



JAN 30 1991

Mr. G.A. Finch
Querrey & Harrow, Ltd.
La Salle Bank Building
Suite 3600
135 South La Salle Street
Chicago, Illinois 60603-4784

91-08A
ERISA SEC.
3(1)

Dear Mr. Finch:

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 Construction Industry Service Corporation Trust (the CISCO Trust) is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA and whether the purposes and activities contemplated for the CISCO Trust are permissible under the Labor-Management Cooperation Act of 1978.

You advise that the CISCO Trust was created pursuant to a declaration of trust dated September 19, 1990. The declaration of trust states that the CISCO Trust was being established by the Construction Industry Service Corporation (CISCO), which is comprised of contractors associations and building and construction trade unions. The Executive Committee of the CISCO Board of Directors constitutes the Board of Trustees of the CISCO Trust. The By-Laws of CISCO provide in Article III, Section 1 for three classes of membership as follows:

- (a) Full membership in CISCO shall be open to Building and Construction Trades Unions and Contractors and their Associations that have a collective bargaining relationship. Full members shall have voting rights and shall pay full-member dues. Associate membership is available to all other interested parties, including, but not restricted to, owners, developers, governmental agencies, allied professionals, and academic institutions, which associate members shall have no voting rights and shall pay associate-member dues.
- (b) The Board of Directors may elect honorary members who shall have no voting rights and shall not be liable for payment of any dues. Qualification for honorary membership shall be any noteworthy contribution towards the purposes of CISCO which in the judgment of the Board of Directors may

warrant recognition by such election as an honorary member. An honorary membership may be terminated by the Board of Directors at any time.

Article VI, Section 2(c) of the By-Laws provides that the Board of Directors will have equal numbers of union and contractor representatives.

The declaration of trust provides the purpose of the CISCO Trust in Article II as follows:

This CISCO Trust shall function where allowable by law to:

- operate programs that will carry out the purposes set forth in the Labor-Management Cooperation Act of 1978 and are in furtherance of the tax-exempt purposes of the CISCO Trust as may be exercised by an organization exempt under Section 501(c)(6) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended;
- improve communication between workers, their representatives and employers in the construction industry;
- identify and expand work opportunities for workers and employers in construction;
- promote efficiency in operations and the economic competitiveness of the construction industry;
- provide a forum for discussion of matters of common concern to employers, workers and their representatives in the industry;
- acquire and operate a computer information system to collect and disseminate information relating to solicitations of bids for construction work;
- inform contractors associations and building and construction trade union representatives about projects, contracts, trends and events affecting the construction industry and establish a network for the exchange of information pertinent to the construction industry;
- provide information concerning all laws governing construction contracts including local, state and federal

laws governing wages, hours and work conditions on public works construction;

- sponsor the establishment and operation of local satellite labor and management cooperation committees and trusts throughout the greater Chicago area for one or more of the same purposes as the CISCO Trust has been established;
- sponsor seminars, conferences and meetings to expand the reach of CISCO Trust activities;
- promote the economic and community development of the construction industry;
- promote the general welfare of the construction industry and to promote its standards and specifications;
- sponsor institutional advertising, public relations programs and promotional activities for the good of the public and the construction industry;
- do and perform all other things and undertake such other projects as may be of benefit to the construction industry;
- obtain governmental and philanthropic assistance to CISCO Trust as warranted;
- operate CISCO Trust programs that enhance the ability of CISCO as an organization to accomplish the goals described in the Labor-Management Cooperation Act of 1978.

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 CISCO Trust is an employee welfare benefit plan within the meaning of section 3(1) of ERISA. The benefits described in section 3(1)(A) do not include any benefits provided by the CISCO Trust. Further, it is the Department's position that section 3(1)(B) of ERISA does not mean that every arrangement described in section 302(c) of the Labor Management Relations Act of 1947 (the LMRA) constitutes an employee welfare benefit plan within the meaning to section 3(1) of ERISA. In the Department's 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, regulation section 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 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 is the same. 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. The CISCO Trust does not provide, in the Department's view, any "benefit" to participants or their beneficiaries within the meaning of section 3(1) of title I of ERISA.

Accordingly, the CISCO Trust would not be covered under title I of ERISA since there is also no indication it is an employee pension benefit plan.

Regarding the second issue you raise, we note that the Labor-Management Cooperation Act of 1978 is not under the interpretive authority of this Office or the Department of Labor. Accordingly we are unable to comment on that portion of your request.

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