

(f) an independent, qualified appraiser determines the fair market value of the rental of the Property, as of August 1, 2003, and annually thereafter;

(g) the I/F monitors compliance with the terms of the New Lease throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance by the Employer and/or the Owners of the Employer of all other obligations of the Employer under the terms of such lease;

(h) the Plan incurs no fees, costs, commissions, or other charges or expenses as a result of its participation in the transactions which are the subject of this exemption, other than the fee payable to the I/F for services rendered to the Plan and the fee payable to the independent, qualified appraiser for the annual appraisal of the fair market value of the Property;

(i) the I/F ensures that the terms and conditions described herein are at all times satisfied;

(j) the I/F will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this exemption in the **Federal Register**, and subject to the termination of the New Lease, as provided in section II(k), below, of this exemption, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which the I/F determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and

(k) notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice, which date shall be at least six (6) months after the date such written notice is given to the Employer (but in no event extending the New Lease beyond the then current lease term).

Effective Date: The exemption will be effective August 1, 2003.

Written Comments

In the Notice of Proposed Exemption (the Notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within forty-five (45) days of the date of the publication of the Notice in the **Federal Register** on September 5, 2003. All comments and requests for a hearing were due by October 20, 2003.

The Department received, on October 20, 2003, a letter from the applicant, informing the Department of a correction to the language of the exemption, as proposed. In this regard, in the Notice on page 52796, Part I, lines 16–17, the reference to “Deseret News Publishing Corporation” should be revised to read “Deseret News Publishing Company.” The Department acknowledges the correction and in the final exemption has amended the language of Part I, as requested in the October 20, 2003, letter from the applicant.

In addition, on October 20, 2003, the Department received a comment letter, from the Executive Board and Chief Steward of the Graphic Communications International Union, Local 28N (the Local). Accompanying this comment letter was a petition signed by 153 individuals who are employees of the Employer and members of the Local. In this regard, the commentators requested denial of the exemption. In support of this request, the commentators state that: (a) The Employer has not maintained the premises of the Property, because upon completion of construction on a new building, the Employer wants to “walk away” leaving “an almost worthless piece of property” in the Plan; (b) all employees will be adversely affected by the grant of the exemption; (c) the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer; and (d) a hearing should be scheduled, in the event negotiations between the union(s) and the Employer break down.

At the close of the comment period, the Department forwarded a copy of the comment letter to the applicant and requested that the applicant respond in writing to the issues raised by the commentators.

With regard to the commentators' assertion that the Employer has not maintained the Property, the applicant points out that the Property is a warehouse constructed of cement block. As such, the greatest expense involved in maintaining the Property has been that of maintaining the roof. In this regard, it is represented that the Employer has expended substantial sums in maintaining the Property. For example, since June of 2001, the Employer has paid a total of \$112,809.67 to replace over two-thirds (2/3) of the roof (\$49,891 paid on June 30, 2001, and an additional \$62,918.67 paid during 2002). It is represented that the Employer also pays for janitorial services for the Property two (2) times per week.

In response to the comment that the Property is “an almost worthless piece of property,” the applicant points out that the fair market value of the Property is \$1,700,000, as evidenced by the written appraisal of the independent appraiser selected by the I/F. In addition, the applicant points out that the Property has increased in value over the period from 1971 to 2003 from \$259,000 to \$1,700,000, being an increase in value of over 650% (or an average of slightly over 20% per year over the term of 32 years). In addition to appreciation in the value of the Property, the Employer, as the tenant, has made fair market value rental payments to the Plan and also paid for the taxes, liability and casualty insurance premiums, maintenance, and repairs.

In response to the comment that all employees will be adversely affected by the grant of the exemption, the applicant represents that the Plan is a defined benefit pension plan under which the participant benefits are calculated without regard to the value of the underlying plan assets as they exist from time to time. Accordingly, it is represented by the applicant that benefits of Plan participants are not adversely affected by approval of the exemption request. In this regard, the applicant points out that the exemption deals with the leasing of the Property under the terms of the New Lease between the Employer and the Plan which includes various provisions which are favorable to the Plan, including but not limited to the following:

(a) the Employer, as the tenant, is required to pay fair market value lease payments to the Plan, redetermined annually by independent appraisal (in addition to taxes, insurance and other expenses); and

(b) upon six months written notice to the Employer, the Plan may unilaterally terminate the New Lease for any reason. The applicant notes that the Employer does not have the right to terminate the New Lease prior to the end of the primary three (3) year term. Further, the applicant points out that the exemption includes a condition requiring the I/F, within fifteen (15) days following publication of the grant of the exemption in the **Federal Register**, to place the Property on the open market so that the Plan has adequate time (in essence, almost a three (3) year period) to find a buyer for the Property.

In the opinion of the applicant, the comment that the exemption should not be allowed without proper and meaningful negotiations between the union(s) and the Employer appears to