

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION 81-49A  
3(1)

MAY 28 1981

Mr. Robert Matisoff  
O'Donoghue & O'Donoghue  
1912 Sunderland Place, N.W.  
Washington, D.C. 20036

Dear Mr. Matisoff:

This is in response to your letter of August 7, 1978, requesting an advisory opinion regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the National Mechanical Equipment Service and Maintenance Education and Training Trust Fund (the Trust) is an employee welfare benefit plan under section 3(1) of ERISA.

You advise that the Trust was established pursuant to Article XX of the National Mechanical Equipment Service and Maintenance Agreement of August 16, 1975 (the Agreement), a collectively bargained agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, and the Mechanical Contractor's Association of America, Inc. In Article XX, the parties agreed to establish a fund to "develop or assist in the development of programs for educating and training journeymen, apprentices and tradesmen in the Mechanical Equipment Service and Maintenance Industry." There are eight trustees with half named by each of the parties to the Agreement. You further advise that, on June 23, 1977, the trustees approved a set of rules pursuant to authority granted in the Agreement regarding the disbursement of funds which limit the Trust's activities to making monetary grants to local training and apprenticeship plans jointly administered by employers and union locals. The Agreement provides for funding of the Trust through employer contributions only. The terms of the Agreement provide, among other things, that (1) the Trust is established for the exclusive benefit of employees, and (2) the trustees are authorized to invest such portion of the trust assets as are not required for current expenditure in suitable investments, including bonds and common stocks.

Section 3(1) of ERISA defines an employee welfare benefit plan as including:

... any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan,

fund, or program was established or is maintained for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A)... apprenticeship or other training programs ....

Since the Trust was established pursuant to a collective bargaining agreement, it was established both by employers and by an employee organization. The purpose of the Trust is to develop or assist in developing apprenticeship and other training programs for the benefit of employees of such employers. Therefore, it is the position of the Department of Labor that the National Mechanical Equipment Service and Maintenance Education and Training Trust Fund is an employee welfare benefit plan within the meaning of section 3(1) of ERISA, and that it is not excluded from such definition as an "industry advancement program" within the meaning of regulation 29 C.F.R. §2510.3-1(i), to which you refer in your letter.

The fact that the trustees have elected to implement the Trust by providing funds to other entities that perform the actual training functions, rather than by some other means, does not, in our view, require or warrant a different result. Although you assert that the Trust is a mere conduit, we do not agree with that characterization. The trustees have broad discretionary authority not only with respect to investment of funds not required for current expenditure but also (pursuant to the rules that the trustees have adopted and which are themselves the result of the exercise of discretionary authority) with respect to the selection of the training programs to be funded.

We also disagree with your argument that the Trust has no employee "participants". We are of the opinion that the employees who are or may become eligible to receive the benefits of the above-mentioned training programs are "participants" in the Trust within the definition contained in section 3(7) of ERISA.

On June 12, 1979, the Department issued regulation 29 C.F.R. §2520.104-22 (copy enclosed), which provides a limited exemption from reporting and disclosure requirements for apprenticeship and other training plans.

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

Sincerely,

Ian D. Lanoff  
Administrator of Pension and Welfare Benefit Programs

Enclosure