

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington, D.C. 20210



DEC 15 1986

86-27A
Sec.

Ms. Cheryl A. French
Hafer, Price, Rinehart & Schwerin
2505 Third Avenue
Suite 309
Seattle, Washington 98121

Dear Ms. French:

This is in reply to your request for an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the trust (the Trust) established in accordance with the Labor Management Cooperation Act of 1978 (LMCA) by the United Association of Journeyman & Apprentices of the Plumbing and Pipefitting Industry, Local Union 598, AFL-CIO (Local 598) and the Southwestern Washington Mechanical Contractors Association (SWMCA) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA. You also ask whether the planned functions of the Trust are allowed by the LMCA.

You advise that on or about January 9, 1985, SWMCA and Local 598 entered into a trust agreement which you submitted. Article II of the trust agreement states that the purpose of the Trust is to engage in activities permitted by section 302 of the Labor Management Relations Act (the LMRA) and the LMCA.¹ The Trust is administered by six trustees, half appointed by Local 598 and half by SWMCA. You further advise that the proposed activities of the Trust are to:

1. Provide information programs for the general public on topics such as choosing skilled craftsmen and contractors.
2. Conduct education programs, including management training seminars, programs to upgrade journeymen's skills in specialty areas and in-house training programs. Provide scholarships for employees and contractors to relevant classes of training programs.
3. Sponsor informational publications and commercial advertisements which promote the industry. These would target the general public and others influential in the construction

¹ The LMCA amended the LMRA by adding sections 203, 205A and 302(c)(9) thereof.

industry, such as architects, engineers and contractors. Also serve as a representative of the mechanical contracting industry to organizations such as the Associated General Contractors, engineering societies and other industry organizations.

4. Maintain an information center with information on current and proposed legislation and regulations relevant to the industry. Represent industry interests before legislative and regulatory bodies in areas such as labor-management relations, building codes, licensing and contractor regulations.
5. Promote good labor-management relations by sponsoring functions such as labor-management banquets, picnics and award ceremonies.
6. Sponsor community service programs, such as home-energy efficiency checks.
7. Fund research, directly or through contributions to other organizations, on topics such as industry growth, manpower trends, and new technology.
8. Sponsor work place safety programs.
9. Recruit high school students and others into the industry.
10. Sponsor educational and planning programs concerning equal employment opportunity.
11. Promote communication among union members and contractors by publishing a newsletter.

Section 3(1) of ERISA defines the term “employee welfare benefit plan” to include:

... 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) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions). (Emphasis supplied.)

Based on the information you submitted, the activities of the Trust include a program described in ERISA section 3(1). Accordingly, it is the view of the Department of Labor (the Department) that the Trust constitutes an employee welfare benefit plan subject to the provisions of title I, including the trust and fiduciary provisions thereof.²

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.

We understand that the Department of Justice has responded to you regarding the status of the Trust under the LMCA.

Sincerely,

Elliot I. Daniel
Associate Director for Regulations and Interpretations

Enclosure

² It is the Department's position that section 3(1)(B) of ERISA does not mean that every arrangement described in section 302(c) of the LMRA constitutes an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Only those arrangements described in section 302(c) of the LMRA that provide benefits to participants or their beneficiaries would constitute employee welfare benefit plans under ERISA. See Opinion 84-40A (issued October 26, 1984, copy enclosed).