



September 16, 1994

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

94-33A
ERISA SECTION 3(1)

Dear Mr. Price:

This is in reply to your latest request for an 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 Committee 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 signatory 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 the question in light of the terms of the trust agreement for the Trust, as amended June 1, 1994 (the Amended Agreement).

You advise that the Trust was the subject of Opinion 86-27A (issued December 15, 1986) and Opinion 93-34A (issued December 18, 1993). Opinion 86-27A 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, the Trust constituted an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. You further advise that the Trust was essentially inactive after the issuance of Opinion 86-27A, but was revived in December of 1991, at which time the trustees of the Trust concluded that it was never their intention 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, two of the activities proposed in the material submitted in the request for Opinion 86-27A. You requested a second advisory opinion based on these additional facts, and, in response, our Opinion 93-34A stated that the Department of Labor (the Department) was not able to conclude that the Trust no longer constituted an employee welfare benefit plan within the meaning of section 3(1). Your current request asks us to reconsider whether the Trust would still be an employee welfare benefit plan based on the Amended Agreement for the Trust and the prior representations. The trust agreement for the Trust, as amended June 1, 1994, provides in Article II:

The Trust Fund shall be used solely, as determined by the Trustees, for purposes set forth in Section 6(b) of the Labor Management Cooperation Act of 1978 including improving communication between representatives of labor and management; providing workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness and elevating the standards of work in the construction industry; assisting workers and employers in solving problems of material concern not susceptible to resolution within the collective bargaining process; studying and exploring ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the construction industry; enhance the involvement of workers in making decisions that affect their working lives; and to explore and improve working relationships between workers and managers; and the Trust Fund shall further provide the means for financing the reasonable and necessary expenses actually incurred by the Trustees and all costs incurred in connection with the establishment, operation and administration of the Trust Fund, in accordance with this Agreement and Declaration of Trust.

Section 3(1) of Title I 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).

Based on the information you now submit, it does not appear that the Trust provides any benefit described in section 3(1) of ERISA. First, the Trust does not provide any benefit included in section 3(1)(A). Further, the Trust does not provide any other benefit described in section 302(c) of the Labor Management Relations Act of 1947 (the LMRA). It is the Department's position that section 3(1)(B) of ERISA does not incorporate as a covered benefit every arrangement described in section 302(c) of the LMRA. In the Department's regulation section 29 C.F.R. 2510.3-1(a), the Department clarified the definition of "employee welfare benefit plan." With regard to benefits described in section 302(c) of the LMRA, regulation § 2510.3-1(a) provides:

(3) Section 302(c) of the LMRA lists exceptions to the restrictions contained in subsections (a) and (b) of that section on payments and loans made by an employer to individuals and groups representing employees of that employer. Of these exceptions, only those contained in paragraphs (5), (6), (7) and (8) describe benefits provided through employee benefit plans. Moreover, only paragraph (6) describes benefits not described in section 3(1)(A) of [ERISA]. The benefits described in section 302(c)(6) of the LMRA but not in section 3(1)(A) of [ERISA] are ". . . holiday, severance or similar benefits."

Thus, the effect of section 3(1)(B) of [ERISA] is to include within the definition of "welfare plan" those plans which provide holiday and severance benefits, and benefits which are similar (for example, benefits which are in substance severance benefits, although not so characterized).

Although this regulation was issued prior to the amendment of section 302(c) of the LMRA to add subsection 302(c)(9), the principle remains fully applicable. Only those arrangements described in section 302(c) of the LMRA that provide benefits to participants and their beneficiaries constitute employee welfare benefit plans. The Trust does not provide, in the Department's view, any "benefit" to participants or their beneficiaries within the meaning of Title I of ERISA. Accordingly, the Trust is not covered under Title I of ERISA.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

¹ There is also no indication in the submission that the Trust is an employee pension benefit plan.