



December 16, 1993

Mr. M. Lee Price
Hader, Price, Rinehart & Robblee
. 1620 Metropolitan Park Building
1100 Olive Way
Seattle, Washington 98101

93-34A
ERISA SEC.
3(1)

Dear Mr. Price:

This is in reply to your request for an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Labor-Management Cooperation Trust (the Trust), which was established in accordance with the Labor Management Cooperation Act of 1978 (LCMA) by the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union 598, AFL-CIO (Local 598) and the employers that are signatories to the Local 598 Collective Bargaining Agreement, as revised December 1991, is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. You ask that we consider this question in light of the terms of the trust agreement for the Trust, as revised December 1991 (the Revised Trust Agreement), and the following additional representations.

The Revised Trust Agreement provides in Article II that "[t]he purpose of this Trust is to engage in activities permitted by the Act." The term "Act" is further defined in Article I, Section 1.5 as follows:

The word "Act" refers to Section 302 of the Labor Management Relations Act of 1947 and to the Labor Management Cooperation Act of 1978. The word "Act" includes amendments to either statute.

You represent that the Trust was the subject of Advisory Opinion 86-27A (issued December 15, 1986) which concluded that "the activities of the Trust include a program described in ERISA section 3(1)" - i.e., apprenticeship or other training programs - and, therefore, that the Trust constituted an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. You further represent that the Trust was essentially inactive during the period following the issuance of Advisory Opinion 86-27A, but was revived in December of 1991. At that time the trustees of the Trust concluded that it was never their intention to perform two of the activities proposed in the material submitted in the request for Advisory Opinion 86-27.

Specifically, you represent that the Trust did not intend to recruit high school students and others into the industry or to conduct or provide education programs, management training seminars, programs to upgrade journeymen's skills, in-house training programs, or scholarships for employees and contractors.

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan" to include:

. . . any plan, fund, or program which was hereto-fore 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 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).

The Revised Trust Agreement states that its purpose is to provide benefits described in section 302 of the Labor Management Relations Act of 1947. Nothing in the Revised Trust Agreement excludes, or otherwise prohibits, the Trust from providing benefits described in section 302(c) of the Act, which are specifically included in the definition of an employee welfare benefit plan. Accordingly, although you represent that the Trust has no present intention of providing apprenticeship or other training or any other benefit described in section 3(1) of ERISA, the governing instruments of the Plan indicate that the Trust is established for purposes that include the provision of such benefits. The Department is therefore not able to conclude that the Trust no longer constitutes an employee welfare benefit plan within the meaning of section 3(1).

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

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations