eliminate union democracy:

"The best and only ultimate safeguard of local autonomy lies in the hands of a vigilant, informed and active membership, jealous

\textsuperscript{123}Ibid., pp. 2-3.

of their rights and interests in the operation of a health and welfare program as well as any other trade union program."\textsuperscript{125}

The Committee of the Congress of Industrial Organizations that was designated to recommend action to prevent future irregularities in health and welfare plans, advocated the adoption of training and educational programs in the local unions.

"International unions which negotiate welfare programs, or whose locals negotiate such programs, should ... provide training programs for union representatives in the techniques and standards of proper administration of welfare programs ... carry on educational programs for the members, who are the beneficiaries of such programs, as to the content of the programs and their rights thereunder."\textsuperscript{126}

The Counsel for the Labor Relations and Legal Department of the Chamber of Commerce of the United States suggested that employer participation in the administration is indicative of sound business practices and good public relations: "It is important to recognize that it is good business--good public and human--relations for private industry to concern itself deeply with these vast and growing trust funds and to assume a substantial

\textsuperscript{125}Guides for Administration of Health and Welfare Funds, 1955, p. 6.

\textsuperscript{126}Proposed "Employee Welfare Plan Disclosure Act, 1955, p. 2."
responsibility for social welfare of employees." 127

The failure of employers to actively participate in the administration of health and welfare plans was in the opinion of Professor Sumner H. Slichter indicative of a narrow personnel policy: "Incidentally, the unwillingness of employees to participate actively in the administration of welfare funds reveals a narrow conception of personnel policy. Employers should welcome opportunities to show an interest in the problems of their people." 128

Another organization that felt employer indifference was in a large measure responsible for the abuses uncovered in welfare plans, was the Commerce and Industry Association of New York. This association, after reminding employers of their employee relation and legal trusteeship responsibilities recommended: "All employers must recognize and accept their obligation to participate fully in the handling of their employee welfare programs, whether or not they are set up under collective bargaining." 129


CHAPTER VI

SUMMARY OF FINDINGS

The growth of private health and welfare programs imposes serious obligations upon Government, Labor and Management to use all reasonable measures to assure that their purposes are achieved. The revealed irregularities indicate the need for prompt and firm action by all three groups. It is also clear that voluntary action in itself cannot prevent abuses and other improper practices.

The principle of disclosure as recommended by most organizations will permit a public review of practices that led to revealed irregularities and prevent their recurrence in the future. Hence the interests of beneficiaries, employers and the general public would be protected.

The inclusion of provisions that would permit publicity of the operations of all welfare plans, regardless of the mode of administration is an integral part of any protective legislation. This is necessary to preclude the assumption that only jointly administered plans need regulation to assure honest operation.

The two principal methods to regulate the plans also indicate an active interest of the role of government in the administration of health and welfare plans. The question of whether to
amend existing legislation or enact new statutes is the only possible hinderance to proper governmental action.

There have been several proposals that the Labor-Management Relations Act of 1947 be amended to protect the beneficiaries of health and welfare plans. The principal disadvantage here is the antagonism that has surrounded this law since its passage. The regulatory statute to be effective must be capable of obtaining the cooperation of most of the leaders of the American Labor Movement. This cooperation does not appear to exist at the present time and it is through the constant failure to secure necessary amendments to the Taft-Hartley Act that this lack of cooperation is exemplified.

Enactment of the bill proposed by the Senate Subcommittee seems to be the best method of obtaining adequate statutory regulations. In addition to obtaining the cooperation of labor organizations, it also would require the registration and regulation of all welfare plans. This bill which is based upon the taxing power of the Federal Government, the general welfare interest and the interstate nature of existing welfare plans is indicative of a real and enthusiastic interest by the national government in welfare plans. The bill would also leave with the states the authority to regulate insurance entities and trust laws.

The appointment of the Securities and Exchange Commission as
the agency to administer the proposed act is, in the writer's opinion, a major disadvantage of the legislation. The Internal Revenue Service in its enforcement of the tax laws would be in a better position to assure the fair and honest operation of health and welfare plans. The Internal Revenue Code of 1954 should be amended to give this agency the power necessary to adequately cope with the operations of these plans. Also this agency has the authority to deny a tax exempt status to pension funds who violate the code. In this manner, there would be effective regulation of these plans in intrastate commerce as well as welfare plans in interstate commerce.

One of the principal advantages of the proposed disclosure act is the provision that welfare plans list their investments of surplus funds and reserves. Welfare and pension funds constitute the largest source of monies for investments. Their future effect upon the financial markets of the nation indicates a need for greater knowledge and supervision by the authorities responsible for the fiscal policies of this country. It is only through regulation at the national level that such policies may be properly planned and executed.

The role of local governments in the administration of health and welfare plans should include enactment of new legislation and enforcement of existing statutes and regulations. This course of action may only be adopted by the states because of
their authority to regulate the business of insurance and trust statutes.

A few states have enacted laws to permit the supervision of the operations of private health and welfare plans. The State of Washington passed such a statute in 1954. The only other state to legislate in this area in New York, it adopted such a statute in 1956.\footnote{130}

The law of the State of Washington designates the Insurance Commissioner as the official responsible for the supervision of the health and welfare plans. The statute requires the registration and reporting of the operations of all plans. The regulation of self-insured plans is permitted under the same statute.

The law of the State of New York provides for the regulation of jointly administered plans. Insured plans and self insured programs are supervised under provisions of the law.

The insurance law of New York permits the Superintendent of Insurance to examine the records of insurance entities to determine whether the statute is observed. In the absence of legislation directed to unilaterally administered plans, possibly sufficient attention will be the aspect of insurance to these plans.

The amendment of the banking law in New York permits a

\footnote{130 The text of these laws appears in Appendix II, pp. 112-23.}
fiduciary responsibility upon trustees of the regulated plans. This action indicates an interest by the state of the problems of self-insured plans and should make the trustees of unregulated plans aware of their responsibilities.

There is a further need by the states to revise their insurance laws and regulations to prevent irregularities and the placing of unnecessary burdens upon insured plans. While the prevention of discrimination among group policy holders is commendable, the mandatory charging of commissions is an unnecessary charge against premiums and full coverage. This results in the payment of a much lower level of benefits. The legislatures of states have such laws and should be encouraged to repeal them insofar that such payments or charges would be unnecessary when no services are performed.

The regulation of commissions and fees paid by insurance carriers to brokers and agents is within the exclusive jurisdiction of the state insurance departments. If it is not practical to legislate in this area, a voluntary "code of fair practices" should be adopted. Insurance carriers, brokers, agents and insurance regulatory authorities should cooperate in the formulation of this code. This code should be enforced through state executive authority and economic sanctions by the entities involved. The payment of spurious management fees should be eliminated. The ability of insurance carriers to underwrite group insurance
coverage should be analyzed and evaluated by insurance authorities.

The activities of certain brokers and agents in the obtaining and placing of insurance can only be described as deplorable. The states and the insurance industry would be within the jurisdiction in exercising a greater degree of control over these officials.

Revision of trust laws is also an area that should be studied by the states with a view of enacting remedial legislation. The absence of sufficient case law to assist in the determination of the legal status of welfare plans and interests of their beneficiaries should be a major concern of such investigations. If the plans are to be considered charitable trusts, legislation should be enacted to permit individuals to institute legal action after the failure of the state to act is evident.

The failure of employers, and in particular employer trustees, to exercise meaningful responsibility in the administration of health and welfare plans was a contributing factor to the revealed abuses and other improper practices. Trustees of insured and self-insured plans, in the absence of statutes or specific agreements, should adopt the so-called prudent-man rule to determine the degree of fiduciary character of stewardship that is indicative of a successfully operated welfare plan: "A trustee is required to conduct himself faithfully and to exercise sound discretion, and to be enlightened by observance as to how men of prudence, discretion and intelligence manage their own
affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of the capital."

Parent unions will have to assume a more prominent role in the internal affairs of their local unions to assure the successful operations of welfare plans. The local autonomy of unions would be enhanced rather than hindered by this action.

The parent union should establish and enforce specific standards and conditions of performance regarding the best method of providing benefits. The unique position that it has would permit an analysis and evaluation of many plans and assist the local union in adopting the plan which most adequately fits its circumstances. Expert advice should be available for the negotiation and administration of welfare programs. The international and national union should also conduct internal audits of welfare plans administered by subordinate organizations to insure honest and efficient administration.

Education is a very essential factor in the operation of a well managed health and welfare program. Here, again, the parent union could assist the local union by training union representatives in the techniques and standards of proper administration.

131 Springfield Safe Deposit and Trust Company v. First Unitarian Society (1936) 293 Mass. 430; L00 NL 541.
A sound educational program for union members that would include details of the plan and their rights as beneficiaries would be of invaluable assistance in the achievement of the notable goals of welfare plans.

The entire nation may be justly proud of the development and growth of private health and welfare plans. Such programs represent a milestone in the collective bargaining process and a notable achievement of the free enterprise system. Legislation can provide the framework for the successful operations of the plans. The active and intelligent participation in the administration of the fund by employers and unions will insure their continued effective operation.
BIBLIOGRAPHY

I. PRIMARY SOURCES


II. SECONDARY SOURCES

A. Books


B. Articles


C. Unpublished Material


D. Judicial Decisions


Inland Steel Company v. National Labor Relations Board, 170 F. 2d 247 (1949), 18 ALC 1553. enf'g 77 NLRB 1, Certiorari Denied (1949); 336 U.S. 960, 69 S. Ct. 887.


Rice-Stix Company v. St. Louis Institute, 22 LRRM 2049 (1949).


APPENDIX I

REPRODUCTIONS OF PERSONAL CORRESPONDENCE
Mr. Milton C. Jossey
230 West 90th Place
Chicago 20, Illinois

Dear Mr. Jossey:

I am in receipt of your letter of December 20 requesting any information available concerning the names of organizations investigated by the Ives Subcommittee on Welfare and Pension Plans during the 83rd Congress.

Other than the published reports and hearings of the 83rd and 91st Congresses, there is to my knowledge no other information available to the public. The files of the Subcommittee have now been placed in the National Archives and I regret inability to comply with your request that particular names be dug out and sent to you prior to January 4.

I am returning herewith your postal money order in the amount of $10.00.

If you do not have certain hearings and reports of the above-mentioned Subcommittee, kindly let me know the volumes you lack and they will be sent to you at once.

Sincerely,

(Signed) S. E. McClure

Stewart E. McClure
Staff Director
STATE OF NEW YORK  
INSURANCE DEPARTMENT  

61 BROADWAY  
New York 6  

December 27, 1956  

Mr. Milton C. Jossey  
230 West 90th Place  
Chicago 20, Illinois  

Dear Mr. Jossey:  

This is in reply to your recent communication requesting information on the Department's investigation of welfare plans.  

Since the publication of "whose Welfare," the Department has published another report entitled "Private Employee Benefit Plans -- A Public Trust, A Report On Welfare and Pension Funds of New York State" prepared by Martin S. House, Special Counsel to the Superintendent. This report summarizes the results of the Department's continued investigation of welfare and pension funds in New York State.  

However, in keeping with Department policy, this report, like its predecessor, does not identify the unions, employers, insurance companies or agents referred to in the report. We regret to inform you that we cannot make this type of information public.  

We are, therefore, returning your $5.00 Money Order. If you desire a copy of the House report, we shall be happy to comply with your request. The price is $3.25.  

Very truly yours,  

LEFFERT HOLZ  
Superintendent  

(Signed) By A. Trupin  
A. Trupin  
Chief, Research Bureau  

Enc.
APPENDIX II

EXCERPTS FROM FEDERAL AND STATE LAWS
"Section 2211(a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed."

"(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon the request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed."

(U.S. Code, Title 29, 171-182.)

"Section 302(a) It shall be unlawful for any employee to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce."

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept or to agree to receive or accept, from the employer of such employees any money or other thing of value."

"(c) The provisions of this section shall not be applicable . . . (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sale and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents); Provided, that (A) such payments are held in trust for the purpose of paying either from principal or income or both, for the benefit of employees, their families and dependents, for medical or hospital care, pensions or retirement or death of employees, compensation for injuries, or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees
and employers are equally represented in the administration of such
fund, together with such neutral persons as the representatives of
the employers and the representatives of the employees may agree
upon and in the event the employer and employee groups deadlock on
the administration of such fund and there are no neutral persons
empowered to break such deadlock, such agreement provides that the
two groups shall agree on an impartial umpire to decide such dis­
putes, or in the even of their failure to agree within a reasonable
length of time, an impartial umpire to decide such dispute shall,
on petition of either group, be appointed by the district court of
the United States for the district where the trust fund has its
principal office, and shall also contain provisions for an annual
audit of the trust fund, a statement of the results of which shall
be available for inspection by interested persons at the principal
office of the trust fund and at such other places as may be desig­
nated in such written agreement; and (c) such payments as are in­
tended to be used for the purpose of providing pensions or annui­
ties for employees are made to a separate trust which provides that
the funds held therein cannot be used for any purpose other than
paying such pensions or annuities."

"(f) This section shall not apply to any contract in force on
the date of enactment of this Act, until the expiration of such
contract, or until July 1, 1948, whichever first occurs."

"(g) Compliance with the restrictions contained in subsection
(c)(5)(B) upon contributions to trust funds, otherwise lawful,
shall not be applicable to contributions to such trust funds estab­
lished by collective agreement prior to January 1, 1946, nor shall
subsection (c)(5)(A) be construed as prohibiting contributions to
such trust funds if prior to January 1, 1947, such funds, contained
provisions for pooled vacation benefits."

(U.S. Code, Title 29, 185-189.)
"(a) IN GENERAL--There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade of business, including--

1) a reasonable allowance for salaries or other compensation for personal services actually rendered;..."

"SEC. 401(c). CERTAIN NEGOTIATED PLANS--

"If such contributions are paid by an employer--

1) under a plan under which such contributions are held in trust for the purpose of paying (either from principal or income or both) for the benefit of employees and their families and their dependents at least medical or hospital care, and pensions on retirement or death of employees; and

2) such plan was established prior to January 1, 1954, as a result of an agreement between employee representatives and the Government of the United States during a period of Government operation, under seizure powers, of a major part of the productive facilities of the industry in which such employer is engaged,

such contributions shall not be deductible under this section nor be made nondeductible by this section, but the deductibility thereof shall be governed solely by Section 162 (relating to trade or business expenses). This subsection shall have no application with respect to amounts contributed to a trust on or after any date on which such a trust is qualified for exemption from tax under section 501(a)."

"SEC. 501. EXEMPTIONS FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

"(a) EXEMPTIONS FROM TAXATION-- An organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504."

"(c) LIST OF EXEMPT ORGANIZATIONS-- The following organizations are referred to in subsection (a);

9) Voluntary employees beneficiary associations providing for payment of life, sick, accident, or other benefits to the members of such association or their dependents, if--
(A) no part of their net earnings inures (other than through such payments to the benefit of any private shareholder or individual, and

(B) 35 per cent or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses."

Sources:

a68A United States Statutes at Large, 45.

b68A United States Statutes at Large, 142-143.

c68A United States Statutes at Large, 163, 164.
An Act to express the intent of Congress with Reference to the Regulation of the Business of Insurance.

"The Congress hereby declares that the continued regulation and taxation by the several States of the business of insurance is in the public interest, and that silence on the part of Congress shall not be construed to impose any barrier to the regulation or taxation of such business by the several States."

"Section 2(a) The business of insurance, and every person engaged therein, shall be subject to the laws of the several States which relate to the regulation or taxation of such business.

(b) No Act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance or which imposes a fee or tax upon such business, unless such Act specifically relates to the business of insurance: Provided, After June 30, 1948, the Act of July 2, 1890, as amended, known as the Sherman Act and the Act of October 15, 1914, known as the Clayton Act, and the Act of September 26, 1914, known as the Federal Trade Commission Act, as amended, shall be applicable to the business of insurance to the extent that such business is not regulated by State law."

"Section 4. Nothing contained in this Act shall be construed to affect in any manner the application to the business of insurance of the Act of July 5, 1935, as amended, known as the National Labor Relations Act, or the Act of June 25, 1938, as amended, known as the Fair Labor Standards Act of 1938, or, the Act of June 5, 1920, known as the Merchant Marine Act, 1920."

(159 U.S. Statutes at Large 33.)
CLAYTON ACT

Public Law 212

An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes.

Labor Organizations

"Sec. 6. That the labor of a human being is not a commodity or article of commerce. Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profits, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; nor shall such organizations, or the members thereof, be held or construed to be illegal combinations or conspiracies in restraints of trade under the antitrust laws."

An Act relating to employee welfare trust funds; making an appropriation; and providing penalties.

"Be it enacted by the State of Washington:

Section 1. As used in this act:
(a) "Commissioner" means the insurance commissioner of the State of Washington.
(b) "Employee welfare trust fund" means any fund established for employees of one or more employers for providing employees, their families or dependents, medical or hospital care, disability benefits, death benefits, retirement benefits, annuity benefits, health care services, or any insurance benefits whether such benefits or services are to be paid directly from such fund or interest therefrom, or paid contracts entered into by the trustees of the fund with an insurer or health care service contractors.
(c) "Health Care Service Contractor" means health-care service contractor as defined in R.C.W. 48.44.010.
(d) "Insurer" means insurer as defined in R.C.W. 48.01.050.
(e) "Person" means any individual, company insurer, association, organization, reciprocal or interinsurance exchange, partnership, business trust, or corporation.

Section 2. The Commissioner may examine each employee welfare trust fund as often as he deems necessary, and the Commissioner shall examine each employee welfare trust fund at least once every five years.

Section 3(a) The trustees of every employee welfare trust fund existing within this State shall be responsible for the maintenance of full and accurate records and accounts of the transactions and affairs of such employee welfare trust fund in conformance with generally accepted accounting practices and principles.
(b) Such trustees shall properly file with the Commissioner a copy of the trust instrument or other instrument by which the employee welfare trust fund is established, together with all amendments thereto. Upon request by the Commissioner, the trustee shall file with the Commissioner such regular and/or special reports concerning the transactions and affairs of such employee welfare trust fund as the Commissioner may from time to time deem to be necessary or advisable for carrying out the purpose of this Act. All such reports shall be open to inspection by the public in the Commissioner's office and when obsolete shall be subject to destruction by the Commissioner as provided in R.C.W. 48.02.210.

Section 4(a) Each insurer and each care service contractor
that insures an insurance contract or health care service contract
in consideration of money shall promptly file with the Commissioner
a complete copy of each such contract together with all amendments
thereof.

(b) Each such insurer and health care service contractor shall
promptly file with the Commissioner a statement, on a form as pre-
scribed and furnished by the Commissioner, of the rate of all com-
misions and/or service fees or other similar fees or compensation
paid or to be paid by such insurer or contractor with such insur-
ance contract or health care service contract, and the name of each
person receiving any such payments.

(c) Such contracts and statements shall be open to public in-
spection in the Commissioner's office and when obsolete shall be
subject to destruction by the Commissioner as provided in R.C.W.
48.02.120.

Section 5. The Commissioner shall enforce the provision of
the Act as provided in R.C.W. 48.02.080.

Section 6. Any person aggrieved by an Act, threatened Act, or
failure of the Commissioner to act shall have the right to a hear-
ing or review thereof as provided in R.C.W. 48.04.

Section 7. Sections 2 and 3 of the Act shall not apply to
such employee welfare trust fund where the trustees or all of the
trustees are subject to examination by the Supervisor of Banking of
the State of Washington or the Comptroller of the Currency of the
United States or the Board of Governors of the Federal Reserve Sys-
tem.

Section 8. Any person who fails to comply with the provisions
of this act, or lawful order of the Commissioner made pursuant to
this Act, shall upon conviction, be punished by a fine of not less
than ten dollars nor more than one thousand dollars, or by impris-
onment for not more than one year, or both fine and imprisonment.

Section 9. For the biennium ending June 30, 1956, there is
appropriated from the general fund to the insurance commissioner,
the sum of forty-six thousand, two hundred and fifty dollars or so
much thereof as may be necessary to carry out the provisions of
this Act."

([H.B. 23], Chapter 8, Session Laws of the State of Washington.)
STATE OF NEW YORK

"Section 1. The insurance law is hereby amended by adding thereto a new article to follow article three, to be article three-A, to read as follows:

ARTICLE III-A
EMPLOYEE WELFARE FUNDS

Section 37. Declaration of policy

It is hereby declared to be the policy of the state that employee welfare funds are of great benefit to employees and their families and that their growth should be encouraged; that the establishment and management of such funds vitally affect the well-being of millions of people and are in the public interest; and that such funds should be supervised by the state to the extent necessary to protect the rights of employees and their families, without imposing burdens upon such funds which might discourage their orderly growth and without duplicating the supervisory responsibilities presented vested in any state agencies.

37-a. Definitions

1. Employee welfare funds. The term "employee welfare fund" as used in this article; shall mean any trust fund or other fund established or maintained jointly by one or more employers together with one or more labor organizations, whether directly or through trustees, to provide employee benefits, by the purchase of insurance or annuity contracts or otherwise; and to which is paid or contracted to be paid anything other than income from investment of
such fund, by or on behalf of any employer doing business in this state, provided, however that such term, as used in this article, shall not include any such fund where its over-all management is vested, alone or jointly with other trustees, in a corporate trustee which is subject to supervision by the superintendent of banks of this state or any other state or is a member of the federal reserve system.

2. Employee benefits. The term "employee benefits" as used in this article, shall mean one or more benefits or services for employees or their families or dependents, or both, including, but not limited to, medical, surgical, or hospital care or benefits, benefits in the event of sickness, accident, disability or death, benefits in the event of unemployment or retirement benefits.

3. Trustee. The term "trustee" as used in this article, shall mean any person, firm, association, organization, joint stock company or corporation, whether acting individually or jointly and whether designated by that name or any other, who or which is charged with or has the over-all management of any employee welfare fund; provided, however, such term shall not include a corporate trustee which is subject to supervision by the superintendent of banks of this state or any other state or is a member of the federal reserve system and which acts merely as a depository of any such fund and performs no other function with respect thereto; nor shall such term include any insurer licensed under the laws of this state or authorized to do business herein when performing only those functions normally performed by insurers acting as such.

37-b. Registration

The trustees of every employee welfare fund shall register such fund with the superintendent within three months after the effective date of this article, and the trustees of every employee welfare fund commencing to do business in this state after the effective date of this article shall register such fund with the superintendent within three months after so commencing. Such registration shall be in such form and shall contain such information relating to the organization, operation, and affairs of such fund as may be described by the superintendent.

37-c. Examination; authorization and requirement

1. The superintendent may examine into the affairs of any employee welfare fund as he deems it necessary, and he shall do so at least once in every five years.

2. The trustees of every employee welfare fund shall be responsible for the maintenance of accurate records of its books and
accounts in conformance with generally accepted accounting principles.

37-d. Examination; conduct

1. Whenever, pursuant to this article, the superintendent shall determine to examine the affairs of any employee welfare fund, he shall make an order indicating the scope of the examination and may appoint as examiner one or more competent persons not employed by the trustees of such fund or interest in such fund. A copy of such order shall, upon demand and before the examination begins, be exhibited to the trustees of the employee welfare fund whose affairs are to be examined. Any examiner authorized by the superintendent shall have convenient access at all reasonable hours to the books, records, files, assets, securities and other documents of such employee welfare fund, including those of any affiliated or subsidiary fund thereof, which are relevant to the examination, and shall have power to administer oaths and to examine under oath the trustees of such fund and their officers, agents, and employees and any other persons having custody or control of such books, records, files, assets, securities, or other documents, regarding any matter relevant to the examination.

2. The examiner or examiners in charge of such examination shall make a true report of every examination made by him, verified under oath, which shall comprise only facts appearing upon the books, records, or other documents of the trustees of such funds or as ascertained from the sworn testimony of its trustees, or their officers, agents, or employers, or other persons examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts.

In connection with any such examination, the superintendent, the superintendent may appoint one or more competent persons as appraisers with the authority to appraise any real property or any interest therein which, as security or otherwise, may constitute a part of the assets of any employee welfare fund. The report of such appraisers shall be a supplement to the report of the examiner as examiners in charge.

37-e. Examination; publication

1. All reports of examinations and investigations, including any duly authenticated copy or copies thereof in the possession of any employee welfare fund, shall be confidential communications and shall not be subject to subpoena and shall not be made public unless, in the judgment of the superintendent, the ends of justice and the public advantage will be served by the publication thereof on which event he may publish a copy of any such report or any part thereof in such manner as he may deem proper.
2. In any action or proceeding against the trustees of any employee welfare fund, or against their officers, agents or employees, such report, or any part thereof, if published by the superintendent shall be admissible in evidence and shall be presumptive evidence of the facts stated therein.

3. The superintendent may assemble and file for public inspection such information covering forms of trust indentures in use, commission and fee schedules adopted by insurers and compensation paid to trustees of employee welfare funds and such other matters affecting the establishment and administration of such fund, as in his opinion, are in the public interest.

37-f. Examination; expense

The expenses of every examination of the affairs of any employee welfare fund, including any appraisal of real property made pursuant to the authority conferred by any provision of this Chapter, shall be borne and paid so examined, but the superintendent, with the approval of the comptroller may in his discretion for good cause shown remit such charges. For any such examination by the superintendent or a deputy superintendent personally, the charges made shall be only for necessary traveling expenses and other actual expenses. In all other cases, the expenses of examination shall also include reimbursement for the compensation paid for services of persons employed by the superintendent or by his authority to make such examination or appraisal. All charges, including necessary traveling and other actual expenses, as audited by the comptroller to the person or persons making the examination or appraisal, shall be presented to the trustees of the employee welfare fund in the form of a copy of the itemized bill therefore as certified and approved by the superintendent or a deputy superintendent. Upon receiving such certified copy, such trustees shall pay the amount thereof to the superintendent, to be paid by him into the state treasury.

37-g. Annual statement to superintendent

The trustee of every employee welfare fund shall file in the office of the superintendent, annually on or before the first day of March, a statement, to be known as the annual statement of such fund, executed in duplicate, verified by the oath of its trustee or if there is more than one trustee, then by the oath of at least two of such trustees, showing its condition on the thirty-first day of December then next preceding or on any other date in the year next preceding as the superintendent may approve. Such statement shall be in such form and contain such substantiation by voucher and otherwise and such other information as the superintendent shall from time to time prescribe. The superintendent shall cause to be prepared and furnished to the trustees of every employee welfare fund required by law to report to him, printed forms of the statements and schedules required by him.
37-h. Special statements to superintendent

In addition to any other statements or reports required by the article, the superintendent may also address to the trustees of any employee welfare fund or to their offices, agents, or employees any inquiry in relation to the transactions or condition of the fund or any matter connected therewith. Every person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be verified, if required by the superintendent, by such individual or individuals as he may designate.

37-i. Annual statements to employers and employees

The trustees of every employee welfare fund shall, annually or before the first day of March file a report with the superintendent to be known as the annual report of such fund, verified by the oath of its trustee, or if there is more than one trustee, then by the oaths of at least two such trustees, showing its condition on the thirty-first day of December then next preceding or on such other day in the year next preceding as the superintendent may approve such report shall be in such form and contain such matter as the superintendent shall from time to time prescribe. Such annual report shall be kept on file with the superintendent and at the principal office of the trustees and such report or such portion thereof as the superintendent shall deem appropriate and relevant, shall be made available by the superintendent or by the trustees or both, for inspection by any employer contributing to such fund, by any labor organization which is a party to an agreement establishing such fund, or by any employee covered by such fund. In addition, and to such extent that he deems it to be in the public interest, the superintendent may require the trustees to mail such report, or such portions thereof as the superintendent shall deem appropriate and relevant, to employees covered by the fund, to contributing employers or to any labor organization which is a party to an agreement establishing such fund, or to any or all such parties.

37-j. Annual statements by insurance companies, service plans and corporate trustees and agents

Any insurance company, hospital, surgical or medical service plan providing benefits under an employee welfare fund as defined in this article and Article two-A of the banking law, and any corporate trustee or agent holding or administering all or any part of an employee welfare fund as so defined shall, within four months after the end of each policy or fiscal year, furnish to the trustees of the fund a statement of account setting forth such information as the trustees of the fund may need from it in order to comply with the requirements of such audits.
37-k. Regulations under other laws

Where the trustees of any employee welfare fund are subject to and comply with the requirements of any law of this state other than this article or law of any other state or of the United States with respect to registration, filing, examination, statements or reports, such requirements of this article may be waived by the superintendent with respect to any such fund or trustees to the extent that they are included in such other laws. Application for such a waiver shall be in writing to the superintendent on such forms as he require and any waiver issued by him hereunder shall be in writing and shall be filed in his office. The superintendent may, at any time, revoke any such waiver issued by himself, in his opinion, such other law failed to accomplish adequately the purpose of this article. The action of the superintendent pursuant to this section shall be subject to judicial review.

37-1. Compliance and enforcement

1. The trustees of every employee welfare fund shall be responsible in a fiduciary capacity for all money, property, or other assets received, managed or disbursed by them or under their authority, on behalf of such fund.

2. No trustee, employer or labor organization representing any employee eligible for employee benefits under an employee welfare fund, and no officer, agent or employee for any such trustee, employer or labor organization shall receive, directly or indirectly, any payment, commission, loan, or service or any other thing of value from any insurance company, insurance agent, insurance broker or any hospital, surgical or medical service plan, in connection with the solicitation, sale, service or administration of a contract providing employee benefits for such fund, or receive any payment, commission, loan, service or any other thing of value from such employee welfare fund, or which is charged against such fund either directly or indirectly, except that any such person may receive any employee benefits to which he is otherwise entitled, and any such trustee or his officer, agent or employee, may receive from such employee welfare fund, reasonable compensation for necessary services and expenses rendered or incurred by him in connection with his official duties as such; provided, however, that nothing in the subdivision shall affect the payment of any dividend or rate credit or other adjustment due under the terms of any insurance or annuity contract.

3. No political contributions shall be made directly or indirectly by or from any employee welfare fund.

4. The superintendent may impose a penalty of not to exceed
twenty-five hundred dollars upon any trustee of any employee welfare fund subject to this article or upon his agent or employee, or may remove such trustee, agent, or employee from office or employment, or both such penalty and removal, if after notice and a hearing he shall find that he has willfully failed to comply with the requirements of this article. Any such action by the superintendent under this subsection shall be subject to judicial review.

5. In any case where after notice and a hearing, the superintendent finds that any employee welfare fund has been depleted by reason of any wrongful or negligent act or omission of a trustee or of any other person, he may transmit a copy of his findings to the attorney general, who may bring an action in the name of the people of the state, or intervene in an action brought by or on behalf of an employee, for the recovery of such fund for the benefit of the employees and such other persons as may have an interest in the fund.

37-m. Injunction

The superintendent may maintain and prosecute in the name of the people of the State an action against any trustee or any other person or persons subject to the provisions of this article, for the purpose of obtaining an injunction restraining such person or persons from doing any acts in violation of this article and that such violation will cause irreparable injury to the interests of the people of this state or the beneficiaries of the employee welfare fund involved, the court may, on motion and affidavits, grant a preliminary injunction ex parte and an interlocutory injunction, upon such terms as may be just; but the people of the state shall not be required to give security before the issuance of any such injunction.

37-n. Construction

Nothing in this article shall be construed to relieve the trustees of any employee welfare fund from compliance with any other provision of this Chapter or any other applicable laws of this state."

(Chapter 774, Section 1, McKinney's 1956 Session Laws of New York, p. 984.)
STATE OF NEW YORK

"Section 2. The banking law is hereby amended by adding thereto a new article, to follow article two, to be article two-A, to read as follows:

ARTICLE II-A

Section 60. Declaration of policy

It is hereby declared to be the policy of the state that employee welfare funds are of great benefit to employees and their families and that their growth should be encouraged; that the establishment and management of such funds vitally affect the well being of millions of people and are in the public interest; and that such funds should be supervised by the state to the extent necessary to protect the rights of employees and their families, without imposing burdens upon such funds which might discourage their orderly growth and without duplicating the supervisory responsibilities presently vested in any state agencies.

61. Definitions

Employee welfare funds. The term "employee welfare fund" as used in this article, shall mean any trust fund or other fund established or maintained by or on behalf of one or more employers together with one or more labor organizations to provide any benefit by the purchase of insurance or annuity contracts or otherwise, with the over-all management of such a fund vested alone or jointly with other trustees in a corporate trustee which is subject to supervision by the superintendent of banks of this state or any
other state or is a member of the federal reserve system, and to
which fund is paid or contracted to be paid any thing, other than
income from investments of such fund, by or on behalf of any em-
ployer doing business in this state or for the benefit of any per-
son or persons employed in this state.

2. Employee benefits. The term "employee benefits" as used
in this article, shall mean one or more benefits or services for
employees or their families or dependents, or both, including, but
not limited to, medical, surgical, or hospital care or benefits,
benefits in the event of sickness, accident, disability or death,
benefits in the event of unemployment or retirement benefits.

3. Trustees. The term "trustee" as used in this article,
shall mean any person, firm, association, organization, joint stock
company, or corporation, whether acting individually or jointly and
whether designated by that name or any other, who or which is
charged with or has the management of any employee welfare fund,
provided, however, such term shall not include a corporate trustee
which is subject to supervision by the superintendent of banks of
the state or any other state or is a member of the federal reserve
system and which acts merely as a depository of any such fund and
performs no other function with respect thereto; nor shall such
term include any insurer licensed under the laws of this state or
authorized to do business herein when performing only those func-
tions normally performed by insurers acting as such.

4. Superintendent. The term "superintendent" as used in this
article, shall mean the superintendent of banks.

62. Registration

The trustees of every employee welfare fund shall register
such fund with the superintendent within three months after the
effective date of this article, and the trustees of every employee
welfare fund commencing to do business in this state after the
effective date of this article shall register such fund with the
superintendent within three months after so commencing, such regis-
tration shall be in such form and shall contain such information
relating to the organization, operation, and affairs of such fund
as may be described by the superintendent.

63. Examination; authorization and requirement

1. The superintendent may examine into the affairs of any
employee welfare fund as he deems it necessary, and he shall do so
at least once in every five years.

2. The trustees of every employee welfare fund shall be re-
ponsible for the maintenance of accurate records of its books and
accounts in conformance with generally accepted accounting principles.

64. Same wording as Section 1--37-e.
65. Same wording as Section 1--37-f.
66. Same wording as Section 1--37-g.
67. Same wording as Section 1--37-h.
68. Same wording as Section 1--37-i.
69. Same wording as Section 1--37-j.
70. Same wording as Section 1--37-k.
71. Same wording as Section 1--37-l.
72. Same wording as Section 1--37-m.
73. Construction

Nothing in this article shall be construed to relieve the trustees of any employee welfare fund from compliance with any other provision of this Chapter or any other applicable laws of this state.

3. Subdivision three of section twenty-eight of the insurance law, as added by Chapter two hundred seventy-eight of the laws of nineteen hundred fifty-four, is hereby repealed.

4. The sum of seventy-five thousand dollars ($75,000), or so much thereof as may be necessary is hereby appropriated to the insurance department from any moneys in the state treasury in the general fund to the credit of the state purposes fund, not otherwise appropriated, for the purposes set forth in this act, including personal service and other necessary expenses payable on the audit and warrant of the comptroller on vouchers certified or approved by the superintendent of insurance in the manner prescribed by law.

5. The sum of twenty-five thousand dollars ($25,000), or so much thereof as may be necessary is hereby appropriated to the banking department from any moneys in the state purposes fund, not otherwise appropriated, for the purposes set forth in this act, including personal service and other necessary expenses, payable on the audit and warrant of the comptroller on vouchers certified or approved by the superintendent of banks in the manner prescribed by law.
6. This act shall take effect September first, nineteen hundred fifty-six, except that the appropriations made by sections four and five of this act shall take effect April first, nineteen hundred fifty-six."

(Chapter 774, Section 2, McKinney's 1956 Session Laws of New York, p. 984.)