U.S. Department of Labor Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210

DEC 5 1985 85-41A

Mr. Gerald V. Dandeneau
Suite 4, North 10
One Huntington Quadrangle
Melville, NY 11747

Re: United Brotherhood of Carpenters and Joiners of America, District Council of Nassau County and Vicinity, Pension Fund (Plan)
Identification Number: F-3050A

Dear Mr. Dandeneau:

This letter responds to your request for an advisory opinion under the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974 (ERISA) concerning the term of appointment for a union-designated trustee of the above referenced Plan.

You represent that an issue has arisen regarding whether certain language in the Agreement and Declaration of Trust of the Plan provides for a trustee's appointment for life, in the absence of fiduciary misfeasance. You indicate that the union which appointed a particular trustee has designated a successor trustee, but the present trustee refuses to resign on the basis that he has a lifetime appointment under the provisions of the trust instrument. Assuming such a construction of the trust instrument, you request confirmation of your view that an unlimited trustee term is contrary to ERISA.

Section 5 of ERISA Procedure 76-1 (41 FR 36281, August 27, 1976) provides that advisory opinions ordinarily will not be issued regarding problems of an inherently factual nature or on the form or effect in operation of a plan or particular provisions thereof. Interpretations of plan documents normally fall within those categories. Therefore, we wish to emphasize at the outset that the response of the Department of Labor in this case should not be construed in any manner as a basis for a particular interpretation of the provisions of the trust instrument that are described in your letter. Rather, the Department's response is based solely upon the assumption you have posited, i.e., that plan provisions permit a trustee's appointment for life.

The fiduciary responsibility provisions of title I of ERISA do not specifically address the term of office of a plan trustee. However, the Department is generally of the view that a lifetime term of appointment for a pension fund trustee would be inconsistent with ERISA's fiduciary responsibility provisions. In enacting those provisions, Congress concluded that employee

benefit plans should be administered in accordance with high standards of loyalty and prudence and that the conduct of fiduciaries should be subject to effective oversight on behalf of plan participants and beneficiaries. These broad objectives are underpinned by prohibited transaction rules which, among other things, permit fiduciary and other services to be provided to a plan only under contracts or arrangements that are reasonable. In this regard, Congress indicated in the Conference Report on ERISA that they expected that service arrangements with parties in interest, including fiduciaries, would allow the plan to terminate the services on reasonably short notice under the circumstances so the plan would not become locked into an arrangement that may become disadvantageous. (H.R. Rep. No. 93-1280, at 312).

The Department believes the principles outlined above may be frustrated where a plan sponsor that appoints a trustee can appoint a successor trustee only upon successfully bringing such charges as misfeasance or incapacity to perform the duties of the position. Under section 404(a)(1)(D) of ERISA, fiduciaries are required to act in accordance with the plan documents and instruments, but only insofar as they are consistent with titles I and IV of ERISA. Thus, in the Department's view, the fiduciaries of a plan cannot lawfully rely upon a plan provision to the extent it would purport to establish a trustee's term of appointment as lifetime.

We do not intend to suggest that trustees should serve only at will. Limited terms, such as for a specified number of years, that are reasonable under the facts and circumstances of the plan generally would be consistent with ERISA.

Finally, it should be noted that this letter addresses only the fiduciary responsibility provisions of title I of ERISA. We offer no comments regarding any other law, including section 302(c) of the Labor Management Relations Act, 1947.

This letter is an advisory opinion under ERISA Procedure 76-1. Section 10 of the Procedure describes the effect of advisory opinions.

Sincerely,

Elliot I. Daniel
Assistant Administrator for Regulations and Interpretations