

U.S. Department of Labor

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



Reply to the Attention of:

OPINION 81-21A
3(1), 104, 403(a), 404(a)(1), 514(a)

FEB 9 1981

Steven L. Ross, Esq.
Robins, Davis & Lyons
33 South Fifth Street
Minneapolis, Minnesota 55402

Dear Mr. Ross:

This is in response to your request for an advisory opinion, dated April 10, 1979, as supplemented by your submissions of September 14, 1979, and August 20, 1980, on behalf of the St. Paul Sheet Metal Journeymen & Apprentice Training Fund (the Trust) and the St. Paul Local Joint Sheet Metal Apprenticeship Committee (the Committee). In your original request you asked whether the Trust and the Committee may continue to operate in the manner outlined below. As stated in your submission of September 14, 1979, of particular concern in this regard is the requirement in section 403(a) of ERISA that, in general, the assets of an employee benefit plan shall be held in trust by one or more trustees. You also inquire about reporting and disclosure requirements under ERISA for the two entities.

Your first letter contains the following relevant facts and representations. The Committee, which is not a trust, was organized in 1937 by Local Union No. 76, Sheet Metal Workers International Association of St. Paul, Minnesota (the Local) and area sheet metal employers in order to create an apprenticeship program for the sheet metal industry in the St. Paul area. Prior to 1971, the Committee was funded entirely by the Local. Since 1971, funding has been obtained through the collective bargaining process. A collective bargaining agreement between the Local and the Sheet Metal, Air Conditioning, Roofing Contractors Association of Minnesota, Inc., Twin Cities Division (SMARCA), in effect for the period May 1, 1978, to April 30, 1980, provides for joint union and employer representation on the Committee and provides further that all duly qualified apprentices shall be under the supervision and control of the Committee.

The Trust, created in 1971 pursuant to a collective bargaining agreement between SMARCA and the Local, was established in order to provide a training and educational program for apprentice sheet metal workers and, in the further discretion of the Trustees, for journeymen in the industry. The Trust, however, fulfills its obligations with respect to apprentices by funding the activities of the Committee. Under this arrangement, funds are transferred from the Trust to the Committee and are, thereafter, subject to the control of the Committee.

Section 3(1) of ERISA defines an employee welfare benefit plan as including any plan, fund or program, established or maintained by an employer, an employee organization, or both, for the purpose of providing apprenticeship or other training benefits for its participants. The Committee was established by an employee organization and is maintained by an employer and employee organization under a collective bargaining agreement for that purpose. The Trust also was established and is maintained for that purpose, pursuant to a collective bargaining agreement. The arrangement according to which the Trust and the Committee are organized and carry out their responsibilities would, therefore, fall within the definition of employee welfare benefit plan.

Employee welfare benefit plans covered by Title I of ERISA are subject to the reporting and disclosure requirements of part 1 of Title I. However, in 29 CFR 2520.104-22 (45 FR 15527, March 11, 1980) the Department has provided an exemption from those requirements, under specified conditions, for apprenticeship and other training plans. A copy of that document is enclosed for your convenience.

It is the Department's opinion that the present arrangement, whereby funds are transferred from the Trust to a separate non-trust account for use by the Committee, fails to satisfy the requirement of section 403(a) of ERISA that, in general, all assets of an employee benefit plan shall be held in trust by one or more trustees.

You have asked whether "any problems" are cured if the Committee were "merged" into the Trust. Such a "merger" would not affect our conclusion that any plan assets involved in this matter must be held in trust by plan trustees. If the effect of the merger, however, would be to create a single trust account containing all of the funds now held by the Trust as well as those funds currently held by the Committee in a separate non-trust account, the trust requirement of ERISA section 403(a) would appear to be satisfied.¹

You also ask whether our conclusions are affected by the fact that the Committee operates pursuant to regulation of the state of Minnesota, under the Minnesota Apprenticeship Act (Chapter 178, Minnesota Statutes). The stated purposes of that Act are, among other things, to establish a program of voluntary apprenticeship under approved apprentice agreements, to establish standards for apprentice training, and to establish an apprenticeship advisory council

¹ It should be noted that to the extent that funds placed into the trust are contributed pursuant to plan documents which limit the use to differing purposes, e.g., for the training of apprentices or for the improvement of skills of journeymen, section 404(a)(1) of ERISA would not allow the use of funds contributed to the trust for one limited purpose to be used for another purpose.

and apprenticeship committees to assist in carrying out the purposes of the Act. Our conclusions are not affected thereby.²

According to your submission of August 20, 1980, the members of the Committee and the trustees of the Trust are considering a plan to amend the underlying documents of the Committee and the Trust so as to remove from the Committee all responsibility for the investment, handling, and use of funds. All responsibility over financial matters involving the Trust and the Committee would be placed in the hands of the trustees of the Trust, and the Committee would act as advisor to the Trust with respect to financial matters. We assume, that, under this new arrangement, the Trust would no longer transfer any of its funds to the Committee. Provided that the new arrangement is implemented as proposed and our assumption concerning the new arrangement is correct, it appears to the Department that the arrangement would not be inconsistent with the trust requirements of section 403(a) of ERISA.

Although, in your letter of April 10, 1979, you requested a conference in the event of an unfavorable opinion from the Department, it appears that a conference is not necessary in light of your letter of August 20, 1980 and the conclusions expressed above.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of that procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator, Pension and Welfare Benefit Programs

² You may wish to consider, in this regard, section 514(a) of ERISA, which provides, with certain exceptions, that the provisions of Title of ERISA shall supersede any and all state laws insofar as they relate to employee benefit plans covered by Title I.