



April 20, 1994

Mr. Emil Steck, Jr.
The Park Center Building
221 East Walnut Street, Suite 236
Pasadena, California 91101

94-14A
ERISA SECTION
3(1)

Dear Mr. Steck:

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 Heat and Frost Insulators and Asbestos Workers Joint Apprenticeship Trust (the JAT) or the Heat and Frost Insulators and Asbestos Workers Maintenance and Hazardous Waste Agreements Trust (the MHWAT) are employee welfare benefit plans within the meaning of section 3(1) of Title I of ERISA, and if so, whether any ERISA reporting requirements are applicable to the plans.

You advise that the JAT and the MHWAT have been established under collective bargaining agreements between the Western Insulation Contractors Association, Southern California Chapter (the Association) and the Heat and Frost Insulators and Asbestos Workers Local Union No. 5 (the Local). The JAT provides apprenticeship training and work in the insulation industry with the object of qualifying apprentices as Mechanics. The MHWAT provides services for obtaining immigration clearances, federally mandated medical examinations for employees who may be exposed to asbestos fibers, and also provides training and certification of employees in hazardous materials and asbestos removal and abatement. The trust assets of both the JAT and the MHWAT are derived exclusively from employer contributions, and all benefits offered by the JAT and MHWAT are paid out of trust funds.

The term "employee welfare benefit plan" is defined in section 3(1) of Title I of ERISA 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 insurance to provide such pensions).

To clarify the definition of an employee welfare benefit plan, the Department of Labor (the Department) issued 29 CFR §2510.3-1 which describes certain arrangements that do not constitute employee welfare benefit plans within the meaning of section 3(1). Specifically, regulation section 2510.3-1 provides, in pertinent part:

(b) Payroll practices. For purposes of title I of [ERISA] and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include--

(3) Payment of compensation, out of the employer's general assets, on account of periods of time during which the employee, although physically and mentally able to perform his or her duties and not absent for medical reasons (such as pregnancy, a physical examination or psychiatric treatment) performs no duties; for example-

(iv) Payment of compensation on account of periods of time during which an employee performs little or no productive work while engaged in training (whether or not subsidized in whole or in part by Federal, State, or local government funds)....

(i) Industry advancement programs. For purposes of title I of [ERISA] and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a program maintained by an employer or by a group or association of employers, which has no employee participants and does not provide benefits to employees or their dependents, regardless of whether the program serves as a conduit through which funds or other assets are channeled to employee benefit plans covered under title I of [ERISA].

(k) Unfunded scholarship programs. For purposes of title I of [ERISA] and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a scholarship program, including a tuition and education expense refund program, under which payments are made solely from the general assets of an employer or employee organization.

Both the JAT and the MHWAT provide benefits -- i.e., apprenticeship or other training -- described in section 3(1) of Title I of ERISA. Further, based on the information you submitted, the JAT or the MHWAT do not meet the criteria set forth in regulation subsection 2510.3-1(b)(3)(iv) or 2510.3-1(i) or (k) for arrangements that are payroll practices, industry advancement programs, or unfunded scholarship programs that do not constitute employee welfare benefit plans within the meaning of section 3(1).

The benefits paid under the JAT and the MHWAT are not paid from the general assets of an employer or an employee organization, as described in subsections 2510.3-1(b)(3)(iv) and 2510.3-1(k). Moreover, neither the JAT nor the MHWAT constitutes an industry advancement program pursuant to subsection 2510.3-1(i) because both programs provide a benefit -- training -- to employee/participants.

Accordingly, it is the position of the Department that the JAT and the MHWAT both constitute employee welfare benefits plans within the meaning of section 3(1) and, thus, are covered by Title I of ERISA. As a result, the JAT and the MHWAT are subject to the reporting and disclosure requirements of ERISA as set forth at 29 CFR sections 2520.101-1 through 2510.104(b)(30). We note, however, that 29 CFR section 2520.104-22 provides an exemption from ERISA's reporting and disclosure requirements for plans that are in compliance with the requirements of that section.

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 an advisory opinion.

Sincerely,

ROBERT J. DOYLE
Director of Regulations
and Interpretations