

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



JAN 8 1979

Mr. William K. Ecklund
Felhaber, Larson, Fenlon and Vogt
West 1080 First National Bank Building
Saint Paul, Minnesota 55101

OPINION 79-1A

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Dear Mr. Ecklund:

This is in reply to your letter requesting an advisory opinion regarding applicability of the Employee Retirement Income Security Act of 1974 (ERISA) to the National Training Fund for the Sheet Metal and Air Conditioning Industry (NTF). Specifically, you are requesting an advisory opinion regarding whether NTF is an employee welfare benefit plan within the meaning of ERISA section 3(1).

You represent that NTF is established under section 302(c) of the Taft-Hartley Act and jointly administered by trustees appointed from the Sheet Metal Workers International Association (SMWIA) and the Sheet Metal and Air Conditioning Contractors Association. You also state that NTF is funded by employer contributions of 2 cents for each hour worked by persons represented by the SMWIA and employed by contributing contractors as required by collective bargaining agreement.

In addition, section 2.1 of the Agreement and Declaration of Trust for the National Training Fund for the Sheet Metal and Air Conditioning Industry (dated May 12, 1971 and restated as amended, December 4, 1975; and as amended May 6, 1976) provides as follows:

Section 2.1 - There is hereby established a Trust Fund to be known as the National Training Fund for the Sheet Metal and Air Conditioning Industry. The National Training Fund has been established and shall be used and applied for the following purposes:

(a) To develop comprehensive training programs for journeymen and apprentices and through training to upgrade the general quality of workmanship and productivity . . .

(c) To provide training for new specialty fields engendered by changing technology, to provide training in the use of new materials and new methods and to establish skill and proficiency in the Sheet Metal

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Industry and other related fields to which the skills of journeymen sheet metal workers may be adapted . . .

You also represent that the current projects of NTF include: providing an instructor training course for sheet metal instructors; sponsoring an apprenticeship competition program; contracting with writers who prepare courses of instruction; producing training films; making available audiovisual equipment and instructional material for training purposes; providing research services in the sheet metal industry by contract with Syracuse University; providing loan/grants to local joint apprenticeship committees.

An "employee welfare benefit plan" is defined in section 3(1) of ERISA 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)."

You will note that apprenticeship and other training programs are among the benefits listed in ERISA section 3(1).

Section 2510.3-1(i) of regulations issued by the Department of Labor on August 15, 1975, exclude certain industry advancement programs from the definition of employee welfare benefit plans. Section 2510.3-1(i) provides as follows:

For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a program maintained by an employer or group or association of employers, which has no employee participants and does not provide benefits to employees or their dependents, regardless of whether the program serves as a conduit through which funds or other assets are channeled to employee benefit plans covered under Title I of the Act.

You will note that the programs excluded from the definition of employee welfare benefit plan by regulation section 2510.3-1(i) are only those maintained by an employer or group or association of employers. Programs maintained by an employer and an employee organization are not mentioned in regulation section 2510.3-1(i).

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NTF does not meet the criteria of regulation section 2510.3-1(i) and, unless otherwise excluded, constitutes an employee welfare benefit plan because it is established and maintained by employers and an employee organization to provide benefits described in ERISA section 3(1) (namely, apprenticeship and other training programs) to employees and others as participants and beneficiaries of apprenticeship and other training programs.

It may also be helpful for you to know that exemptions from certain reporting and disclosure requirements are applicable to apprenticeship programs under regulation 29 CFR 2520.104-22. While this exemption is now available only to those programs which are "solely apprenticeship" plans, the Department is presently considering extending this exemptive relief to training programs as well.

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,

Ian D. Lanoff
 Administrator
 of Pension and Welfare
 Benefit Programs