U.S. DEPARTMENT OF LABOR
LABOR MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20016

May 12, 1977

Mr. Douglas A. Fraser
Vice President
International Union, United
Automobile, Aerospace and
Agricultural Implement Workers
of America
800 East Jefferson Avenue
Detroit, Michigan 48214

OPINION 77-40 A

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

Dear Mr. Fraser:

This is in response to the letter from you and Mr. G. Lee Philp of Chrysler Corporation 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 U.A.W. and Chrysler Corporation.

You represent in your letter and the memorandum enclosed therewith that in 1973 the U.A.M. and Chrysler Corporation agreed upon a 6-year retirement agreement. 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 additional pension credited service to 350 asbestos employees out of 119,685 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 amendments 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 section 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 section 204 and 205 solely because of a supplementary of 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 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.

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 termination of the 1973 retirement agreement. Similarly, the additional pension credited service 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 Chrysler Corporation 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.

It should be noted that this opinion is limited to the facts and circumstances of this request and 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 206(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,

Fred W. Stuckwisch
Director
Office of Regulatory Standards
and Exceptions