U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216

APR 27 1978

Mr. Robert J. Hickey
Kirlin, Campbell & Keating
The Connecticut Building
Suite 800
1150 Connecticut Avenue, N.W.
Washington, D.C. 20036

OPINION 78-12 A

3(1)

Dear Mr. Hickey:

This is in response to your letters of November 17, 1977, and March 8, 1978 regarding coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you asked for an advisory opinion whether the International Carpentry Apprenticeship Contest Fund (ICACF) is an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

You advise that ICACF was created pursuant to section 302 of the Labor Management Relations Act. Article V, Section 4 of the July 22, 1977, Agreement and Declaration of Trust (the Trust) for the ICACF provides that the Trustees shall have no authority nor responsibility for the establishment or maintenance of any local training program. In addition, the ICACF was established according to Article II, Section 2 of the Trust for the purpose of providing an international contest for prizes among eligible apprentices, with eligibility determined on the basis of the participant having been a winner in a State or Provincial contest and being in the last year of apprenticeship.

ERISA section 3(1) defines an employee welfare benefit program as "...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.)"

While it is not entirely clear from the material submitted with the request for an advisory opinion, we assume that ICACF does not provide apprenticeship or other training. Based on this assumption, as well as on your representations and the copy of the Trust, it is the position of the Department of Labor that the ICACF is not an apprenticeship or other training program within the meaning of section 3(1)(A) of ERISA.

Regarding the second portion of the definition under section 3(1), the Department of Labor stated in regulation section 2510.3-1(a)(3) (issued August 15, 1975, copy enclosed):

> (3) Section 302(c) of the LMRA lists exceptions to the restrictions contained in subsections (a) and (b) of that section on payments and loans by an employer to individuals and groups representing employees of the employer. Of these exceptions, only those contained in paragraphs (5), (6), (7) and (8) describe benefits provided through employee benefit plans. Moreover, only paragraph (6) describes benefits not described in section 3(1)(A) of the Act. The benefits described in section 302(c)(6) of the LMRA but not in section 3(1)(A) of the Act are '... holiday, severance or similar benefits'. Thus, the effect of section 3(1)(B) of the Act is to include within the definition of 'welfare plan' those plans which provide holiday and severance benefits, and benefits which are similar (for example, benefits which are in substance severance benefits, although not so characterized).

Therefore, the ICACF would not be an employee benefit plan within the meaning of section 3(1)(B) of ERISA.

Notwithstanding the preceding, this letter should not be deemed to be an opinion of the Department as to whether section 302(c) of the Labor Management Relations Act, 1947 applies to the ICACF. If you have any questions on this issue, you may wish to get in touch with the U.S. Department of Justice.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof, relating to the effect of advisory opinions.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions

Enclosure