

**U.S. Department of Labor**

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



December 30, 1998

98-09A  
ERISA SEC. 3(1)

Mr. Steven L. Ball  
Ball, Noga & Tanoury  
700 Ackerman Road, Suite 450  
Columbus, Ohio 43202

Dear Mr. Ball:

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 Ohio Laborers' District Council - Ohio Contractors' Association Cooperation and Education Trust (the Trust) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You advise that the Trust was formed on July 1, 1995, by the Ohio Laborers' District Council, Laborers' International Union of North America (the Union) and the Ohio Contractors' Association (the OCA). The OCA is an association of employers that employ laborers in the construction industry and represents its members for collective bargaining purposes. The Trust was created for the purpose of funding and facilitating matters of mutual concern to the members of the Union and the OCA and other employers who choose to participate in the Trust's activities. The Trust is funded by employer contributions at a rate set forth in the collective bargaining agreement. Half of the trustees on the Board of Trustees of the Trust are appointed by the OCA and half by the Union. The powers of the Trust are identified in Article II, Section 2.02 of the trust agreement effective July 1, 1995, as amended, as:

- a) To improve communications and engender cooperative and harmonious relations, between and among representatives of labor and management in the Industry and provide a forum for discussion of matters of mutual interest;
- b) To preserve, identify and expand work opportunities for Laborers and their Employers in the Industry;
- c) To facilitate the exchange of information between labor and management concerning projects, contracts, events, trends, and all other matters of mutual interest affecting the Industry;
- d) To promote efficiency in operations and the economic competitiveness of Laborers and Employers in the Industry;
- e) To promote the establishment and maintenance of quality training programs for Laborers employed or to be employed in the Industry;
- f) To establish and maintain, in order to assist competitiveness and economic development, mechanisms for monitoring and enforcing compliance with federal, state and local laws, rules, regulations and standards applicable to the Industry;
- g) To inform and petition governmental officials, in order to assist competitiveness and economic development, concerning issues affecting the Industry;

- h) To sponsor seminars, programs, conferences and meetings concerning issues affecting the Industry;
- i) To communicate with the public, in order to assist competitiveness and economic development, about issues of concern to the Industry;
- j) To engage in productive discussions with users of the Industry's services, architects, engineers, and other professionals whose decisions affect the labor and management in the Industry;
- k) To establish standards for practices within the Industry affecting labor and management;
- l) To promote organizational effectiveness;
- m) To cooperate with and participate in other organizations, trusts, programs and groups to achieve mutual interests relating to the Industry;
- n) To encourage free collective bargaining in the Industry;
- o) To solicit and otherwise raise funds to finance the Trust's activities from any and all lawful sources, including Employers, private foundations, the federal government, and state and local governments; and
- p) To otherwise implement the purposes and provisions of the Labor Management Cooperation Act of 1978 (Public Law 95-524, Sec.6).

On July 23, 1997, Article II, Section 2.02(e) was amended to provide:

- e) To promote the establishment, maintenance, and use of quality training and upgrading programs for Laborers employed or to be employed in the industry [sic], and to provide incentives for their enrollment in and successful completion of such programs.

You advise that the Trust is not authorized to provide training or other welfare benefits to eligible individuals and has no intention of providing such benefits. However, you indicate the Board of Trustees of the Trust may implement programs to provide nominal incentives, such as ball-caps or \$50 U.S. Savings Bonds (valued at \$25), to laborers who successfully participate in and complete training courses. The recipients of the incentives may or may not be employed by employers participating in the 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).

In regulation 29 C.F.R. § 2510.3-1, the Department identified certain arrangements which would not constitute employee welfare benefit plans within the meaning of section 3(1). In § 2510.3-1(a)(2), the Department stated that "only plans which provide benefits described in section 3(1)(A) of [ERISA] or in section 302(c) of the Labor-

Management Relations Act, 1947 (hereinafter ‘the LMRA’) (other than pensions on retirement or death) constitute welfare plans.” The Department subsequently stated that “section 3(1)(B) does not incorporate as a covered benefit every arrangement described in section 302(c) of the LMRA.” See Opinion 95-05A (issued May 18, 1995). In that opinion, the Department concluded that a labor-management cooperation committee described in section 302(c)(9) of the LMRA was not an employee welfare benefit plan within the meaning of section 3(1) of ERISA. In § 2510.3-1(g), the Department excluded from the definition of an employee welfare benefit plan “a program under which contributions are made to provide remembrances such as flowers, an obituary notice in a newspaper or a small gift on occasions such as the sickness, hospitalization, death or termination of employment of employees, or members of an employee organization, or members of their families.” Similarly, § 2510.3-1(d) excludes the distribution of gifts such as turkeys or hams by an employer to employees at holidays from the definition of an employee welfare benefit plan.

Based on the information you have provided, it does not appear that the Trust is an employee welfare benefit plan within the meaning of section 3(1). Although the Trust is established and maintained jointly by a group or association of employers (the OCA) and an employee organization (the Union), as currently maintained, it appears to be a labor-management cooperation committee described in section 302(c)(9) of the LMRA and none of the powers identified in the Trust as cited above appear to include providing any benefit described in section 3(1). It is also the Department’s opinion that the implementation of a program to provide nominal incentives, whose value is \$25 or less, to individuals who successfully complete or participate in training courses sponsored by entities other than the Trust would not affect the status of the Trust under Title I of ERISA. The nominal incentives such as you describe to be provided upon completion of a training course are similar to the remembrances described in regulation § 2510.3-1(g) or the holiday gifts described in regulation § 2510.3-1(d). The Department does not consider these nominal incentives to be a “benefit” provided to eligible individuals within the meaning of section 3(1) of ERISA. Moreover, the Trust is not an employee pension benefit plan because it does not provide any benefit described in section 3(2) of ERISA. Therefore, it is the position of the Department of Labor, based on the information you provided, that the Trust is not covered by 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,

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