4 FEB 1977

OPINION 77-20 A

211(c)(1)

Mr. Edwin C. McManus
Staff Vice President
Employee Benefits Program
Rockwell International Corp.
600 Grant Street
Pittsburgh, Pennsylvania 15219

Dear Mr. McManus:

This is in reply to your letter of January 12, 1977 requesting our prompt confirmation of your interpretation of section 211(c) of the Employee Retirement Income Security Act of 1974 (ERISA) that, based on the facts set forth in your letter, (1) the lifetime supplement described therein constitutes a "supplementary or special plan provision" and (2) the Rockwell International Corporation Hourly Rated Employees Pension Plan (the Plan) is "a plan maintained on January 1, 1974 pursuant to a collective bargaining agreement" which is still in effect.

Your letter contains the following facts and representations: The benefits provided by the Plan have historically been patterned after the plan maintained pursuant to the collective bargaining agreement between General Motors Corporation and the UAW. This pattern has existed since 1950, which was the date on which the Plan was adopted by Rockwell International Corporation (Rockwell). Since 1950 there have been nine negotiations between Rockwell and the UAW. In each of these negotiations whenever General Motors agreed to increase benefits, Rockwell has also increased benefits. The benefits provided by Rockwell throughout this period have, with two exceptions, been the same as those provided by General Motors. In 1968 and in three negotiations since that time, the benefits were substantially identical. The language of the Plan is substantially the same as the General Motors Pension Plan.

In 1973, General Motors and the other two major automobile manufacturers introduced a six-year pension agreement containing a supplementary lifetime benefit for certain employees which

benefits commence at age 65. You believe that this benefit clearly is a "supplementary or special plan provision" within the meaning of section 211(c)(1) of ERISA. Rockwell, consistent with the foregoing pattern, agreed to include this supplement in the Rockwell Plan on February 5, 1974, as part of a six-year pension collective bargaining agreement.

You believe that Rockwell's long standing tradition of pattern bargaining with the UAW, in which Rockwell has followed the General Motors Corporation's plan benefit increases, compels the determination that the Plan containing such provisions was maintained on January 1, 1974. The UAW staggers its negotiations with the major autoworkers and their suppliers. The major autoworkers pension collective bargaining agreement, which Rockwell had traditionally followed, was entered into prior to January 1, 1974. You believe that if it is concluded that the Plan is not deemed to be maintained on January 1, 1974 pursuant to the collective bargaining agreement still in effect, the result would be inequitable and would disrupt orderly and historical collective bargaining relationships.

Section 211(c) of ERISA provides that:

> (c)(1) In the case of a plan maintained on January 1, 1974, pursuant to one or more agreements which the Secretary finds to be collective bargaining agreements between employee organizations and one or more employers, no plan shall be treated as not meeting the requirements of sections 204 and 205 solely by reason of a supplementary or special plan provision (within the meaning of paragraph (2)) for any plan year before the year which begins after the earlier of--
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> (A) the date on which the last of such agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or
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> (B) December 31, 1980.
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> For purposes of subparagraph (A) and section 306(c), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement contained

> in this Act or the Internal Revenue Code of 1954 shall not be treated as a termination of such collective bargaining agreement. This paragraph shall not apply unless the Secretary determines that the participation and vesting rules in effect on the date of enactment of this Act are not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204.
> (2) For purposes of paragraph (1), the term "supplementary or special plan provisions" means any plan provision which--
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> (A) provides supplementary benefits, not in excess of one-third of the basic benefit, in the form of an annuity for the life of the participant, or
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> (B) provides that, under a contractual agreement based on medical evidence as to the effects of working in an adverse environment for an extended period of time, a participant having 25 years of service is to be treated as having 30 years of service.
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> (3) This subsection shall apply with respect to a plan if (and only if) the application of this subsection results in a later effective date for this part than the effective date required by subsection (b).

Your letter does not contain sufficient information concerning the Plan's provisions regarding supplementary lifetime benefits to determine whether such provisions constitute a "supplementary or special plan provision" within the meaning of section 211(c)(2) of ERISA. Accordingly, we cannot issue any opinion in response to your request in that regard.

In regard to your question with respect to whether the Plan was maintained on January 1, 1974 pursuant to a collective bargaining agreement which is still in effect, it is our opinion that, on the basis of the representations in your letter of January 12, 1977 as to all the facts and circumstances surrounding the agreement of February 5, 1974, the action taken by Rockwell International Corporation with respect to the patterned bargaining of certain supplementary lifetime benefits relates back to the pre-1974 pattern agreement for purposes

of section 211(c)(2) of ERISA. It should be noted that this opinion is limited to the facts and circumstances of this request and should not be interpreted as imploing, as a general proposition, that later patterned bargaining will be deemed to be concluded at the same time as the agreement of the pattern setter for purposes of the applicability of any ERISA provisions.

Notwithstanding the above, this letter should not be deemed to be an opinion of the Department as to whether section 211(c) applies to the Plan. In this regard, we are issuing no opinion herein as to whether the agreements mentioned in your letter constitute "collective bargaining agreements" for purposes of section 211(c)(1) of ERISA or whether the Plan's participation and vesting rules in effect on the date of enactment of ERISA were not less favorable to participants, in the aggregate, than the rules provided under sections 202, 203, and 204 of ERISA.

This letter constitutes an advisory opinion as defined in ERISA Procedure 76-1 (copy enclosed). Accordingly, this letter is issued subject to the provisions of such procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Fred W. Stuckwisch
Director
Office of Regulatory
Standards and Exceptions

Enclosure