P/OPINION 77-38

211(c)(1)
306(c)(1)

May 11, 1977

Dear

This is in response to the letter from you and Mr. (x) of (named) Company requesting an advisory opinion regarding certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) as they relate to several matters collectively bargained between the (Union) and (named) Company.

You represent in your letter and the memorandum enclosed therewith that in 1973 the (Union) and (named) Company agreed upon a 6-year retirement agreement which contained certain provisions which you state are "supplementary or special plan provisions" within the meaning of ERISA section 211(c)(2). After bargaining in 1976, the two parties agreed to the following:

a. An increase in the Special Age 65 Benefit effective November 1, 1976;

b. An increase in the percentage benefit of the surviving spouse of an employee retiring on or after November 1, 1976;

c. An extension of the foundry service bonus to 2,000 foundry skilled trades employees out of 149,676 employees participating in the plan; and

d. Payment of a one-time lump sum from company assets to employees retiring before September 14, 1976, who are eligible to receive benefits as of January 1, 1978.

The foundry service bonus and the lump sum payments in the 1976 agreement were made conditional upon securing a satisfactory ruling from the Department of Labor.

Specifically, you request an advisory opinion that these 1976 agreements do not constitute a termination of the 1973 retirement agreement under sections 211(c) and 306(c) of ERISA.

Section 306(c)(1) provides that the minimum funding standards of Part 3 of Title I of ERISA shall not apply to any plan in effect on January 1, 1974, pursuant to a collective bargaining agreement until the earlier of the dates specified in section 211(c)(1)(A) or (B). Section 211(c)(1) provides that such plans will not be treated as not meeting the requirements of sections 204 and 205 solely because of a supplementary or special plan provision for any plan year before the year which begins after the earlier of the date on which the last collective bargaining agreement relating to the plan terminates or December 31, 1980.

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.

The statute does not define what constitutes termination of a collective bargaining agreement relating to a plan for purposes of section 211(c). However, a House Ways and Means Committee Report (House Report 93-807, p. 51-52) stated such an agreement "... will not be considered terminated if it can be (or is) reopened with respect to narrow issues only. For example, a collective bargaining agreement would not be considered as being terminated for this purpose if it can be reopened with respect to the benefit payable to a surviving spouse, if it can be reopened because of a change in payments with respect to voluntary coverage under Part B of the Medicare Benefits under the Social Security Act or if it can be reopened to increase benefits with respect to a quite limited group of employees." The Conference Committee Report on ERISA (House Report 93-1280, p. 267) incorporated these statements by reference.

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Based on your representations, the supplementary material enclosed with your letter, and the intent of the Congress as shown in the Committee Reports, we conclude that the 1976 agreements on the Special Age 65 Benefit and the increased surviving spouse benefit do not constitute a termination of the 1973 retirement agreement. Similarly, the extension of the foundry service bonus under the 1976 agreement will not constitute a termination of the 1973 retirement agreement because it merely increases "... benefits with respect to a quite limited group of employees." Lastly, the agreement for (named) Company to pay a lump sum to certain retirees will not constitute a termination of the 1973 retirement agreement because it in any event deals with a narrow issue within the meaning of the legislative history cited above.

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.

Because sections 211(c) and 306(c) have parallel provisions in ERISA section 1017(c), which is under the jurisdiction of the Internal Revenue Service, we have conferred with representatives of the Service and they have indicated their concurrence in the views set forth above as they apply to that section.

Sincerely,