

Date: June 27, 2014

## NOTICE TO INTERESTED PERSONS

1. You are hereby notified that a written submission has been filed on behalf of the International Union of Operating Engineers Local 57 Apprenticeship and Skill Improvement Training Fund (the Plan) with the United States Department of Labor (the Department) seeking authorization, pursuant to class 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 (the Proposed Transaction), as described in paragraph 3 below.

2. The submission has met the requirements for tentative authorization under PTE 96-62.

3. If authorized by the Department, pursuant to PTE 96-62, the restrictions of 406(a)(1)(A), 406(a)(1)(D), 406(b)(1), and 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) shall not apply to the sale by the Plan of a parcel of unimproved real property (the Property) to the International Union of Operating Engineers Local 57 (the Local Union), a party in interest with respect to the Plan.

4. The authorization, if granted, will not provide relief from the general fiduciary provisions of the Act with regard to the acquisition and holding of the Property by the Plan or to the sale of the Property by the Plan to the Local Union, nor will such authorization constitute an endorsement by the Department of the Proposed Transaction that is the subject of this submission. Further, this authorization, if granted, will not provide relief for any transactions, other than the Proposed Transaction described herein.

### **Background**

5. The Plan is Taft-Hartley, multi-employer employee benefit plan subject to the Act. The Plan was jointly created in 1971 by labor and management, pursuant to a collective bargaining agreement between the Construction Industries of Rhode Island, an association of contributing employers, and the Local Union which is based in Providence and Johnston, Rhode Island.

The Plan has net assets available for benefits totaling \$372,773, as of 2013, which are held in trust (the Trust). The Trust agreement, as amended and restated, effective July 1, 2010, with respect to the Plan was entered into in the State of Rhode Island on July 30, 1971. The Trust was established to fund educational and training programs for apprentices and journeyworkers. As of June 9, 2014, there were twenty-five (25) apprentices enrolled in a three (3) year training program. The apprentices learn how to operate heavy equipment, such as cranes, forklifts, loaders, and other construction equipment. Approximately 275 journeyworkers obtain some training each year from the Plan. Training is available to all Local Union members, of which there are approximately 750.

The Board of Trustees of the Plan (the Trustees) with investment discretion over the assets of the Plan is composed of two union representatives and two management representatives. As of April 29, 2014, the Trustees selected by the Local Union are James J. White (Mr. White) and Timothy E. Quillen (Mr. Quillen). Mr. White and Mr. Quillen are, respectively, the business manager and the President of the Local Union. As of the same date, the Trustees selected by management are Stephen A. Cardi and Brad Bilodeau.

The Plan currently operates out of two locations. The training site, located at 873 Central Ave., Johnston, Rhode Island, is owned by the Town of Johnston, an unrelated party. The Plan leases the training site from the Town of Johnston, pursuant to a long term lease.

The Plan also leases administrative office space at 141 Gano Street, Providence, Rhode, Island (the Gano Street Property). The Gano Street Property is owned by the Local Union. In addition, the Local Union occupies a portion of the Gano Street Property. The Plan pays \$666 a month in rent to the Local Union (\$7,992 per annum). In 2011, the rent paid by the Plan was reviewed by James Aceto, CPA (Mr. Aceto), of Ward, Fisher & Company, LLP. Mr. Aceto determined that the amount of the rent paid by the Plan was “reasonable and appropriate for the space being rented” by the Local Union to the Plan. For the leasing arrangement between the Local Union and the Plan, the Plan relies on the statutory exemption, pursuant to 408(b)(2) of the Act. Section 408(b)(2) provides exemptive relief from the prohibitions of section 406(a) of the Act for “contracting or making reasonable arrangements with a party in interest for office space... necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.” It is represented that the rent paid by the Plan is reasonable and was independently reviewed by Mr. Aceto. Because the Local Union Trustees have recused themselves from decisions concerning the leasing arrangement, it is represented that there has been no self-dealing, as defined by section 406(b) of the Act.<sup>1</sup>

6. In 2000, the Plan acquired the Property, which is the subject of the Proposed Transaction, by deed from the Rhode Island Resource Recovery Corporation (RIRRC), a quasi-public state agency responsibility for managing the state’s solid waste and recyclables. The Plan collaborated with the RIRRC to widen a road in the vicinity of the training site by using apprentices to perform the work. In return, the RIRRC donated the Property to the Plan.

7. The tax identification of the Property is Plat 43, lot 602. The address of the Property is Central Avenue, Johnston, Providence County, Rhode Island. The neighborhood surrounding the Property consists mainly of single family homes with some commercial uses along commercial roadways. The Property consists of 70,002 square feet in area (1.61 acres), is level, and on grade with the street. The Property is located next to the Plan’s training site and is directly adjacent to the Johnston landfill. The Property is unimproved and vacant. Heavy machinery is used on the Property. The Plan does not pay any real estate taxes or maintenance on the Property. The Plan pays approximately \$30,000 in an annual premium for coverage under an omnibus insurance policy which protects the Plan from all forms of potential liability, or damage, including such liability or damage that may occur in relation to the Property. It is represented that because the Property is undeveloped and unused, it does not appear that the cost of the premium paid by the Plan for the coverage under the omnibus insurance policy would be significantly affected by the Proposed Transaction.

8. The fair market value of the Property was determined to be \$45,000, pursuant to an appraisal, prepared on February 7, 2014, by Christopher Moore (Mr. Moore) under the supervision of Mr. Peter M. Scotti (Mr. Scotti). Mr. Scotti is the founder and President of the firm of Peter M. Scotti & Associates in Providence, Rhode Island which employs Mr. Moore. Mr. Scotti and Mr. Moore are both licensed and certified appraisers in the State of Rhode Island. Mr. Scotti is a seasoned commercial and residential real estate appraiser with over thirty-nine (39) years of executive-level experience spanning the full spectrum of real estate transactions in the greater Providence, Rhode Island area and surrounding communities. Mr. Scotti and Mr. Moore are independent in that the revenues each receives or expects to receive within the current federal income tax year, from parties in interest (and their affiliates) with respect to the Proposed Transaction, represent not more than 2% of each appraiser’s annual revenues based upon the prior income tax year.

The appraisal of the Property prepared by Mr. Scotti and Mr. Moore utilized the sales comparison

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<sup>1</sup>The Department is offering no view, as to whether the leasing agreement for administrative office space between the Plan and the Local Union is covered by the statutory exemption, pursuant to section 408(b)(2) of the Act and the Department’s regulations, pursuant to 29 CFR 2550.408b-2. Further, the Department is not opining as to whether the conditions of section 408(b)(2) of the Act have been satisfied in connection with such leasing.

approach to value. The appraisal of the Property was based on a fee simple interest. The appraisers assumed the Property is buildable. In conducting the appraisal, Mr. Scotti and Mr. Moore were aware of the potential assemblage value of the Property to the Local Union. However, given the overall lack of market demand together with the necessity of zoning relief in order to construct a commercial building, Mr. Scotti and Mr. Moore determined that no additional assemblage value or premium value should be included in the fair market value of the Property.

9. The Local Union desires to purchase the Property from the Plan. As the Local Union is a party in interest with respect to the Plan, the purchase of the Property by the Local Union would be a prohibited transaction which is not permitted under the Act, unless the Proposed Transaction is authorized by the Department.

10. An independent, qualified fiduciary, Mark I. Irvings, Esq. (Mr. Irvings), reviewed the Proposed Transaction on behalf of the Plan. Mr. Irvings is an independent labor and employment arbitrator and mediator. Mr. Irvings has had significant experience in serving as an arbitrator in numerous disputes involving plans subject to the Act. Mr. Irvings is independent in that the revenue that he receives or expects to receive within the current federal income tax year, from parties in interest (and their affiliates) with respect to the Proposed Transaction, represents not more than 2% of Mr. Irvings' annual revenues based upon the prior income tax year.

Mr. Irvings has determined that the Proposed Transaction is administratively feasible, in that it will be a one-time sale transaction in which the Plan will receive cash in exchange for the Property which is currently unused. Mr. Irvings has determined that the Proposed Transaction is in the interest of the Plan, because the terms will be negotiated at arm's length and will be simple and easy to understand by all parties. Further, Mr. Irvings states that the Plan is protected in that it will receive the **greater of** \$45,000 or the fair market appraised value of the Property on the date of the sale.

Mr. Irvings represents that he will verify that a second independent appraisal will be undertaken promptly should the Proposed Transaction receive authorization. All the documents necessary to consummate the Proposed Transaction will be prepared by a real estate counsel. Once those documents are prepared and transmitted to Mr. Irvings, he will review such documents and approve, if appropriate. Mr. Irvings will verify that the Proposed Transaction is valued at the **greater of** the original appraised value (\$45,000) or the fair market appraised value of the Property on the date of the sale, and that all other details are in order. After such review, and assuming the materials are satisfactory, Mr. Irvings will communicate to the Trustees that they may proceed with the closing on the Property. Mr. Irvings will then review the final, signed, and executed documents to confirm that the parties have proceeded properly. Finally, Mr. Irvings will confirm that the check from the Local Union has cleared, the Plan has received cash, and that the title to the Property has passed to the Local Union.

11. The Plan has applied to the Department in order to obtain authorization for the sale of the Property by the Plan to the Local Union. If the authorization is granted by the Department, the Proposed Transaction will be subject to the following conditions: (a) the transaction will be a one-time transaction for cash; (b) the Local Union will purchase the Property for a purchase price which is the **greater of** \$45,000 or the fair market value of such Property, as of the date of sale; (c) the fair market value of the Property will be determined by an independent qualified appraiser, as of the date the Proposed Transaction is entered; (d) the Plan will not be responsible for any of the fees or commissions associated with the sale of the Property; (e) the Proposed Transaction has been reviewed by an independent, qualified fiduciary; and (f) the terms of the sale will be no less favorable to the Plan than an arm's-length transaction with an unrelated party.

12. If the authorization is granted, the Proposed Transaction will take place within thirty (30) days after the date of the final authorization of the Proposed Transaction by the Department.

13. It is represented that the Proposed Transaction poses little, if any, risk of abuse or loss to the Plan. The Proposed Transaction will be a one-time cash transaction. The Plan will receive the **greater of** the current fair market value or the fair market value of the Property as of the date of the sale, as determined by an independent, qualified appraiser. Further, an independent fiduciary has also reviewed and approved the Proposed Transaction.

14. Relying on PTE 96-62, the applicant has identified as substantially similar to the Proposed Transaction the following: (a) an individual exemption granted by the Department within the past 120 months, and (b) an EXPRO authorization within the past 60 months:

° Prohibited Transaction Exemption 2005-10, issued to The North Texas Electrical Joint Apprenticeship and Training Trust Fund, 70 FR 37443 (June 29, 2005). This exemption permitted the cash sale of tract#1 and tract#2 of vacant, unimproved land by the plan, respectively, to the National Electrical Contractors Association, and to the International Brotherhood of Electrical Workers and the North Texas Chapter, Local Union No. 20.

° Final Authorization 2012-09E issued to the Roofers Local 20 Apprenticeship Fund. This exemption permitted the cash sale by a plan of a parcel of improved real property by the plan to the employer which is a party in interest with respect to the plan.

15. It is represented that the persons who may be affected by the Proposed Transaction are plan participants, plan trustees, the Local Union Executive Board members and employers who are signatory to the collective bargaining agreement. As a person who may be affected by the Proposed Transaction, you have the right to comment on the Proposed Transaction. Written comments should be addressed to:

Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Ave, NW  
Room N-5700  
Washington, D.C. 20210  
Attention Submission No. E-00744

Comments may also be submitted by facsimile to 202-219-0204, and by e-mail to [leblanc.angelena@dol.gov](mailto:leblanc.angelena@dol.gov).

**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. All comments may be posted on the Internet and can be retrieved by most Internet search engines.

16. The comment period will close on July 27, 2014, 25 days following completion of the distribution of this Notice to Interested Persons. Final Authorization of the Proposed Transaction will not occur until the Department reviews all comments received in response to this Notice to Interested Persons.