

August 18, 1977

Dear :

This is in response to your letter of June 23, 1976, in which you inquired whether the affirmative action fund described therein (the Fund) is subject to the Employee Retirement Income Security Act of 1974 (ERISA). We regret that we have been unable to respond to your inquiry earlier.

In your letter you make the following representations concerning the Fund. The Fund was established pursuant to a conciliation and settlement agreement approved by the United States District Court of the (named) District of (State). The purposes of the conciliation and settlement agreement include the resolution of all issues raised in certain charges brought by the Equal Employment Opportunity Commission (EEOC) against (named), Inc., an organization representing canning industry employers in (State) in labor relations matters, and the (named) Unions (the Council), and issues raised in a lawsuit brought by the (named) Legal Defense and Educational Fund against (named), Inc., and the Council. Under the terms of the conciliation and settlement agreement, the Fund is to be financed by contributions made by employers who are members of (named), Inc. The Fund is to be used to resolve and remedy charges and complaints concerning employment discrimination, to pay promotion incentive bonuses designed to encourage minority group employees to take advantage of the conciliation and settlement agreement, and to provide for the payment of training costs, salaries and expenses of an office of affirmative action to be established pursuant to the conciliation and settlement agreement. The implementation of the conciliation and settlement agreement will be under the supervision of a board of trustees, of whom two will be appointed by (named), Inc., and two by the Council. A conformance committee composed of representatives of the EEOC and (named) Legal Defense and Educational Fund may attend all meetings of the trustees and dispute any

P/OPINION 77-89

decision of the trustees concerning disbursements under the conciliation and settlement agreement. If such a dispute is raised and not resolved between the trustees and the conformance committee, the matter is to be arbitrated before an arbitrator selected by the parties to the dispute or by the District Court. The District Court retains jurisdiction of the lawsuit for the purpose of enforcing the terms of the agreement. Finally, you note that as a part of the affirmative action program to be implemented pursuant to the conciliation and settlement agreement, minority group training programs will be supervised by the fund over the next five years.

On the basis of the representations set forth above, we have concluded that the Fund is not an employee welfare benefit plan within the meaning of section 3(1) of ERISA. Although section 3(1) includes "apprenticeship or other training programs" within the definition of "employee welfare benefit plan", the Fund is not an apprenticeship or other training program of the kind contemplated by Congress in that section. Such training as may be provided through the Fund is incidental to its primary purpose of enhancing the employment opportunities of minority persons in the canning industry in (State). This purpose is less closely associated with the relationship between employers and employees, which is the primary Congressional concern embodied in the Act, than with civil rights and equal employment opportunity, which are dealt with through other laws and governmental programs. Unlike the apprenticeship and other training programs contemplated in section 3(1) of the Act, the Fund, as a program oriented towards civil rights and equal employment opportunity, is designed to implement a national governmental policy, rather than to fulfill the immediate personnel needs of employers in private industry. Finally, involvement of the EEOC in the supervision of the Funds' activities and the retention by the District Court of jurisdiction over the lawsuit from which the Fund stems insures that the goal of protecting the Fund against abuse will be met quite apart from those provisions of ERISA which are designed to ensure such protection.

P/OPINION 77-89

Your letter contains no factual representations from which it might be concluded that the fund constitutes an employee pension benefit plan within the meaning of section 3(2) of ERISA. If the Fund is neither an employee welfare benefit plan nor an employee pension benefit plan, it is not an employee benefit plan within the meaning of section 3(3) of ERISA and, therefore, under section 4(a) of ERISA, it is not covered under Title I of ERISA.

Sincerely,