P/OPINION 77-18

3(1)
3(2)

January 18, 1977

Dear :

Thank you for your letter dated January 9, 1976, requesting a determination whether proposed severance payment funds are covered under the Employee Retirement Income Security Act of 1974 (ERISA). I am sorry we could not reply sooner.

Each fund, with union and management trustees, would be set up on an individual company basis. Each employee whose termination is due to reorganization, going out of business, relocating, etc., would be paid one week's pay for each year of service, the payroll on January 1 of each year being the basis of computing the amount due to any worker who is terminated during such year. According to your phone conversation with a member of my staff, payments will be made immediately or within a few weeks after separation.

Section 2510.3-2(b) of a regulation issued August 15, 1975 (copy enclosed), describes the conditions under which a severance pay plan is not an employee pension benefit plan under the ERISA. All such payments must be completed within one year after the participant's separation from service and the total of all payments made within such year to any participant cannot exceed the participant's annual compensation level. In a News Release issued April 26, 1976 (also enclosed), the Department announced its intention to revise the regulation to include payments which do not exceed two years of final annual compensation, or extend for a period of more than twelve months beyond normal retirement age or the effective date of elected early retirement.

Based on the above, it appears that these funds will not constitute pension plans under the ERISA. However, section 3(1) defines an employee welfare benefit plan, in part, as "any 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, . . . (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)". Severance pay is one of the benefits described in section 302(c) of the Labor Management Relations Act. Therefore, the funds are employee welfare benefit plans within the meaning of section 3(1) of the ERISA and are covered under Title I.

Sincerely,