

March 26, 1985

U.S. DEPARTMENT OF LABOR EMPLOYMENT AND TRAINING ADMINISTRATION Bureau of Apprenticeship and Training Washington, D.C. 20213 Symbols: TDT/MMW	<u>Distribution:</u> A-539 All Tech. Hdqtrs. A-544 All Field Techs. A-547 SD+RD/SAC; Lab. Com.	<u>SUBJECT:</u> <u>CODE:100.11</u> Apprenticeship: Sheet Metal Workers' Supplemental Training Agreement <u>ACTION:</u> Due date:
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PURPOSE: To advise the field staff of the Solicitor's Opinion concerning the legality of the new Sheet Metal Scholarship Loan Agreement that has been adopted by the Sheet Metal Industry.

BACKGROUND: In September 1983, the Solicitor's Office rendered an opinion on the Sheet Metal Workers International Association Supplemental Training Agreement. That agreement provided "that the union may prevent the apprentice's nonunion employment by seeking injunctive relief." This provision has been dropped in the new agreement.

ACTION: Apprenticeship and Training Representatives should make the Solicitor's opinion available to sponsors contemplating use of similar supplemental agreements.

Apprenticeship and Training Representatives should also make sponsors aware that such supplemental agreements are separate and apart from their apprenticeship standards. The Bureau of Apprenticeship and Training recommends that sponsors contemplating the use of similar supplementary agreements consult with their attorneys prior to developing such an agreement.

Attachments:

Memo from DuRoss to F. E. Romero

Memo from R.S. Swain to T. Hague

Memo from A. Swoope to R.D. Swain

Sheet Metal Scholarship Loan Agreement

~~H~~ / ~~J~~ / BAT



MAR 6 1985

MEMORANDUM FOR: FRED E. ROMERO
Administrator
Office of Strategic Planning
and Policy Development

FROM: WILLIAM H. DuROSS, III
Associate Solicitor for
Employment and Training

SUBJECT: Apprenticeship: Sheet Metal Workers'
Supplemental Training Agreement

This is in response to your February 27, 1985, memorandum to me on the above subject. We have reviewed the new version of the agreement and do not object to it. The provision in which we observed some legal problems in the former agreement -- that the union may prevent the apprentice's nonunion employment by seeking injunctive relief -- has been dropped in the new agreement.

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(2/26)

27 FEB 1985

MEMORANDUM FOR: WILLIAM H. DUROSS, III
Associate Solicitor for
Employment and Training

FROM: FRED E. ROMERO
Office of Strategic Planning
and Policy Development

SUBJECT: Request for Opinion

The Sheet Metal Industry has adopted a new Sheet Metal Scholarship Loan Agreement that replaces a previous agreement, "Supplement to Apprenticeship Agreement Between Apprentices and Joint Committee." You have rendered an opinion as to the legality of the previous agreement and SAT is now requesting an opinion on the legality of the new loan agreement.

Attached is a copy of your 1983 opinion on the first agreement, and material related to the new agreement.

Attachments

TDT:NRKolb:irl:02/22/85
Room 6314-PHB Ext. 376-2570

cc: Hague/Miller/Purves/Kolb/Reading File. *Lawrence Jones*

Lawrence Jones



BUREAU OF APPRENTICESHIP AND TRAINING

Employment and Training Administration
230 South Dearborn Street
Chicago, Illinois 60604

December 17, 1984

MEMORANDUM FOR: Thomas Hague
Director, BAT

FROM: Richard D. Swain *RDS*
Director, Regional BAT

SUBJECT: Sheet Metal Scholarship Loan Agreement

Subsequent to the D.O.L. solicitor's opinion in 1983 the Sheet Metal Industry has adopted a 'new' Sheet Metal Scholarship Loan Agreement. Ohio State Director Anthony Swoope has requested an opinion and approval regarding the legality of this agreement (memo attached). I am sure that the Loan Agreement will be widely used and suggest that a circular be issued regarding BAT's policy of recognizing the agreement as a condition of employment.

cc: Miller ✓
Swoope

U. S. DEPARTMENT OF LABOR
Employment and Training Administration
Bureau of Apprenticeship and Training
200 North High Street, Room 605
Columbus, Ohio 43215

DATE : December 6, 1984
TO : RICHARD D. SWAIN, Regional Director
FROM : ANTHONY SMOOPE, State Director *as*
SUBJECT: SHEET METAL SCHOLARSHIP LOAN AGREEMENT



On Tuesday, December 4, 1984, I met with Eugene Hartline, Regional Training Coordinator for the National Training Fund for the Sheet Metal and Air Conditioning Industry, to discuss their "Sheet Metal Scholarship Loan Agreement".

Discussion was held on their old "Supplement to Apprenticeship Agreement Between Apprentice and Joint Apprenticeship Committee". The solicitor made a ruling on that supplement in 1983.

Mr. Hartline is requesting an opinion and approval from the Bureau of Apprenticeship and Training as to their new agreement. Enclosed you will find that agreement.

Please feel free to contact me if there are any additional questions.

Best regards.

Enclosure

cc: R. Eugene Hartline
Regional Training Coordinator
National Training Fund
Sheet Metal & Air Conditioning Industry
68 Woods Drive
West Milton, Ohio 45383

AS:mrg



Phone (202) 833-9543
Sheet Metal and
Air Conditioning Industry

National Training Fund

1900 L Street, N.W., Suite 510, Washington, D.C. 20036 • W. L. (BILL) FILLIPPINI-ADMINISTRATOR

EDWARD J. CARLOUGH — JAMES E. ROTH
NTF COCHAIRMAN

TO: All Joint Apprenticeship and Training Committees (JATCs),
Local Unions, Contractors' Associations

RE: "Sheet Metal Scholarship Loan Agreement"
(Security of Industry Training Investments)

Since May 5, 1960 the industry has been using agreements titled "Supplement to Apprenticeship Agreement between Apprentice and Joint Apprenticeship Committee." Those agreements were designed in an effort to curtail the constant attempts at "pirating" union industry highly trained journeymen and apprentices by the nonunion market. The agreements were reviewed and approved by the Office of the Solicitor, U.S. Department of Labor, in 1983. The decision, in part, by the Solicitor stated:

"Based on our review of the National Apprenticeship Act and the apprenticeship regulations at 29 CFR Part 29, we see no legal problems under those enactments with the union requiring the worker to repay the cost of the training if he or she enters nonunion employment."

Those agreements have served reasonably well in an effort to reach the industry's ultimate goal of protecting its historical investment in developing the necessary skilled manpower to meet the nation's needs. The cooperative efforts made by the JATCs, local unions and contractor associations in executing those agreements are to be commended and are appreciated.

However, since the initiation of the present contracts the industry has continued to monitor and research the subject in an effort to strengthen our position. As a result we are extremely pleased to announce that the Sheet Metal Workers' International Association (SMWIA) Executive Council has accomplished an unquestionable "breakthrough" by the development of a "Sheet Metal Scholarship Loan Agreement." Therefore, new agreements have been designed which will prove to be far more effective and legally more enforceable.

The new concept is fundamentally based on the background of the Federal Government's "Guaranteed Student Loan Program" which has years of longevity, and has proven to be legally enforceable.

This new concept adopted by the General Executive Council is parallel to the government's practice. It has been enthusiastically accepted and is supported by the Sheet Metal and Air Conditioning Contractors' National Association (SMACNA). The National Training Fund (NTF) has been authorized and instructed to immediately place the program into effect.

The agreements shall supercede past agreements. JATCs, or Training Trusts, are requested to take those steps necessary to bring about the signatures of all apprentices, journeymen, instructors, etc. to the agreements designed for each respective category of training. Every person(s) scheduled to receive training or educational benefits as a result of industry contributions must become signatory to qualify for those benefits.



A Joint Labor Management Program



Industry contributions will be interpreted to include those which are either direct or indirect. They will reflect, but not be limited to, monetary contributions through collective bargaining agreements, plus contributions known as "in-kind" services, such as volunteer services rendered by JATC, local union, or contractor association officials and members.

The NTF has instructed its ten regional coordinators to assist each JATC in determining the recoverable costs which are to be calculated and inserted into each agreement. The NTF Regional Coordinator will also be prepared to advise each JATC of the prorated cost incurred as a result of the NTF's efforts. Those collective costs will subsequently be inserted into each agreement along with the local JATC's calculations.

The new "Sheet Metal Scholarship Loan Agreement" provides that apprentices or journeymen who have accepted training benefits paid for by industry contributions will repay the investments made on the trainee's behalf.

Repayment to the industry's training resources may be made in one of two ways:

(a) First, the monetary investment made on behalf of the trainee by both the local JATC and the NTF will be repaid through "service to the industry," which means "in-kind credits received" by working in the sheet metal industry for employers under collective bargaining agreements whereby those employers make contributions to the NTF and local JATCs. The service to the industry will be for a minimum of ten years. The ratio of repayment is based on a percentage formula starting with 5% repayment the first year of service and ending with 15% the tenth year of service. (Such a ratio is consistent with those imposed by mortgage companies, i.e., the principal of a "home loan" is depreciated the least in the first years and the most in the latter years of the mortgage.)

(b) The second method of repayment is to repay the loan in its entirety upon demand by the respective JATC. The demand will be made if trainees choose to make their "services" available to a nonunion (non-signatory) employer engaged in any phase of work jurisdiction which is recognized to be that of the union sheet metal worker and/or industry. A promissory note, in addition to the agreement, shall be signed by each trainee to assure collection of the obligation.

Recognizing that the training costs will vary each apprenticeship year and will be different for each journeyman course, it is necessary for a new contract to be signed at the beginning of each apprenticeship year or the beginning of each journeyman training course of study.

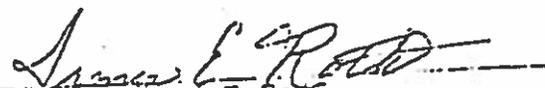
Enclosed you will find a copy of the apprentice agreement. Guidelines to assist you in calculating recoverable costs to be inserted into the contracts and promissory notes will be forwarded with your order for additional copies of the agreement. (Order form enclosed for your convenience — Journeyman agreements are being prepared.)

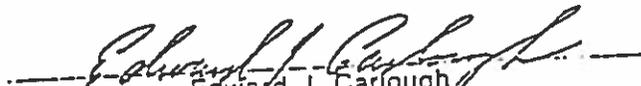
We have asked NTF legal counsel to monitor the use of these agreements by local JATCs. Therefore, if a JATC decides at any point to proceed to enforce an agreement, it is requested that the JATC give advance notice to the NTF Administrator in order to coordinate procedures and/or possible legal action.

This directive is endorsed by the cochairmen of the NTF in order to emphasize the cooperation and mutual determination of both labor and management to protect the historically vested interest of our industry.

YOUR IMMEDIATE ACTION IS IMPERATIVE!

If you have any questions, please do not hesitate to call your respective NTF Regional Coordinator or parent organization for guidance.


James E. Rom
NTF Management Cochairman


Edward J. Carlough
NTF Labor Cochairman

Apprentice
Sheet Metal Scholarship Loan Agreement
Between
Apprentice, Joint Apprenticeship & Training Committee
and the National Training Fund

WHEREAS, the Joint Apprenticeship and Training Committee of Local Union No. _____ SMWIA (hereinafter "Local Committee"), the National Training Fund for the Sheet Metal and Air Conditioning Industry (hereinafter "National Training Fund") and _____ (hereinafter "Apprentice") understand and agree that the Local Committee and the National Training Fund will expend significant sums of money for the training of the Apprentice in the specialized skills necessary for employment in the Sheet Metal Industry; and

WHEREAS, those sums of money will result in a substantial direct benefit, as well as a substantial indirect and intangible benefit, to the Apprentice from this training, which is valued, at a minimum, in the amount set forth in Paragraph 1 hereof (the "Scholarship Loan"); and

WHEREAS, the recent recession and the underemployment which has occurred in the Sheet Metal Industry have created a need to have the Scholarship Loan repaid by the Apprentice, in addition to the fact that it is only right and equitable that the Scholarship Loan should be repaid in any event; and

WHEREAS, the training of the Apprentice is a benefit which will lead to expected life earnings of over \$1,000,000 by the Apprentice; and

WHEREAS, the Local Committee and the National Training Fund (hereinafter referred to collectively as "The Committees") will grant a Scholarship Loan to the Apprentice in the amount set forth in Paragraph 1 hereof for the _____ year of the Apprentice's training; and

WHEREAS, the Scholarship Loan amount for the Apprentice's subsequent years of training will be calculated on or before the anniversary date of this Agreement and a new Agreement and Promissory Note for that amount will be sent to the Apprentice and the Apprentice agrees to promptly execute such new Agreement and Promissory Note; and

WHEREAS, the Apprentice hereby understands and agrees that the Apprentice assumes certain obligations arising out of the training provided by The Committees, including the obligation to repay the total Scholarship Loan made to the Apprentice by The Committees for all years of training; and

WHEREAS, the Apprentice will repay the Scholarship Loan to The Committees pursuant to the terms set forth herein by either cash payments or in-kind credits received by working in the Sheet Metal Industry for Employers under collective bargaining agreements whereby those Employers make contributions to The Committees;

NOW, THEREFORE, The Committees and Apprentice on this _____ day of _____, 19____, hereby Agree and Covenant, for the good and valuable consideration set forth herein, as follows:

1. **Scholarship Loan:** The Committees and the Apprentice hereby agree that the cost of the training, including books, manuals, necessary equipment, instructors' salaries (where applicable), and related materials, and the amount of the Scholarship Loan for the year of training covered by this Agreement is \$ _____, and that the Apprentice will execute this Agreement and the Promissory Note in that amount, attached hereto as Exhibit 1, and deliver such executed Agreement and Promissory Note to the Local Committee.

2. **Subsequent Years of Training:** The Committees and the Apprentice hereby agree that the cost of the training, including books, manuals, necessary equipment, instructors' salaries (where applicable), and related materials for each subsequent year of training shall be calculated by The Committees on or before the anniversary date of this Agreement. That calculation shall be the amount of a new Agreement and Promissory Note that the Apprentice shall execute for that year of training. A separate Agreement and Promissory Note shall be signed for each year of training.

3. **Term of Training:** The Committees will provide training worth at least the amount loaned to the Apprentice hereby during the period from _____, 19____, to _____, 19____.

4. **Repayment of Scholarship Loan:** The Scholarship Loan may be repaid by the Apprentice in full either in cash as set forth in Exhibit 1 hereto, or by in-kind credits, as set forth in Paragraph 7 hereof.

5. **Warranty of the Apprentice:** The Apprentice agrees and warrants as a condition of receiving the Scholarship Loan that upon completion of the training provided pursuant to this Agreement, and within the Sheet Metal Industry, the Apprentice will neither seek nor accept employment from an Employer engaged in, nor become an Employer engaged in, any general, mechanical sheet metal, testing and balancing, roofing, residential, sign or food service work or any other work covered by the Constitution of the Sheet Metal Workers' International Association unless such employment is performed under the terms of a collective bargaining agreement that provides for the payment of contributions by such Employer to The Committees or like Joint Apprenticeship and Training Committees.

6. **Breach of this Agreement:** It will constitute an immediate breach of this Agreement if the Apprentice accepts employment in the Sheet Metal Industry from an Employer who does not have a collective bargaining agreement which provides for the payment of contributions to The Committees or like Joint Apprenticeship and Training Committees.

7. **Repayment By In-Kind Credits:** An Apprentice, who works pursuant to a collective bargaining agreement for an Employer making payments to The Committees or a like Joint Apprenticeship and Training Committee, will receive a credit for each calendar year of such employment in accordance with the Repayment Schedule set out in the Promissory Note attached hereto as Exhibit 1, and all subsequent Promissory Notes signed by the Apprentice. The amount due The Committees for the Scholarship Loan will be reduced by such amount in accordance therewith.

8. **All Amounts Due and Payable if Breach Occurs:** If the Apprentice breaches this Agreement, all amounts due and owing on the Scholarship Loan, reduced by any credit received by the Apprentice pursuant to Paragraph 7 hereof, or by any cash payments made, will become immediately due and payable, together with interest at the prime interest rate then prevailing at The Riggs National Bank in Washington, D.C., from the date of this Agreement, and all costs of collection hereof, including reasonable attorneys' fees and all court costs. All amounts due and payable shall be owed to the National Training Fund and to the Local Committee in the same proportions as the National Training Fund and the Local Committee have contributed direct funds to the Loan. The Apprentice hereby agrees and covenants to accept personal service and jurisdiction of any competent court determined by The Committees by the mailing of a copy of the Complaint brought pursuant to this Agreement to the current address provided in Paragraph 10 hereof.

9. Waiver of Breach: An inadvertent breach of this Agreement can be waived in writing by The Committees in their sole discretion, and a waiver of such inadvertent breach of this Agreement will not be unreasonably withheld by The Committees.

10. Notice: All notices under this Agreement will be sent to The Committees and Apprentice as follows:

Apprentice:

Name

Address

City

State

Zip

Local Committee:

Name

Address

City

State

Zip

National Training Fund:

W. L. Fillippini, Administrator
1900 L St. N.W., Suite 510
Washington, D.C. 20036

The Apprentice hereby agrees to notify promptly the Local Committee of any change in the Apprentice's address.

11. Sheet Metal Industry: As used herein, the term "Sheet Metal Industry" means any and all types of work covered by collective bargaining agreements to which the Sheet Metal Workers' International Association (hereinafter "International Union") and/or any affiliated Local Union are a party or under the trade jurisdiction of the International Union's Constitution; or in a related building trade; or any other work to which a sheet metal worker has been assigned, referred or can perform because of his skills and training as a sheet metal worker.

Signed and agreed this _____ day of _____, 19____

By: W. L. Fillippini
W. L. Fillippini, Administrator
National Training Fund

By: _____
Signature and Title
Joint Apprenticeship & Training Committee

By: _____
Signature
Apprentice

Apprentice Promissory Demand Note for Sheet Metal Scholarship Loan Agreement

I, _____, hereinafter known as Apprentice, hereby promise to pay to _____ Joint Apprenticeship and Training Committee (the "Committee") and to the National Training Fund for the Sheet Metal and Air Conditioning Industry (the "National Training Fund"), on demand a Scholarship Loan of \$ _____ (the "Loan Amount") in accordance with the terms and provisions of the Sheet Metal Scholarship Loan Agreement between the undersigned, the Committee and the National Training Fund, dated _____, 19____ (the "Agreement"). That Loan Amount represents \$ _____ in direct funds provided by the National Training Fund, \$ _____ provided by the Committee, and \$1,000.00 in indirect and intangible value and worth provided by the National Training Fund and the Committee.

I also understand that the Loan Amount will be reduced, in accordance with Paragraph 7 of the Agreement for every year I work for an Employer who makes contributions, pursuant to a collective bargaining agreement within the Sheet Metal Industry, to the National Training Fund, the Committee, or a like Joint Apprenticeship and Training Committee, as follows:

Years Worked	Percent of Total Reduced	Annual Amount Reduced	Amount Reduced	Net Amount Due
1	5%	\$ _____	\$ _____	\$ _____
2	6%	\$ _____	\$ _____	\$ _____
3	7%	\$ _____	\$ _____	\$ _____
4	8%	\$ _____	\$ _____	\$ _____
5	9%	\$ _____	\$ _____	\$ _____
6	11%	\$ _____	\$ _____	\$ _____
7	12%	\$ _____	\$ _____	\$ _____
8	13%	\$ _____	\$ _____	\$ _____
9	14%	\$ _____	\$ _____	\$ _____
10	15%	\$ _____	\$ _____	\$ _____
	100%			

I agree that if legal action is required to collect this Demand Note that I will pay interest at the prime rate prevailing as determined by The Riggs National Bank of Washington, D.C., from the date of this Note, plus reasonable attorney's fees and all court costs.

Name: _____
Please print

Address: _____

City _____ State _____ Zip _____

Date: _____

Apprentice Signature _____