U.S. DEPARTMENT OF LABOR
LABOR-MANAGEMENT SERVICES ADMINISTRATION
Pension and Welfare Benefit Programs
Washington, D.C. 20216

August 8, 1977

Mr. Raymond M. Lyons
Vice President
Employee and Public Relations
Fruehauf Corporation
10900 Harper Avenue
Detroit, Michigan 48232

OPINION 77-52 A

211(c)(1)

Dear Mr. Lyons:

This is in reply to your letter requesting our 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) Kelsey-Hayes Company Hourly-Rated and Salaried Employees Within a Bargaining Unit Pension Plan - Detroit and Romulus, Pension Plan for Hourly-Rated Employees at the Gunite Division Kelsey-Hayes Company Pension Plan for Hourly-Rated and Salaried Employees Within a Bargaining Unit - Heintz Division, Pension Plan for Salaried Employees at Detroit and Romulus Plants (Plant Guards), Kelsey-Hayes Pension Plan for Hourly Rated Employees - Jackson Plant, and Kelsey-Hayes Pension Plan for Hourly-Rated Employees - French & Hecht Division (the Plans) are plans " . . . 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 Plans 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 Plans were adopted by Kelsey-Hayes Company. The Plans' changes have been the same as those provided by General Motors. The language of the Plans is almost identical to the General Motors Pension Plan.

In 1973, General Motors and the other two major automobile manufacturers introduced a 6-year pension agreement containing a supplementary lifetime benefit for certain employees which benefits commence at age 65. You believe that this

benefit is a "supplementary or special plan provision" within the meaning of section 211(c)(2) of ERISA. Kelsey-Hayes, consistent with the foregoing pattern, agreed to include this supplement in the Plans beginning on January 31, 1974, as part of a 6-year pension collective bargaining agreement.

You believe that Kelsy-Hayes' long standing tradition of pattern bargaining with the UAW, in which Kelsey-Hayes has followed the General Motors Corporation's plan benefit increases, compels the determination that the Plans containing such provisions were 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 Kelsey-Hayes had traditionally followed, was entered into prior to January 1, 1974. You believe that if it is concluded that the Plans are 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 211c) 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 --

(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

(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.

(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).

Based on the representations in your letter of April 1, 1977, the supplementary lifetime benefit does constitute a "supplementary or special plan provision" within the meaning of section 211(c)(2) of ERISA.

In regard to your question with respect to whether the Plans were 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 April 1, 1977 as to all the facts and circumstances surrounding the agreements of January 31, 1974, March 1, 1974, April 18, 1974, July 31, 1974, and August 31, 1974, the action taken by Kelsey-Hayes Company 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)(1) 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 implying, 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 Plans. 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 Plans' 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. Stuckwish
Director
Office of Regulatory Standards
and Exceptions