

**U.S. Department of Labor**

Labor-Management Services Administration  
Washington, D.C. 20216



Reply to the Attention of:

OPINION NO. 84-17A  
Sec. 3(1), 3(5), 3(40) and 514

APR 16 1984

Ms. Joyce A. Mader  
O'Donoghue & O'Donoghue  
1912 Sunderland Place, N.W.  
Washington, D.C. 20036

Dear Ms. Mader:

This is in response to your request for an advisory opinion on behalf of the National Automatic Sprinkler Industry Welfare Fund (the Fund) concerning the status of the Fund under the provisions of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you request an advisory opinion stating that the Fund is an employee welfare benefit plan within the meaning of section 3(1) of title I of ERISA, and you assert that the Fund is not a multiple employer welfare arrangement as described in recently added section 3(40) of title I of ERISA. You state that you are seeking to inform Fund trustees of their responsibilities under state insurance law.

In connection with your request for an advisory opinion you submitted the trust document governing the Fund and a collective bargaining agreement. The collective bargaining agreement dated April 1, 1982 (the CBA) is between the National Automatic Sprinkler and Fire Control Association, Inc. (NASA) and Road Sprinkler Fitters Local Union No. 669 of the United Association (UA) of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (Local 669). Article 19 of the Agreement describes the Fund and provides for contributions by contractors on behalf of employees working under the CBA.

The trust document describes the arrangement as follows:

...by and between the National Automatic Sprinkler and Fire Control Association, Inc. (hereinafter referred to as 'NASA') for and on behalf of its contractor members who are bound to a Collective Bargaining Agreement with the Union and other Employers, as defined in Article I, Section 3 of this Trust Agreement, who are contractually obligated to make contributions to the National Automatic Sprinkler Industry Pension Fund and Sprinkler Fitters Union No. 669 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO (hereinafter referred to as 'Union'), and certain individual Trustees....

Article I, section 3, of the trust document includes among employers eligible to contribute to the

Trust the following employers:

...(1) the members of NASA who are bound to a Collective Bargaining Agreement with the Union; (2) members who subsequent to the date of this Agreement authorized NASA to negotiate and execute Collective Bargaining Agreements on their behalf; (3) any Employers engaged in the sprinkler or fire control business of installing, servicing and maintaining sprinkler and fire control systems, who are now or may become parties to a Collective Bargaining Agreement with a Local Union affiliated with the United Association, which provides that the Employer party to the Agreement shall contribute to the National Automatic Sprinkler Industry Welfare Fund; (4) Employers employing sprinkler fitters of a Sprinkler Local Union affiliated with the United Association who are contractually obligated, by agreements or signed stipulations, to make contributions and do in fact make one or more payments to the National Automatic Sprinkler Industry Welfare Fund; and (5) sprinkler Local Unions affiliated with the United Association who are contractually obligated by a signed stipulation to make contributions on behalf of all paid employees of Sprinkler Local Unions to the National Automatic Sprinkler Industry Welfare Fund and do in fact make one or more such payments....

Local 669 constitution and bylaws and the NASA organizational documents were not included in the materials you submitted; nevertheless, nothing in your correspondence suggests that Local 669 is not a bona fide employee organization or that NASA is not a bona fide employer association within the meaning of sections 3(4) and (5) of title I of ERISA.<sup>1</sup> Therefore, for purposes of this opinion, we assume that Local 669 is an employee organization and that NASA is an employer with respect to the Fund. Accordingly, the opinion rendered herein is dependent on the accuracy of the assumption. You describe the Fund as jointly administered by union and employer trustees. Specifically, article III, section 1, of the trust document provides for six Fund trustees. Local 669 appoints two trustees in accordance with Local 669 constitution and bylaws, and the remaining union trustee is appointed by other UA local unions as prescribed by the UA General President. NASA appoints all three employer trustees. According to article III, section 6, the party designating a trustee may also establish the trustee's term of office. You state that you believe the Fund complies with sections of the Taft-Hartley Act identified in your correspondence.

You also state that the Fund became self-insured as of June 1983, with the exception of certain life insurance coverage. The Fund's sole purpose appears to be the provision of medical, surgical, hospital care, sickness, accident, disability, and death benefits.

Section 3(1) of ERISA defines the term "employee welfare benefit plan" as:

...any plan, fund, or program which was heretofore or is hereafter established or

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<sup>1</sup> In a series of advisory opinions, the Department of Labor has discussed a number of factors that should be considered in determining whether an organization is a bona fide employee organization or a bona fide group or association of employers acting for an employer in relation to an employee benefit plan.

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).

Based on the information you submitted, the Fund appears to provide benefits among those enumerated in section 3(1) of ERISA and appears to be established and maintained both by employee organizations (Local 669, other UA locals, and UA itself) and by NASA, a group or association of employers meeting the definition of an employer within the meaning of section 3(5) of ERISA, with respect to members' employees and therefore appears to be an employee welfare benefit plan within the meaning of section 3(1) of ERISA.

Section 514(b)(6) of title I of ERISA allows state insurance departments to regulate an employee welfare benefit plan or other arrangement which constitutes a multiple employer welfare arrangement (MEWA) as defined in section 3(40) of ERISA; however, an employee welfare benefit plan meeting an exception from the MEWA definition specified in section 3(40)(A) is not subject to state insurance regulation.

You should be aware, however, that if benefits provided by the Fund extend to individuals (other than employees of a UA local) who are not under the jurisdiction of UA's or UA locals' collective bargaining agreements with NASA (for example, in accordance with unspecified agreements or signed stipulations), the Department of Labor cannot assure you that the above conclusions concerning the Fund under title I of ERISA are applicable.

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

The opinions expressed in this letter relate solely to the legal consequences of the facts described herein under title I of ERISA. In particular, we express no opinion regarding the legal consequences of those facts under section 302 of the Labor Management Relations Act, 1947.

Sincerely,

Morton Klevan  
Deputy Administrator  
Pension and Welfare Benefit Programs