

**NOTICE TO INTERESTED PERSONS  
REGARDING PROPOSED TRANSACTION INVOLVING THE  
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 450  
APPRENTICESHIP AND TRAINING FUND**

**Tentative Authorization**

1. You are hereby notified that a written submission, Application No. E-00763, has been filed on behalf of the International Union of Operating Engineers (the "Union" or the "Applicant") with the United States Department of Labor ("DOL") seeking authorization, pursuant to class prohibited transaction exemption 96-62 (PTE 96-62), 61 FR 39988, July 31, 1996, as amended by 67 FR 44622, July 3, 2002, for the "Proposed Transaction" described below:
  - (a) The proposed sale of certain unimproved real property located in Dayton, Liberty County, Texas (the "Property"), described below, owned by the International Union of Operating Engineers Local Union 450 Apprenticeship and Training Fund ("Training Fund") to the Union.
2. The submission has met the requirements for Tentative Authorization under PTE 96-62. The Department is now considering whether to provide Final Authorization.
3. If Final Authorization is granted by the DOL pursuant to PTE 96-62, the restrictions of Section 406(a)(1)(A) and 406(a)(1)(D) of the Employee Retirement Income Security Act of 1974, as amended (ERISA) shall not apply to the Proposed Transaction. The Proposed Transaction as herein described constitutes a prohibited transaction under Section 406(a)(1)(A) of ERISA, which prohibits the sale or exchange of any property between a plan and a party in interest; and Section 406(a)(1)(D) of ERISA, which prohibits the transfer to, or use by or for the benefit of a party in interest, of any assets of the plan.
4. Identifying Information:
  - (a) Name of Applicant: International Union of Operating Engineers
  - (b) Address of Applicant: 1125 Seventeenth Street, N.W., Washington, D.C. 20036
  - (c) The Plan's Employer Identification Number: 74-6052921
  - (d) Name and Address of Plan Administrator: Board of Trustees, IUOE Local 450 Apprenticeship and Training Fund, 13285 Highway 146 South, Dayton, Texas 77535.
5. The tentative authorization, if granted, will be subject to the following conditions:
  - (a) The Proposed Transaction will be a one-time transaction for cash;
  - (b) At the time of the Proposed Transaction, the Local 450 Training Fund receives the greater of:
    - (1) \$250,000, the fair market value as identified by the appraisal conducted by a independent appraiser ("QIA") on January 28, 2015; or

- (2) the fair market value of the Property as established by a qualified independent appraiser in an updated appraisal of such Property on the date of the sale.
- (c) The Local 450 Training Fund pays no fees, commissions or other expenses associated with the sale;
- (d) The terms and conditions of the Proposed Transaction are at least as favorable to the Training Fund as those obtainable in an arm's length transaction with an unrelated third party; and
- (e) The Local 450 Training Fund Trustees determine, among other things, that it is in the best interest of the Training Fund to proceed with the sale of the Property;
- (f) The Local 450 Training Fund Trustees will review and, if necessary, approve the methodology used in the appraisal that is being relied upon; and ensure that such methodology is applied by the qualified independent appraiser in determining the fair market value of the Property on the date of sale and will determine whether it is prudent to go forward with the proposed transaction.

## **Background**

6. The Training Fund is an apprenticeship training plan that is funded by a trust fund established through collective bargaining and administered by the Training Fund's Board of Trustees. The Union is an international labor union located in Washington, D.C. and it is a party in interest to the Training Fund. The Training Fund trains apprentices and journeymen operating engineers in the construction industry.
7. In August 2010, the Training Fund purchased 152.5 acres of a 305.076 tract for \$419,479 or \$2,750 per acre. At the same time, the International Union of Operating Engineers Local 450 ("Local 450") bought the adjoining tract in a separate transaction. The Training Fund built a school and facilities for training operating engineers, which operate today. The 55.748 acres that make up the Property in the Proposed Transaction were intended for possible future use by the Training Fund with the option to sell if an opportunity arose. The Property is located along the east line of Highway 146 in Dayton, Liberty County, Texas, 77535.
8. The Union intends to purchase the Property within 90 days following receipt of Final Authorization from the DOL. The Trustees of the Training Fund have determined that it is in the best interest of the Training Fund, and the Training Fund's Participants and Beneficiaries, to sell the property to the Union. The Trustees of the Training Fund and the Union have negotiated a tentative sale price of \$250,000 based on the fair market value determined by a qualified independent appraiser. At the same time as the Proposed Transaction, the Union plans to acquire approximately 55.4915 acres of land owned by Local 450 adjacent to the Property.
9. The Trustees of the Training Fund, upon advice of counsel, delegated the decision of whether or not to sell the property to the Union to the Management Trustees (those Trustees who are not members of the Union) and the Union Trustees recused themselves from any further discussions, deliberations and consideration of the Proposed Transaction. The Union Trustees of the Training Fund who recused themselves from the

consideration of the subject transaction are as follows: C. L. Wiggins, Business Manager; Fred Swift, President and Business Agent; and Tom Self, Financial Secretary and Business Agent.

### **National Training and Conference Center**

10. The intent of the Union is to build a National Training and Conference Center on the site for use by the Union and its affiliated Local Unions and related apprenticeship training funds. The Union plans to use the Property and the adjacent land to be purchased from Local 450 (a total of approximately 111 acres) to build a classroom and administrative building; a shop; and a dormitory/hotel of initially about 100 rooms to provide on-site room and board. There would also be outdoor on-the-job training opportunities in designated areas of the site for overhead crane training, heavy equipment operation, and pipeline work.
11. The Union had initially considered building a training and conference facility in Florida. The selection of the Dayton, Texas location was due in part to the growth in the Gulf States area and its location, as the Property provides proximity to major airports and will afford year-round training opportunities for the Union's affiliated Local Unions in the Northeast and Upper Midwest in outdoor hands-on portions of training.

Any entity that utilizes the facility would be charged fair market value for usage. A management company would operate the Center. The Applicant states that this use would be governed by the statutory exemption found at 29 U.S.C. § 1108(b) (2).

### **Merits of the Transaction**

12. The Trustees of the Training Fund believe that the Proposed Transaction is in the best interest of the Training Fund because they will be selling a portion of its real property for an appraised value of at least \$250,000 or \$4,500 an acre, which represents an investment return of approximately 64 percent over the 2010 purchase price of \$2,750 per acre. The Trustees intend to use the proceeds of the Proposed Transaction to fund apprenticeship school activities. Furthermore, the Proposed Transaction will monetize the Property and use an asset that is not currently being used, generates no income to the Training Fund and likely enhance the Training Fund's existing training programs. The Trustees had purchased the property in 2010 for both investment purposes and for potential future expansion of the Fund's facilities in anticipation of possible growth of its training program. The Union approached the Trustees of the Fund with a proposal to purchase a portion of its real property for the purposes of constructing a National Training and Conference Center, which represented an opportunity for the Fund to achieve both a positive return on its investment while enhancing the training opportunities for the participants of the Training Fund. As a result, the Union requested an exemption to purchase the Property at its fair market value as determined by an appraisal conducted by a qualified independent appraiser. The parcel currently is an illiquid asset of the Training Fund as it has no highway frontage or road access, which makes it less likely that an unrelated third party would be interested in purchasing the property for the same price as

currently offered by the Union in the Proposed Transaction now or in the foreseeable future. The Proposed Transaction will help lead to the construction of the National Training and Conference Center, which may enhance property values of the Training Fund's remaining parcels while also providing work and training opportunities for the Training Fund's participants.

13. Further, the Proposed Transaction is a one-time sale of real property owned by the Training Fund to the Union for a fair market value established by a qualified independent appraiser, which will not require the continuous or future monitoring by the Department of Labor. The Training Fund will receive fair market value for unimproved real property that will be developed by the Union into a training and conference center, which will bring increased training and employment opportunities to the participants of the Training Fund.

### **The Appraisal**

14. The fair market value of the Property was determined to be \$250,000, pursuant to an appraisal prepared on January 28, 2015 by Scott Stephens and Ryan J. Dagley, of Scott Stephens & Associates, Inc., who are licensed by the Texas Appraiser Licensing and Certification Board. Mr. Stephens is also a designated MAI and has experience appraising vacant land, in addition to multiple types of property. Scott Stephens & Associates, Inc. has derived .14% of its current revenue on a prior year's basis from all parties in interest in the Proposed Transaction.

The Property was appraised in January 2015 using the sales comparison approach analyzing highest and best use. The appraisers surveyed the market for properties that were most applicable to the Property for price per acre. These sales were analyzed and adjusted for time, location, size and physical characteristics. Based on that analysis, the appraisers identified a range of value from \$3,327 per acre to \$6,278 per acre with a mean of \$4,649 per acre and a median of \$4,128 per acre, yielding a market value of \$250,000.

### **Comparison of Substantially Similar Cases**

Authorization by the Department has been requested pursuant to PTE 96-62, which requires that the transaction be "substantially similar" to at least two transactions which are subject to (1) two individual exemptions that were granted by the Department, and provided relief from the same prohibited transaction restrictions, within the past 60 month period (ending on the date of filing of the submission); or (2) one individual exemption that was granted within the past 120 month period (ending on the date of the filing of the submission) and one Final Authorization granted under PTE 96-62 that received final authorization within the past 60 month period (ending on the date of the filing of the submission).

The Applicant has identified the following individual Prohibited Transaction Exemption granted by the Department within the past 120 months and an Authorized Transaction granted by the DOL within the past 60 months as substantially similar to the Tentative Authorization:

- PTE 2011-24, Oregon-Washington Carpenters Employers Apprenticeship and Training Trust Fund, 76 Fed. Reg. 77266 (December 12, 2011) was a transaction that involved the sale of unimproved real property by a qualified plan to a party in interest. The Proposed Transaction also involves the sale of unimproved property by a qualified plan to a party in interest.

PTE 2011-24 was a one-time transaction for cash. The Proposed Transaction is also a one-time transaction for cash. PTE 2011-24 required the plan to receive the greater of the fair market value of the property being sold based upon a recent evaluation by an independent appraiser, or the fair market value of the property being sold at the time of the transaction as determined by an updated appraisal. The terms of the Proposed Transaction require that the Training Fund receive the greater of the fair market of the Property value as identified by the appraisal conducted by a qualified independent appraiser (“QIA”) on January 28, 2015; or the fair market value of the Property as established by a qualified independent appraiser in an updated appraisal of such Property on the date of the sale.

In PTE 2011-24, the plan did not pay any fees, commissions, or other expenses in connection with the sale of the property. In the Proposed Transaction, the Training Fund will also not pay any fees, commissions, or other expenses in connection with the sale of the Property.

In PTE 2011-24, the terms of the sale were no less favorable to the plan than the terms it would have received under similar circumstances than arm’s length negotiation with an unrelated party. In the Proposed Transaction, the terms of the sale will also be no less favorable to the Training Fund than the terms it would have received under similar circumstances than arm’s length negotiation with an unrelated party.

In PTE 2011-24, the plan trustees appointed by the union recused themselves from voting with respect to the decision of the plan to enter into the proposed sale. In the proposed transaction, the Training Fund Trustees appointed by Local 450 who are members of the Union have also recused themselves from voting with respect to the Training Fund's decision to enter into the proposed sale.

One difference between the transactions is that in PTE 2011-24, the party in interest purchaser did not own real estate within close proximity to the property that was subject to the exemption. Here, the party in interest does not currently own real property within close proximity to the subject Property. However, if the Department gives Final Authorization, the Union will purchase an adjoining parcel from Local 450 and construct a training and conference facility for its membership and affiliated training programs, which includes the Training Fund. This is not a material difference. The qualified independent appraiser has opined that the benefit that the party in interest may derive from owning an adjacent parcel of real property provided no additional assemblage value to the subject

Property. The potential future use of the Property by the Union as a training and conference center does not constitute a material difference as use of the facility by the Training Fund or any other employee benefit plan would be governed by the provisions of the statutory exemption found under Section 408(b)(2) of ERISA, 29 U.S.C. § 1108(b)(2).

- FAN 14-06E, Pipefitters Local 533 Education Training Trust Program (November 8, 2014) was a transaction involving the sale of unimproved real property by a qualified plan to a party in interest. The Proposed Transaction also involves the sale of unimproved real property by a qualified plan to a party in interest.

FAN 14-06E was a one-time transaction for cash. The Proposed Transaction is also a one-time transaction for cash.

FAN 14-06E required the plan to receive the greater of the fair market value of the property being sold based upon a recent evaluation by an independent appraiser, or the fair market value of the property being sold at the time of the transaction as determined by an updated appraisal. The terms of the Proposed Transaction require that the Training Fund receive the greater of the fair market of the Property's value as identified by the appraisal conducted by a qualified independent appraiser ("QIA") on January 28, 2015; or the fair market value of the Property as established by a qualified independent appraiser in an updated appraisal of the Property on the date of the sale.

In FAN 14-06E, the plan did not pay any fees, commissions, or other expenses in connection with the sale of the property. In the Proposed Transaction, the Training Fund will also not pay any fees, commissions, or other expenses in connection with the sale of the Property.

In FAN 14-06E, the terms of the sale were no less favorable to the plan than the terms it would have received under similar circumstances than arm's length negotiation with an unrelated party. In the Proposed Transaction, the terms of the sale will also be no less favorable to the Training Fund than the terms it would have received under similar circumstances in an arm's length negotiation with an unrelated party.

In FAN 14-06E, the plan trustees appointed by the union did not recuse themselves from voting with respect to the decision of the plan to enter into the proposed sale. Therefore, the Applicant in FAN 14-06E requested relief from ERISA §§ 406(b) (1) and (2). In contrast, in the Proposed Transaction, the Training Fund Trustees appointed by Local 450 who are members of the Union have recused themselves from voting with respect to the Training Fund's decision to enter into the Proposed Transaction.

One difference between the transactions is that, in FAN 14-06E, the party in interest purchaser did not intend the purchase of the Property to be part of a larger

integrated transaction. Here, the party in interest intends, if the Department gives Final Authorization, to purchase an adjoining parcel from Local 450 and construct a training and conference facility for its membership and affiliated training programs. This is not a material difference. The qualified independent appraiser has opined that the benefit that the party in interest may derive from owning an adjacent parcel of real property provided no additional assemblage value to the subject property. The potential future use of the Property by the Union as a training and conference center does not constitute a material difference as the decision to use the facility by the Training Fund or any other employee benefit plan would be governed by the provisions of the statutory exemption found at ERISA § 408(b)(2), 29 U.S.C. § 1108(b)(2).

### **Right to Comment**

As an interested party, you have the right to submit comments to the Department on the tentative authorization. If you decide to do so, you should submit your comments to the following address:

Submission Number: E-00763  
Employee Benefits Security Administration  
Office of Exemption Determinations  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Suite 400  
Washington, DC 20210  
Attn: Erica R. Knox

Be sure to refer to the submission number, which is E-00763. Comments must be received by the Department no later than June 23, 2015. All comments will be made available to the public. Warning: Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

Comments may be faxed or e-mailed to the Department. The fax number is (202) 219-0204 and the e-mail address is [knox.eric@dol.gov](mailto:knox.eric@dol.gov). If you have questions regarding your right to comment on this tentative authorization, you may call Erica Knox of the Department at (202) 693-8644.

The transaction will only be consummated after the issuance of a Final Authorization. If the Department authorizes the transaction, the approximate date on which the transaction will occur is within 90 days after such Final Authorization.