

U.S. Department of Labor

Pension and Welfare Benefits Administration
Washington DC 20210



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Mr. Eugene H. Veenhuis
Mitchell, Silberberg & Knupp
Trident Center
11377 West Olympic Boulevard
Los Angeles, California 90064-1683

94-29A
ERISA SECTION
3(1)

Dear Mr. Veenhuis:

This is in reply to your letter requesting an advisory opinion regarding the applicability of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the Screen Actors Guild - AMPTP Industry Advancement and Cooperative Fund (the Fund) is an employee welfare benefit plan within the meaning of section 3(1) of Title I of ERISA.

You represent that the Fund was formed through the cooperative efforts of the Screen Actor's Guild, Inc. (SAG) and the Alliance of Motion Picture and Television Producers (AMPTP) acting solely for the purpose of creating a Labor Management Cooperation Committee under the authority of section 6(b) of the Labor-Management Cooperation Act of 1978, 29 U.S.C. § 175(a), and section 302(c)(9) of the Labor Management Relations Act, 1947 (LMRA), 29 U.S.C. § 186 (c)(9). The members of SAG are performers in the motion pictures and television programs that are produced by employers who are parties to collective bargaining agreements (CBAs) between SAG and AMPTP, a trade association whose members constitute most of the principal producers of motion picture and television programming in the United States. The Fund is intended to improve the relations between performers and producers and to advance the entertainment industry in general.

The Fund, which was originally established on July 1, 1992, as an unincorporated association, was converted into a trust on April 8, 1993, by the SAG-AMPTP Industry Advancement and Cooperative Fund Trust Agreement (Agreement). The purposes and objectives of the Fund are set forth in detail in the Agreement as follows:

- a. To assist performers and producers in solving problems of mutual concern not susceptible to resolution within the collective bargaining process.
- b. To enhance the involvement of performers in making decisions that affect their working lives, including educational and informational assistance to provide for alternative career opportunities.

- c. To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development in the entertainment industry in order to maintain and expand employment opportunities for performers.
- d. To provide performers and producers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness.
- e. To provide a forum for open and honest discussion of problems confronting performers and producers in the entertainment industry.
- f. To improve communication between representatives of labor and management.
- g. To provide seminars and showcases to improve and enhance casting procedures, and to maintain and review continued nondiscrimination practices as to employment of performers.
- h. To study, establish and inform producers and performers as to required safety standards under state and federal laws, and to work towards accident-free work environments.
- i. To study and establish health standards, such as in the use of smoke, as they may affect the well-being and health of performers working on sets and on location.
- j. To study, monitor and establish standards and oversight as to the use and welfare of animals and performers working with animals in motion picture production.
- k. To review and implement policies and procedures as to employment opportunities of American performers under the U.S. immigration laws.
 - 1. To receive and accumulate data and statistics and all relevant information that will aid performers and the industry in achieving the above objectives of the IACF [the Fund].

You further represent that the seminars, referred to in paragraph g., above, "will not be in the nature of apprentice-ships or training seminars, but instead will be designed to enhance the working relationship and nondiscrimination practices in the workplace."

You represent that Article II, Section 1 of the Agreement provides that the Fund shall be administered by ten trustees, half appointed by AMPTP and half designated by SAG. As provided in Article VI of the Agreement, the Fund trustees have the sole authority to determine how and when any of the Fund's purposes and objectives shall be pursued. Under Article III of the Agreement, the Fund is funded by contributions from employers who enter into CBAs with SAG in amounts specified by the CBAs as a percentage of gross compensation paid by such employers.

Section 3(1) of Title I of ERISA defines the term "employee welfare benefit plan" to include:

[A]ny 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 [29 USCS section 186(c)] (other than pensions on retirement or death, and insurance to provide such pensions).

On the basis of the information submitted, it does not appear that the Fund provides any benefit described in ERISA section 3(1)(A). It is the Department of Labor's (the Department's) position that section 3(1)(B) of ERISA does not cover every arrangement described in section 302(c) of the LMRA. In regulation section 29 C.F.R. 2510.3-1(a), the Department clarified the definition of an "employee welfare benefit plan," with regard to benefits described in section 302(c) of the LMRA, by stating:

(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 made 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).

Although this regulation was adopted prior to the amendment of section 302(c) of the LMRA to add subsection 302(c)(9), the principle it articulates remains fully applicable. Only those arrangements described in section 302(c) of the LMRA that provide benefits to participants and their beneficiaries will constitute employee welfare benefit plans. Therefore, the Fund does not provide, in the Department's view, any "benefit" to participants or their beneficiaries within the meaning of section 3(1) of Title I of ERISA. Moreover, the Fund is not an employee pension benefit plan because it does not provide any benefits specified in section 3(2) of Title I of ERISA. Accordingly, the Fund is not covered under Title I of ERISA.

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

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations