

U.S. Department of Labor

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



June 16, 1995

95-16A

Mr. Steven R. Reid
Reid and Riege, P.C.
One State Street
Hartford, Connecticut 06103-3185

Dear Mr. Reid:

This is in reply to your letter requesting an advisory opinion regarding the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Connecticut Labor Management Cooperation Committee Trust Fund (CLMCC) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You represent that the Connecticut Chapter of the National Electrical Contractors Association, Inc. (the Association) and the International Brotherhood of Electrical Workers Locals No. 35 of Hartford, 90 of New Haven, 488 of Bridgeport and 208 of Norwalk (the Unions) entered into collective bargaining agreements providing for the creation of the CLMCC. The Association represents employers in the construction industry in collective bargaining with labor organizations. The Association and the Unions adopted an Agreement and Declaration of Trust (the Trust Agreement) establishing the CLMCC effective as of March 1, 1994. The Trust created by this agreement is to be funded by contributions under the collective bargaining agreements at the rate of \$.10 per hour worked by covered employees. The CLMCC is designed to function solely as a Labor Management Cooperation Committee, within the meaning of section 6(b) of the Labor Management Cooperation Act of 1978, 29 U.S.C. §175(a) and section 302(c)(9) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. §186(c)(9). The purposes and objectives of the CLMCC are set forth in detail in the Trust Agreement as follows:

Section 1.2 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 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 submitted, it does not appear that the CLMCC provides any benefit described in section 3(1) of ERISA. It is the Department's position that section 3(1)(B) of ERISA does not cover every arrangement described in section 302(c) of the LMRA. In regulation section 29 C.F.R. 2510.3-1(a), the Department clarified the definition of an "employee welfare benefit plan," with regard to benefits described in section 302(c) of the LMRA, by stating:

(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 the 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 the Act. The benefits described in section 302(c)(6) of the LMRA but not in section 3(1)(A) of the Act are ". . . holiday, severance or similar benefits." Thus, the effect of section 3(1)(B) of the Act 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 adopted prior to the amendment of section 302(c) of the LMRA to add subsection 302(c)(9), the principle it articulates remains fully applicable. Only those arrangements described in section 302(c) of the LMRA that provide benefits to participants and their beneficiaries would constitute employee welfare benefit plans. We assume, based on the stated purposes and objectives of the CLMCC, that the CLMCC will not establish any program that would provide any "benefit" to participants or their beneficiaries within the meaning of Title I of ERISA. In accordance with that assumption, it is the Department's view that the CLMCC is not an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. Moreover, the CLMCC is not an employee pension benefit plan because it does not provide any benefits specified in section 3(2) of Title I of ERISA. Accordingly, the CLMCC is not covered under Title I of ERISA.

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