



July 1, 1994

Ms. Catherine A. Powers
Benefits Attorney
Air Line Pilots Association
535 Herndon Parkway
P.O. Box 1169
Herndon, Virginia 22070

94-23A
ERISA SECTION
3(1),2510.3-10)

Dear Ms. Powers:

This is in response to your request on behalf of the Air Line Pilots Association, International (ALPA) regarding the applicability of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the ALPA Group Accident and Sickness Insurance Plan (the ASI Plan) is an "employee welfare benefit plan" within the meaning of section 3(1) of ERISA.

You advise that ALPA is an unincorporated association that represents, for purposes of collective bargaining under the Railway Labor Act, 42,000 pilot members who fly for 44 commercial airlines. The Department of Labor (the Department) notes that ALPA files yearly as a labor organization (File No. 000179) under the provisions of the Labor-Management Reporting and Disclosure Act of 1959.

Section 3(4) of Title I of ERISA provides:

(4) The term "employee organization" means any labor union or any organization of any kind, or any agency or employee representation committee, association, group, or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning an employee benefit plan, or other matters incidental to employment relationships; or any employees' beneficiary association organized for the purpose in whole or in part, of establishing such a plan.

For the purposes of this opinion, we assume that ALPA is an employee organization within the meaning of ERISA section 3(4).

You represent that the ASI Plan was established in 1985 to provide medical insurance to ALPA members whose employer-sponsored group medical insurance terminates as a result of bankruptcy, cessation of business, strike, work stoppage, or furlough. The group insurance under the ASI Plan is held in ALPA's name. You state that ALPA makes suggestions to the insurer that provides the medical insurance under the ASI Plan regarding the design and plan structure of the ASI Plan and that "[a]fter considering [ALPA's] input on plan design and structure, along with plan experience and market competition, the insurer sets the premium rates on an actuarial basis."

You further represent that when members incur a loss of employer-sponsored insurance coverage due to one of the specified events mentioned above, ALPA provides the members information regarding the ASI Plan, including a copy of an ASI Plan brochure. The ASI Plan brochure that is provided to such members refers to the ASI Plan as the "ALPA Group Major Medical Insurance Plan" and "ALPA-sponsored Insurance."

You also represent that participation in the ASI Plan is voluntary. ALPA members who choose to enroll in the ASI Plan are billed for premiums by ALPA on a monthly basis. ALPA forwards the premium payments to the insurer. In addition to forwarding members' premiums, you state that ALPA pays the insurer twenty-five cents per month for each active member of ALPA in good standing to create a "claims fluctuation reserve."¹

Payment of the "claims fluctuation reserve" is required by the insurance contract between ALPA and the insurer. The contract states that the premium due is the aggregate of a "Deposit Premium" and the Individual Premium charges due from the members and that the Deposit Premium to be paid by ALPA is the sum of a "Minimum Deposit Premium" and any "Special Deposit Premiums" deemed necessary by the insurer to recoup losses in the years in which there is an experience deficit. The Minimum Deposit Premium to be paid by ALPA is the twenty-five cents that is paid per month by ALPA to the insurer on behalf of applicable ALPA members. The insurer reserves the right under the contract to change the Deposit Premium and the Individual Premiums as of any premium due date if proper notice of such change is given to ALPA.

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).

Although the ASI Plan provides a benefit that is specified in ERISA section 3(1), in order to be an employee welfare benefit plan, it must also, among other criteria, be established or maintained by an employer or an employee organization, within the meaning of section 3(1). You assert that ALPA does not establish or maintain the ASI Plan because the program meets the requirements for a group insurance program set forth in regulations of the Department at 29 C.F.R. section 2510.3-1(j). Regulation section 2510.3-1(j) describes certain group or group-type insurance programs in which the involvement of the employer or employee organization in the operations of the program is so minimal that such involvement does not constitute establishment or maintenance of the arrangement for purposes of ERISA section 3(1). Thus, the issue presented in this case is whether the ASI Plan is a group insurance program as described in regulation section 2510.3-1(j) and therefore not an "employee welfare benefit plan" within the meaning of ERISA section 3(1).

Regulation section 2510.3-1(j) provides:

(j) Certain group or group-type insurance programs. For purposes of Title I of the Act and this chapter, the terms "employee welfare benefit plan" and "welfare plan" shall not include a group or group-type insurance program offered by an insurer to employees or members of an employee organization, under which

(1) no contributions are made by an employer or employee organization;

(2) participation in the program is completely voluntary for employees or members;

(3) the sole functions of the employer or employee organization with respect to the program are, without endorsing the program, to permit the insurer to publicize the program to employees or members, to collect premiums through payroll deductions or dues checkoffs and to remit them to the insurer; and

(4) the employer or employee organization receives no consideration in the form of cash or otherwise in connection with the program, other than reasonable compensation, excluding any profit, for administrative services actually rendered in connection with payroll deductions or dues checkoffs.

It is the Department's position that a program will be excluded from Title I of ERISA pursuant to regulation section 2510.3-1(j) only if the activities of the employer or employee organization do not exceed any of the limitations set forth in the regulation. In the Department's view, ALPA's involvement in the operations of the ASI Plan, as described below, exceeds certain limitations of regulation section 2510.3-1(j).

First, ALPA endorses the ASI Plan within the meaning of section 2510.3-1(j)(3). An employee organization will be considered to have endorsed a group or group-type insurance program if the employee organization expresses to its members any positive, normative judgment regarding the program. An employer or employee organization may, in the course of permitting an insurer, insurance agent, or insurance broker to market a group or group-type insurance program to its employees or members, facilitate the publicizing and marketing of the program, but only to an extent short of endorsing the program.² An endorsement within the meaning of section 2510.3-1(j)(3) occurs if the employee organization urges or encourages member participation in the program or engages in activities that would lead a member reasonably to conclude that the program is part of a benefit arrangement established or maintained by the employee organization.

The brochure that ALPA provides to its members specifically and clearly characterizes the ASI Plan as "ALPA-sponsored Insurance." "ALPA Group Major Medical Insurance Plan" is prominently displayed on the front of the brochure. We view this labeling and packaging as expressions of ALPA's positive, normative judgement regarding the program. An ALPA member, reading this brochure, would reasonably conclude that the program is part of a benefit arrangement established or maintained by ALPA.

Second, ALPA does not comply with the requirement of regulation section 2510.3-1(j)(1) that no contributions be made to the program by the employee organization. ALPA makes contributions to the program by paying to the insurer the amounts, including the twenty-five cents per month for each active member, constituting the "claims fluctuation reserve."

Finally, ALPA's suggestions to the insurer on plan design and structure represent direct involvement in the ASI Plan in excess of that permitted by regulation section 2510.3-1(j)(3). Regulation section 2510.3-1(j)(3) limits the functions of the employee organization with respect to the program to permitting the insurer to publicize the program to members, collecting premiums through dues checkoffs, and remitting premiums to the insurer.

Therefore, on the basis of the facts, representations, and documents provided, we conclude that ALPA's involvement in the ASI Plan exceeds the minimal and neutral involvement contemplated by ERISA section 2510.3-1(j). It is the opinion of the Department that the ASI Plan is established or maintained by ALPA and that it is an employee welfare benefit plan subject to Title I of ERISA.

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

Sincerely,

Robert J. Doyle
Director of Regulations
and Interpretations

Enclosure

¹ Between November 1, 1985, and February 1, 1989, ALPA paid to the insurer an additional sum of seventy-five cents a month for each active member of ALPA in good standing as part of the "claims fluctuation reserve."

² See, e.g., Letter to Mr. Jerry L. Oppenheimer, dated Dec. 16, 1976, (copy enclosed). In that letter the Department opined that a communication to employees or members that states that the employer or employee organization is "enthusiastic" about a program would be an endorsement within the meaning of section 2510.3-1(j)(3). Similarly, a communication that states that the employer or employee organization has "arranged" for a group or group-type insurance program might be an endorsement if, taken together with other employer or employee organization activities, it leads employees or members to reasonably conclude that the insurance program is one established or maintained by the employer or employee organization.