

Bricklayers and Allied Craftworkers Local No. 3 N.Y. Buffalo Chapter Benefit Funds

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Notice of Critical Status Bricklayers and Allied Craftworkers Local No. 3, New York, Niagara Falls-Buffalo Chapter Pension Plan

September 22, 2010

Participants, Beneficiaries, Contributing Employers and Bricklayers and Allied Craftworkers Local No. 3, New York:

This is to inform you that on August 27, 2010, the actuary for the Bricklayers and Allied Craftworkers Local No. 3, New York, Niagara Falls-Buffalo Chapter Pension Plan (the "Fund") certified to the U.S. Department of the Treasury and to the Board of Trustees that the Fund is in critical status for the plan year beginning June 1, 2010. Federal law requires that you receive this notice.

Introduction

The Pension Protection Act ("PPA"), signed into law in 2006, is intended to improve the financial condition of pension funds. The Act introduced several formal safeguards and controls and added notification requirements for Trustees to share more information about a fund's financial circumstances with participants, contributing employers and others directly related to the pension plan.

Many of the Act's provisions relate to funding, which, in simplest terms, is how much a pension plan has coming in, going out, and what is in reserve (or "in the bank") for the future. The safeguards are intended to create more discipline to prevent future funding problems and correct those that have already developed.

The Act requires us to test the Fund annually to classify its funding status. Standardized measurements are established for classifying pension plans based on their funding issues. Funds that are in "seriously endangered" or "endangered" status (also referred to as yellow zone) or "critical" status (or, red zone) must notify all fund participants, beneficiaries, unions, and contributing employers of the fund's status, as well as take corrective action to restore the fund's financial health.

Fund's Status - Red Zone

The Fund is in critical status (red zone) as of June 1, 2010 as a result of the actuary's determination that:

- The Fund is projected to have an accumulated funding deficiency for the plan year ending May 31, 2013. What this means is that by 2013 employer contributions to the fund are not expected to be sufficient to meet government standards for funding promised benefits plus those benefits that participants are currently earning.
- The funded percentage of the Plan is 44.4%
- The liabilities for non-active participants are greater than those for active participants
- The contributions for the year are not expected to cover the cost of accruals during the year plus interest on liabilities not already funded.



Rehabilitation Plan and Possibility of Reduction in Benefits

The Act requires that a fund in the red zone adopt a Rehabilitation Plan designed to enable the fund to improve its funded position so that, over time, it will be able to meet the statutory funding requirements. The Rehabilitation Plan, which must be adopted by April 26, 2011, will consist of one or more “schedules” of recommended contribution increases and possible reductions in benefits. The bargaining parties will be provided with these schedules for consideration in negotiations in new or renewed collective bargaining agreements.

If the bargaining parties cannot agree to adopt one of these schedules, the law requires the Trustees to impose the default schedule for any bargaining unit in this situation. The default schedule will include any legally required reductions in the adjustable benefits, as well as any increase in employer contributions if benefit reductions are not enough to correct the funding problems.

The Trustees may provide, and the bargaining parties may also agree on, an alternative schedule that may include less drastic or no reductions in benefits in addition to employer contribution increases.

In addition to revising the formula for future benefit accruals and making similar changes, under PPA a Rehabilitation Plan may eliminate or reduce “adjustable benefits”. Adjustable benefits include:

- » Post-retirement death benefits;
- » Disability benefits (if not yet in pay status);
- » Early retirement benefit or retirement-type subsidy;
- » Benefit payment options other than a qualified joint-and survivor annuity (QJSA); and
- » Other similar benefits, rights, or features under the plan, such as an actuarial increase for active participants that retire after normal retirement age.

The level of benefits already earned that are payable at normal retirement age as a single life or qualified joint and survivor annuity cannot and will not be reduced under these PPA rules. Any reductions pursuant to the Rehabilitation Plan will apply only to participants and beneficiaries whose benefit commencement date is after [DATE OF NOTICE]. You will be notified before any benefit reduction is put into effect.

Employer Surcharge

The law requires that all contributing employers pay to the Fund a surcharge to help correct the Fund's financial situation, beginning 30 days after the employer is notified that the plan is in critical status. The surcharge is a percentage of the employer's negotiated contribution rate. A 5% surcharge is applicable the first year in critical status. The surcharge goes up to 10% for each succeeding plan year in which the Fund is in critical status, until the employer agrees to a collective bargaining agreement that implements one of the schedules in the Rehabilitation Plan.

For the remainder of the first plan year, the 5% surcharge will be due with respect to any contribution required for work performed on or after [30 days from the date of the notice], and will continue until May 31, 2011. For subsequent plan years, i.e., beginning June 1, 2011, the 10% surcharge will apply to contributions required to be paid for work performed on and after that date. **[Note to counsel: this is written to include contributions for work performed after the applicable date. An alternate interpretation could be that surcharge is due on contributions paid to the Fund after that date, regardless of when the applicable work was performed.]**

What's Next

We understand that legally required notices like this one can create concern about the Fund's future. Be assured that the Board of Trustees takes very seriously its obligation to preserve the financial viability of the Fund. With the assistance of the Fund's actuary, counsel and other professionals, and working with the contributing employers and the Union, the Trustees will develop a Rehabilitation Plan that addresses these issues. You should know that we expect that both contribution increases and benefit reductions will be necessary to improve the Fund's serious financial condition.

As a final note, since the Pension Plan is influenced by economic and financial variables beyond our control (such as market volatility and changes in employment and/or the number of contributing employers), unexpected developments can affect the Fund's status and any future corrective actions needed. Each year the Trustees will be reviewing the Fund's progress with its professional advisors, and which may lead to future changes in the recommended contribution and benefit schedules.

For more information about this notice or the Fund, contact the Fund Office at the address or phone number listed at the top of this letter.

Sincerely,
Board of Trustees

As required by law, this notice is being provided to the Pension Benefit Guaranty Corporation (PBGC) and the Department of Labor.

Note to counsel: this letter does not describe restrictions on acceptance of bargaining agreements that reduce contribution rates or exclude new groups until the Rehabilitation Period officially begins – should that be mentioned?

The Segal Company does not practice law and, therefore, cannot and does not provide legal advice. Statutory interpretations reflected in this draft are subject to review of Fund Counsel. In addition to those specifically identified above, these include:

- *The substitution of an individually designed notice for the model notice proposed by the US Labor Department, including the omission of certain information items that do not appear to be relevant to this case;*
- *The identification and description of adjustable benefits;*
- *The description of the terms on which benefits are protected from reduction; and*
- *The date and manner of mailing or other distribution.*

Other conclusions based on our understanding of the statute may also be embedded in the draft text.

The determination of the tone to take in this announcement, including how and how much to explain about the red zone certification, is solely the responsibility of the Trustees.