

U.S. Department of Labor

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



January 21, 1998

98-01A
ERISA SEC. 3(1)

Mr. Mark W. Kunst
O'Donoghue & O'Donoghue
4748 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Dear Mr. Kunst:

This is in reply to your request for an advisory opinion regarding the application of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Specifically, you ask whether, if the National Distribution Pipeline Industry Communications and Productivity Fund (the Pipeline Fund) provides a grant to a training fund, such action would render the Pipeline Fund an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that the Pipeline Fund was established pursuant to a trust agreement dated November 16, 1990, between the Distribution Contractors Association (the Association), the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO (the Union), and certain individual trustees for the purpose of creating a Labor Management Cooperation Committee under Section 6(b) of the Labor Management Cooperation Act of 1978 (LMCA) and Section 302(c)(9) of the Labor Management Relations Act of 1947 (LMRA). Article II of the trust agreement provides that the purposes of the Pipeline Fund are:

- a. to improve communications between representatives of labor and management;
- b. to provide a mechanism to improve the collective bargaining relationship between the parties with respect to matters of mutual concern;
- c. to study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the distribution pipeline industry;
- d. to engage in public relations and public education programs to promote the distribution pipeline industry;
- e. to engage in research and development programs concerning various aspects of the distribution pipeline industry, including, but not limited to, new technologies in distribution pipeline and related activities, occupational safety and health, labor relations; and new methods of improved production;
- f. to engage in any other lawful activities incidental or related to the accomplishment of these purposes and goals; and
- g. the Fund shall not engage in lobbying or publicizing legislation harmful to unions, and no money can be expended for subsidizing employers during a strike, for litigation against the Union, or for any purpose inimical to the interests of the Union.

You further advise that the Pipeline Fund is administered by six trustees; three appointed by the Association and three appointed by the Union. The Pipeline Fund is funded by contributions, based on hours worked, from employers who enter into collective bargaining agreements with the Union.

The trustees now propose to make a grant to the United Association Local 344 Joint Apprenticeship and Training Program (JATP) for the training of Union members in plastic pipe fusion. You represent that the trustees do not intend to have the grant continue on an annual basis, but that they do not foreclose the possibility of future grants to the same or other training funds. You further represent that the training fund will continue regardless of whether the grant is made, that the grant would only make up a small part of the training fund's annual budget, and that the trustees of the training fund will have ultimate control over how the grant is spent.

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).

Apprenticeship and other training programs are programs specifically identified in section 3(1)(A) as employee welfare benefit plans. We note that, based on the information you submitted, the trust agreement does not contain any limitation that would prevent the Pipeline Fund from providing benefits described in section 3(1) of ERISA. Although in the factual situation you describe the benefit described in section 3(1) is to be provided by another entity, benefits described in section 3(1) could be provided directly by the Pipeline Fund under the broad language of Article II, Section (f) of the trust agreement. For example, in your request for an advisory opinion, you state that the training to be provided by the JATP would enhance the competitiveness of the distribution pipeline industry and better equip members of the Union to engage in public relations and education programs promoting the use of plastic pipe in the distribution pipeline industry.

Accordingly, this letter does not address the general question of whether the Pipeline Fund is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA. However, it is the Department's view that the proposed grant will not, in and of itself, affect the status of the Pipeline Fund under Title I of ERISA. This view, however, is based on the specific representations set forth above, and may not hold for future grants made under other circumstances.

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,

John J. Canary
Chief, Division of Coverage, Reporting and Disclosure
Office of Regulations and Interpretations