

**NOTICE OF CRITICAL STATUS  
FOR THE PLAN YEAR BEGINNING OCTOBER 1, 2009  
FOR THE UNITED FOOD & COMMERCIAL WORKERS UNION -  
EMPLOYER PENSION FUND**

January 28, 2010

TO: Participants, Beneficiaries, Retirees, Participating Employers, United Food & Commercial Workers Union Local 880, Office and Professional Employees Local 339, Business and Organizing Representatives Union Local No. 1, Cleveland, Ohio.

The Pension Protection Act of 2006 (“PPA”), a Federal law, amended ERISA and the Internal Revenue Code to, among other things, impose additional funding rules for multiemployer pension plans, that are based upon the actuarial status of the plan. These rules require multiemployer pension plans to be evaluated by actuaries in order to assess the long-term financial health of the plan, including whether the pension plan has a current or projected funding deficiency. If certain conditions are present, the multiemployer pension plan will be required by law to implement a plan to improve the funding. Generally, the multiemployer pension plan’s actuary must certify to the Secretary of Treasury and the plan sponsor whether or not the multiemployer pension plan’s funding status is “Endangered” or “Seriously Endangered”, commonly referred to as in the “Yellow Zone”, or “Critical”, commonly referred to as in the “Red Zone” for the plan year.

For the United Food & Commercial Workers Union – Employer Pension Fund (“Pension Fund”), these rules took effect for the Pension Fund’s plan year beginning October 1, 2008. As you are aware, the Board of Trustees for the United Food & Commercial Workers Union – Employer Pension Fund (“Trustees”) as the plan sponsor, has taken steps in the past several years to bring the Pension Fund’s liabilities into balance with its assets through increases in contribution rates and reduction or elimination of certain benefits. Despite these efforts, there still remains a funding shortfall that must be addressed in order for the Pension Fund to comply with requirements of the PPA.

**The Pension Fund’s Actuarial Status for 2009**

The purpose of this Notice is to inform you that on December 29, 2009, the Pension Fund’s actuary certified to the Secretary of Treasury and the Trustees that the Pension Fund is in Critical Status for the plan year beginning October 1, 2009. The PPA requires that as an interested party you receive this Notice.

The actuary has certified that the Pension Fund is in the Red Zone for the 2009 plan year because the credit balance in the Funding Standard Account was projected to be depleted within four years.

## **The Pension Fund's Rehabilitation Plan and Changes in Adjustable Benefits**

Once the Pension Fund is certified in the Red Zone, the Trustees must develop a plan to restore the financial health of the Pension Fund, referred to as a "Rehabilitation Plan." The PPA allows the Pension Fund to reduce, or even eliminate, benefits called "Adjustable Benefits" as part of the Rehabilitation Plan. This Rehabilitation Plan must include at least one schedule that describes the benefit adjustments or the combination of benefit adjustments and contribution rate increases that are necessary for the Pension Fund to emerge from the Red Zone. While the Trustees have the ability to develop multiple schedules, the PPA requires that the Trustees develop at least one schedule called the "Default Schedule" which reduces all Adjustable Benefits to the maximum extent allowable by law, prior to requiring any contribution rate increases. The law also permits the Trustees to develop an Alternative Schedule. The Trustees have adopted the Rehabilitation Plan containing both the Default Schedule and an Alternative Schedule. The Trustees previously provided a summary of the Rehabilitation Plan, containing these Schedules, to United Food & Commercial Workers Union Local 880 and other Unions which have members in the Pension Fund and Contributing Employers (collectively referred to as "bargaining parties"). The bargaining parties must negotiate either the Default Schedule or the Alternative Schedule, which then becomes part of the Collective Bargaining Agreement. Even after the Rehabilitation Plan is adopted by the Trustees and negotiated by the bargaining parties, the Trustees must review the Rehabilitation Plan annually and make adjustments as necessary to keep the Pension Fund on track to emerge from the Red Zone. This may require future changes to the Rehabilitation Plan which may include new Schedules that require additional reductions to Adjustable Benefits (described below) and/or contribution rate increases.

The PPA defines certain types of benefits that are considered "Adjustable Benefits" which can be reduced or even eliminated as part of the Rehabilitation Plan even if they might otherwise be protected under ERISA's anti-cutback rules. The term Adjustable Benefits generally includes all of the following:

1. Any right to receive a retirement benefit prior to Normal Retirement Age; and
2. Any early retirement benefit or retirement type subsidy including the Early Retirement Benefit and 30 Year-and-Out Service Pension under the Pension Fund; and
3. All disability benefits not yet in pay status; and
4. All post-retirement death benefits that are not part of an annuity form of payment; and
5. All pro rata pensions to the extent that they are contingent on eligibility to receive one of the adjustable benefits under this Pension Fund; and
6. Any benefit payment form other than the qualified joint and survivor annuity, and

7. All benefits, rights and features under the plan that are not otherwise referenced above; and
8. All benefit increases that would not be eligible for a guarantee under ERISA Section 4022A on the first day of Pension Fund's critical year because the increase was adopted (or if later took effect) less than 60 months prior to October 1, 2008.

Any changes to Adjustable Benefits which are adopted as part of the Rehabilitation Plan **will not** reduce the level of any participant's accrued benefit payable at Normal Retirement Age, with the exception of a repeal of recent benefit increases, if any, as noted in item 8 above. Additionally, these reductions will not apply to any retiree or beneficiary that started receiving his or her benefits before December 12, 2008, the date that Notice of Critical Status was first provided.

### **Notification that Employer Surcharges may be Required in Certain Circumstances**

Once a multiemployer pension plan is certified in the Red Zone, the PPA requires that all contributing employers pay a surcharge to the Pension Fund to help improve the funding situation. Surcharges are additional contributions paid to the Pension Fund at the same time and in the same manner as the regular contributions. The amount of this surcharge is in addition to the amount an employer is otherwise required to contribute to the Pension Fund under the applicable collective bargaining agreement. The surcharge is 10% as of October 1, 2009 unless the bargaining parties negotiated either the Default Schedule or the Alternative Schedule provided under the Rehabilitation Plan as part of the Collective Bargaining Agreement (with such negotiation to include the commencement of contributions consistent with the negotiated Schedule, pursuant to the requirements of the Rehabilitation Plan) prior to that date. Once the bargaining parties negotiate either the Default Schedule or the Alternative Schedule provided under the Rehabilitation Plan (with such negotiation to include the commencement of contributions consistent with the negotiated Schedule, pursuant to the requirements of the Rehabilitation Plan), the obligation for the Contributing Employer to pay the surcharges is eliminated.

### **Where to Get More Information**

The PPA requires that the plan actuary determine the Pension Fund's status each year and that a Notice of such status be provided to all interested parties annually. The PPA also requires that this Notice be provided to the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor. A summary of the Rehabilitation Plan is attached to the enclosed Annual Funding Notice. You have the right to receive a copy of the complete Rehabilitation Plan from the Pension Fund upon request.

For more information about this Notice, you may contact the Board of Trustees, Pension Fund office, 3435 Fortuna Drive, Akron Ohio 44312, phone number (330) 644-8181.