



OPINION NO. 84-35A
Sec. 3(2)

SEP 14 1984

Mr. Lewis A. Siegel
Laiken, Siegel & Co.
71 Union Avenue
Rutherford, New Jersey 07070

Dear Mr. Siegel:

This is in reply to your letter of March 9, 1984, requesting an advisory opinion regarding applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically you ask whether the Pension Fund of Local One, Amalgamated Lithographers of America (the Local One Plan) and the ALA-Lithographic Industry Pension Plan (the ALA Plan) constitute a single employee benefit plan for the purposes of title I of ERISA.

You advise that for the purpose of applying the provisions of title I of ERISA as those provisions may affect the entitlement of your client, Mr. Theodore Palomba, to benefits from the Local One Plan and the ALA Plan, you seek a determination whether those plans constitute a single employee benefit plan within the meaning of section 3(3) of title I of ERISA. You further advise that Sections 8.4 and 18.03 of the By-Laws of Local One, Amalgamated Lithographers of America (Local One) require all members of Local One, except for certain finishing department employees, to participate in the Local One Plan. The Local One Plan is funded solely by employee contributions withheld under a collective bargaining agreement by employers. It is administered by 10 trustees, 4 of whom are officers of Local One and the remainder elected by the membership of Local One.

The ALA Plan covers all employees covered under the collective bargaining agreement between Local One and the Metropolitan Lithographers Association (the MLA). The ALA Plan also covers employees of Local One and some affiliated funds for whom Local One contributes. All other contributions to the ALA Plan are made by the employer members of MLA. The ALA Plan is administered by 12 trustees. Half the trustees are designated by Local One and half by MLA. You state that since the ALA Plan covers only employees who are members of Local One and since members of Local One are required to participate in the Local One Plan as a condition of membership, participation in the Local One Plan and the ALA Plan should be considered a single continuous transaction.

The Department would consider, among others, the following factors in determining whether there is a single plan or several plans in existence: who established and maintains the plans, the process and purposes for plan formation, the rights and privileges of plan participants and the presence of any risk pooling. In the instant case, the Local One Plan appears to be established and maintained solely by an employee organization, while the ALA Plan appears to be established and maintained by both an employer and an employee organization. Moreover, there is nothing in the materials you have submitted which indicates that there is any degree of pooled risk between these two plans since the assets of one plan are not available to pay benefits to participants of the other plan. (In that regard, the Internal Revenue Service has cited the existence or absence of risk

pooling between funds as relevant to the determination of single plan status. See 26 C.F.R. §1.414(1)-1(b).)

Based on the information you submitted, the Department of Labor (the Department) sees no reason to conclude that the Local One Plan and the ALA Plan constitute one employee pension benefit plan within the meaning of section 3(2)(A) of ERISA. As indicated above, the Local One Plan appears to be a plan established and maintained solely by an employee organization, Local One. The ALA Plan, on the other hand, appears to be a plan established and maintained by both an employer (the MLA) and an employee organization (Local One).

Accordingly, it is the position of the Department that the Local One Plan and the ALA Plan each appear to be separate employee pension benefit plans within the meaning of section 3(2)(A) of title I of ERISA.

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

Sincerely,

Morton Klevan
Deputy Administrator for Policy and Program Review