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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c. P.8, as amended (the “PBA”);

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to Refuse to Make an Order under section 87 of the PBA relating to the General Motors Canadian Hourly-Rate Employees Pension Plan, Registration Number 0340968.

TO:

**Unifor
National Office
205 Placer Court
Toronto ON M2H 3H9**

Attention:

**Shane Wark
Assistant to the National President**

Applicant

AND TO:

**General Motors of Canada Company
1908 Colonel Sam Drive
Oshawa ON L1H 8P7**

Attention:

**Marlene Armitage
Pension and Benefit Manager**

Employer and Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the General Motors Canadian Hourly-Rate Employees Pension Plan, Registration Number 0340968 (the “Plan”), under section 87 of the PBA.

Si vous désirez recevoir cet avis en français, veuillez envoyer votre demande immédiatement à: Adjointe, audiences, Greffe, Commission des services financiers de l'Ontario, 5160 rue Yonge, boîte 85, Toronto ON M2N 6L9.

YOU ARE ENTITLED TO A HEARING before the Financial Services Tribunal (the “Tribunal”) pursuant to section 89(6) of the PBA. **A hearing before the Tribunal about this Notice of Intended Decision may be requested by completing the enclosed Request for Hearing (Form 1) and submitting it to the Tribunal within 30 days after this Notice of Intended Decision is served on you¹. A copy of that form is included with this Notice of Intended Decision.** Additional copies can be obtained by visiting the Tribunal’s website at www.fstontario.ca.

If a Request for Hearing (Form 1) is submitted to the Tribunal within 30 days after this Notice of Intended Decision is served on you, sections 89(8) and 89(9) of the PBA provide that the Tribunal shall appoint a time for and hold a hearing, and by order may direct the Superintendent of Financial Services (the “Superintendent”) to make or refrain from making the intended decision indicated in this notice and to take such action as the Tribunal considers the Superintendent ought to take in accordance with the PBA and its regulations, and for such purposes, the Tribunal may substitute its opinion for that of the Superintendent.

A completed Request for Hearing form must be received by the Tribunal within 30 days after this Notice is served on you. Forms may be mailed, faxed, or delivered to:

Financial Services Tribunal
5160 Yonge Street, 14th Floor
Toronto ON M2N 6L9

Attention: The Registrar
Fax: 416-226-7750

The hearing before the Tribunal will proceed in accordance with the Rules of Practice and Procedure for Proceedings before the Financial Services Tribunal made under the authority of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22. Those Rules are available at the website of the Tribunal: www.fstontario.ca. Alternatively, a copy can be obtained by telephoning the Registrar of the Tribunal at 416-590-7294, or toll free at 1-800-668-0128 ext. 7294

REASONS FOR INTENDED DECISION

1. The Plan is a pension plan with a combination of defined benefit and defined contribution provisions for certain employees of General Motors of Canada Company (“GM”) that is registered under the PBA.
2. GM is the administrator of the Plan.
3. GM has retained a third party service provider, Alight, to provide administration services for the Plan including record keeping, benefit calculations and generation of statements.
4. Unifor (the “Applicant”) is the collective bargaining agent for members of the Plan.
5. In late 2016, GM (through Alight) discovered that bridge benefits were being paid to certain Plan members and surviving spouses in error. Under the terms of the Plan, bridge benefits are to cease once a member reaches 65 years of age. If a member dies prior to age 65, bridge benefits are not paid to the surviving spouse, except for Quebec members. For Quebec members, bridge benefits continue to be paid to the surviving spouse of the member until the date on which the member would have reached 65 years of age. The cases identified by GM and Alight included the payment of bridge benefits beyond (a) the date a member reached age 65, (b) the date of death of the member, or (c) for some

surviving spouses in Quebec, the date on which the member would have reached 65 years of age.

6. GM identified 22 cases of bridge benefit overpayments. It notified the affected retired members and surviving spouses and discontinued payment of the bridge benefits. GM initially sought to recover the bridge benefit overpayments but subsequently decided not to pursue recovery.
7. Following the discovery of the bridge benefit overpayments, GM initiated a record keeping review that coincided with the preparation of the first biennial statements to be distributed to certain retired members and former members of the Plan pursuant to section 27(2) of the PBA.
8. As a result of the record keeping review, GM identified administrative errors related to the recognition of credited service under the Plan for certain members.
9. Regulations under the *Income Tax Act* (Canada) (the "ITA") regarding prescribed compensation impose a 5 year limit on credited service accruals during periods of reduced pay and temporary absence. This restriction is incorporated in section 3(b) of Article II of the Plan. The PBA neither imposes nor prohibits credited service limits. GM identified approximately 130 cases in which more than 5 years of credited service was granted for periods of reduced pay or temporary absence.
10. Under the Plan, credited service is granted only in respect of periods of "seniority", which for members represented by the Applicant is defined under the collective agreement with GM. Paragraph 52 of Section IX of the master collective agreement between GM and the Applicant defines "seniority" (subject to certain described exceptions) as 90 days worked in any consecutive 6 month period. However, employees hired on vacation replacements for 4 months or less do not acquire seniority rights and are not given credit toward acquiring seniority rights. A member's seniority date is the date 90 days prior to the date on which the member acquired seniority rights.
11. GM identified approximately 643 cases in which members were granted excess credited service related to periods prior to their seniority dates. This included cases in which students acted as vacation replacements and in which credit was granted for service prior to a member's seniority date.
12. Under the Plan, one full year of credited service is granted for employees who work 1700 hours or more in a calendar year. GM identified 7 members who were credited with more than one full year of credited service based on working more than 1700 hours, and 132 members who were credited with one full year of credited service in a year in which they worked less than 1700 hours.
13. GM also identified 131 members who were credited less service than they had actually earned based on the definition of credited service and the 1700 hour threshold for a full year of credited service. GM rectified those cases to grant such members credited service in accordance with the terms of the Plan.
14. GM did not pursue members or former members for any overpayments arising out of errors related to credited service.
15. GM and the Applicant met on December 20, 2016, and January 12, 2017, to discuss the error correction process. They also had other discussions and correspondence aside

from those dates.

16. GM has represented to staff of the Financial Services Commission of Ontario (“FSCO”) that:
 - a. it and Alight conducted a comprehensive review and reconciliation of all files in which errors were identified;
 - b. members were informed of the errors as quickly as possible to prevent any further retirements based on incorrect information;
 - c. retired members and former members were informed of their overstated credited service by letters in June 2017 and September 2017;
 - d. it determined it was necessary to correct those credited service calculations that were not consistent with the terms of the Plan, the PBA or the ITA;
 - e. it decided to correct the identified errors on a go-forward basis in order to minimize the impact on members;
 - f. it has begun paying excess benefits out of corporate revenues for 78 retired members who would no longer be eligible for enhanced early retirement benefits as a result of the correction (e.g., those who would no longer meet the enhanced early retirement threshold of 30 years of credited service) in order to mitigate the impact of the error correction; and,
 - g. it conducted further reviews if questions or issues were raised by members or the Applicant and, if sufficient information was provided or obtained, corrected the member’s credited service.
17. The Applicant has alleged that, in conducting the error correction review, GM has acted in furtherance of its own self-interest as plan sponsor and contrary to its duties as plan administrator under the PBA, the common law and the terms of the Plan.
18. The Applicant submitted that GM should not be permitted to adjust credited service retroactively and negatively without the informed, express and written consent of a plan beneficiary who has been provided with representation by the Applicant’s relevant local pension representative.
19. The Applicant requested that the Superintendent support the parties in devising an appropriate and expedited process for the resolution of any disputes.
20. Subsequently, the Applicant provided written submissions to FSCO staff dated November 10, 2017, and GM provided a written response dated February 22, 2018.
21. In a letter dated May 9, 2018, addressed to the Applicant and GM, FSCO staff noted that GM is acting in accordance with its statutory obligations as administrator of the Plan in identifying, acknowledging and taking steps to correct various administrative errors. FSCO staff noted that they had not seen any specific information regarding the corrections undertaken by GM that would lead FSCO staff to intervene in the process.
22. In a letter to the Superintendent dated July 11, 2018, the Applicant alleged that the errors corrected by GM are “a brazen repudiation and disavowal of past administrative decisions”

and that GM has ignored the complexity of the terms of the Plan, the factual circumstances of each plan member and “previous determinations regarding credited service that were made by those entitled to make such determinations under the terms of the Plan.”

23. The Applicant further alleged that GM is effecting a “unilateral reduction of benefits” and thereby, in effect, adversely amending the terms of the Plan, “when such a formal amendment to the Plan would be void under section 14” of the PBA.
24. The Applicant requested that the Superintendent make an order pursuant to section 87(1) of the PBA requiring GM (or any person acting on behalf of GM) to refrain from making any reductions in credited service with respect to administrative errors, and that such order be retroactive and remain in effect with respect to each affected individual until an opportunity is afforded for the individual to request the recognition and/or establishment of credited service pursuant to Appendix F of the Plan and a determination is finally made with respect to the merits of such request.
25. Alternatively, the Applicant further requested that, if GM disavowed or repudiated credited service that had previously been established or reinstated without a prior formal application, the Superintendent order GM (or any person acting on behalf of GM) to provide notice and a reasonable opportunity to affected members and retired members to request the recognition and/or establishment of such credited service, as provided by Appendix F of the Plan.
26. GM has submitted that Appendix F only refers to a member’s right to apply for the establishment of credited service or to appeal a determination relating to credited service, and it does not “restrict the correction of administrative errors that are contrary to the registered terms of the [Plan] and, in some cases, the [ITA]”.
27. GM has further submitted that it has provided multiple opportunities for the Applicant and affected members to meet in person and discuss and review the correction of errors. GM has submitted that it has restored credited service in cases where such discussions have revealed additional information in support of the credited service.
28. Section 87(1) of the PBA states that the Superintendent may issue an order if the Superintendent is of the opinion, “upon reasonable and probable grounds”, that a pension plan is not being administered in accordance with the PBA or the pension plan, that the pension plan does not comply with the PBA, or that the administrator of the pension plan, the employer or other person is contravening the PBA.
29. The facts presented to the Superintendent by GM and the Applicant do not support a finding that the Plan is not being administered in accordance with the PBA, the regulations thereunder or the terms of the Plan, including Appendix F.
30. The facts presented to the Superintendent by GM and the Applicant do not support a finding that the Plan does not comply with the PBA and the regulations thereunder.
31. The facts presented to the Superintendent by GM and the Applicant do not support a finding that the Employer or any other person is contravening the PBA.
32. Accordingly, the preconditions for the issuance of an order under section 87 of the PBA have not been met in this case and the Superintendent intends to refuse to issue the requested order under section 87(1).

33. Such further and other reasons as may come to my attention.

DATED at Toronto, Ontario, this 25th day of September, 2018.

Original Signed By

Lester J. Wong
Deputy Superintendent, Pensions
By delegated authority from the
Superintendent of Financial Services

1 NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.

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