

(8) The Board of Trustees of the Training Fund (the Training Fund Trustees) has determined that the Lease transaction is an appropriate investment for the Training Fund and is in the best interest of the Training Fund's participants and beneficiaries.

Summary of Facts and Representations

1. The Welfare Fund, which operates under a formal Trust Agreement, is a collectively-bargained, multiemployer joint welfare plan. The Welfare Fund provides medical and related benefits to union electricians and their families. The Welfare Fund was established by Local 1, of the International Brotherhood of Electrical Workers, AFL-CIO (Local 1), a labor organization, and the St. Louis Chapter, of the National Electrical Contractors Association (St. Louis Chapter, NECA), an employer association.

The benefits provided by the Welfare Fund are funded by contributions made by the employers pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. As of December 31, 2001, the Welfare Fund had net assets available for benefits of \$87,890,891 based upon audited financial statements.¹⁰ As of April 30, 2003, the Welfare Fund had 4,782 participants. The Welfare Fund's operations are located at 3260 Hampton Avenue, St. Louis, Missouri.

2. The Training Fund, which is administered under a formal Trust Agreement, is a collectively-bargained, multiemployer joint apprenticeship training plan. The Training Fund was established by Local 1 and the St. Louis Chapter, NECA. The Training Fund provides training and educational benefits to electrical apprentices and journeymen. The benefits are funded by contributions made by the employers to the Training Fund pursuant to collective bargaining agreements between Local 1 and the St. Louis Chapter, NECA. The Training Fund is a party in interest with respect to the Welfare Fund because employees of the Training Fund are participants in the Welfare Fund. As of December 31, 2002, the Training Fund had net assets available for benefits of \$4,998,407 based upon audited financial statements.¹¹ As of April 30, 2003, the Training Fund had 3,267 participants. The Training Fund's present facility is

located at 2300 Hampton Avenue, St. Louis, Missouri (the 2300 Hampton Avenue Building).

3. The Welfare Fund is administered by six trustees. Three of the Welfare Fund Trustees are appointed by Local 1 while the remaining three Welfare Fund Trustees have been appointed by the St. Louis Chapter, NECA. The Local 1 appointed Welfare Fund Trustees are Messrs. Stephen P. Schoemehl, James Reinheimer and Mathew Lampe. The St. Louis Chapter, NECA appointed trustees of the Welfare Fund are Messrs. Douglas R. Martin, Robert Kaemmerlen and Eric Aschinger.

The Training Fund is also administered by six trustees, three of whom are appointed by Local 1, and three of whom are appointed by the St. Louis Chapter, NECA. The Local 1 appointed Training Fund Trustees are Messrs. Stephen P. Schoemehl, Thomas E. George, and Dan King. The St. Louis Chapter, NECA appointed Training Fund Trustees are Messrs. Douglas R. Martin, T. Michael Fogarty, and Stephen J. Kohnen. As noted herein, Messrs. Stephen P. Schoemehl and Douglas Martin are common Trustees to both Funds.

4. The IBEW-NECA Service Center (the Service Center), which is a "not for profit" Missouri corporation, is a party in interest with respect to the Welfare Fund because it is an employer whose employees participate in such Fund. The Board of Directors of the Service Center are appointed by the Business Manager of Local 1 and the St. Louis Chapter, NECA. The Service Center provides employee benefit plan administration to approximately 17 welfare and pension funds, including the Funds. The largest group of employee benefits funds administered by the Service Center were established by Local 1 and the St. Louis Chapter, NECA pursuant to collective bargaining. The Service Center also administers employee benefit funds established by Local 257, IBEW, and the St. Louis Chapter, NECA, and a pension fund established by the Illinois Chapter, NECA and several locals of the IBEW. The Service Center's costs of administration are allocated among the various employee benefit funds that the Service Center administers.

The Service Center's sole administrative facility is located at 3260 Hampton Avenue, St. Louis, Missouri. There, the Service Center leases portions of three separate two-story buildings (the 3260 Hampton Avenue Buildings) from the Local 1, IBEW Pension Benefit Trust Fund (the Pension Fund), which is the owner of the 3260 Hampton Avenue Buildings. The

Pension Fund is one of the employee benefit plans administered by the Service Center. The three 3260 Hampton Avenue Buildings comprise a total of 12,000 square feet of space. Of this total, the Service Center leases 9,300 square feet of space in these premises.¹² Two unrelated tenants occupy the remaining space in the 3260 Hampton Avenue Buildings.

The Welfare Fund is administered by the Service Center in the 3260 Hampton Avenue Buildings. Of the 9,300 square feet of space leased by the Service Center, employees of the Service Center perform work for the Welfare Fund within approximately 3,965 square feet of space.

The parking facilities at the 3260 Hampton Avenue Buildings are limited with a total of 45 spaces, of which 13 spaces are leased to the two outside tenants. There is no convenient overflow parking at the 3260 Hampton Avenue Buildings.

5. Under section 4.05 of the Welfare Fund Trust Agreement, the Welfare Fund Trustees are authorized to invest in real estate. Therefore, on September 26, 2002, the Welfare Fund Trustees signed a contingent sales contract for the purchase of a two-story, concrete block building, with office and training center facilities, located at 5735 Elizabeth Avenue, St. Louis, Missouri (the 5735 Elizabeth Avenue Building) with the owner, the Plumbers' and Pipefitters' Welfare Educational Fund, an unrelated party. Following the initial planning meetings, Messrs. Schoemehl and Martin, who are the common Trustees of the Welfare Fund and the Training Fund, did not participate in the decisions to purchase the 5735 Elizabeth Avenue Building or to lease it, in accordance with the Lease described herein.

Under the terms of the contingent sales contract, the Welfare Fund must satisfy the purchaser's contingencies prior to the last day of the applicable contingency period. The contingencies to be satisfied contemplate the Welfare Fund (a) obtaining any and all inspections and assessment reports pertaining to the 5735 Elizabeth Avenue Building; (b) obtaining a commitment for title insurance; (c) obtaining a survey of the 5735 Elizabeth Avenue Building

¹⁰ According to the Applicants, the Welfare Fund's 2002 audit report has not been completed. However, draft balance sheets for this Fund show net assets available for benefits of \$91,586,030 as of December 31, 2002, and \$89,305,694, as of March 31, 2003.

¹¹ Based on an unaudited financial statement, the Training Fund had net assets available for benefits of \$4,832,184.44 as of March 31, 2003.

¹² As noted above, the Pension Fund currently leases portions of its 3260 Hampton Avenue Buildings to the Service Center, a party in interest with respect to the Pension Fund. The Applicants represent that the current lease satisfies the terms and conditions of Prohibited Transaction Exemptions (PTEs) 76-1 and 77-10 (41 FR 12740, March 26, 1976 and 42 FR 33918, July 1, 1977, respectively). However, the Department expresses no opinion herein on whether such lease satisfies the terms and conditions of these class exemptions.