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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER 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 Make an Order under sections 19(1), 19(3), 48 and 87(2)(a) of the PBA relating to the IUOE Local 793 Pension Plan for Operating Engineers in Ontario, Registration Number 0389890

TO:

~~IUOE Local 793~~
~~2245 Speers Road~~
~~Oakville ON L6L 6X8~~
The Board of Trustees
The IUOE Local 793 Pension Plan
for Operating Engineers In Ontario
c/o Koskie Minsky LLP
20 Queen Street West
Suite 900, Box 52
Toronto ON M5H 3R3

Attention:

~~Michael Gallagher, Business Manager~~
~~Clio Godkewitsch, Counsel~~

Administrator of the Plan

AMENDED NOTICE OF INTENDED DECISION

(amended by order of Financial Services Tribunal of February 18, 2015).

I INTEND TO MAKE AN ORDER under sections 48(6) and 87(2)(a) of the PBA that the Plan Administrator (“IUOE”) make settlement to the eligible recipient(s) of the pre-retirement death benefit, in accordance with the terms of the IUOE Local 793 Pension Plan for Operating Engineers in Ontario, Registration Number 0389890 (the “Plan”), and section 48 of the PBA, within sixty (60) days from the date the Intended Order set out herein is issued.

I ALSO INTEND TO MAKE AN ORDER under sections 87(2)(a) of the PBA that IUOE notify all persons who have claimed entitlement to the pre-retirement death benefit of IUOE’s

determination regarding such person's eligibility to the pre-retirement death benefit, within sixty (60) days from the date the Intended Order set out herein is issued.

REASONS:

1. IUOE is the collective bargaining agent, sponsor and administrator of the Plan.
2. The Plan was established effective November 1, 1973 as a multi-employer, non-contributory, defined benefit pension plan.
3. N.N. was an active member of the Plan immediately prior to his death on September 8, 2012.
4. At the time of his death, N.N. was living in a conjugal relationship with C.H., with whom he had been living for more than three years.
5. At the time of his death, N.N. was married, but living separate and apart from, K.K.
6. N.N. designated his daughters, T.N. and K.N., as the beneficiaries of his pre-retirement death benefit under the Plan.
7. C.H., T.N. and K.N. have all asserted entitlements to N.N.'s pre-retirement death benefit.
8. IUOE has not made payment or other settlement of N.N.'s pre-retirement death benefit under section 17.01 the Plan text and section 48 of the PBA to any person

The Plan

9. The Plan provides for a pre-retirement death benefit payable if a member of the Plan dies before retirement. Section 17.01 of the Plan text states:

In the event of a Member's death while he is not in receipt of pension benefit payments under this Plan, a death benefit shall be paid under this Plan equal to the greater of (a), (b) and (c) determined as follows:

- a. the aggregate of contributions made by the Member and by Employers on behalf of the Member to the Pension Trust Fund, reduced by the actuarial equivalent of pension benefit payments, if any, made to the member prior to his death, and
- b. the commuted value of the first one hundred and twenty monthly pension benefit payments of an early retirement pension to which the Member would have been entitled under section 11.06 of Article XI of this Plan, reduced by the actuarial equivalent of pension benefit payments, if any, made to the Member prior to his death, and
- c. the minimum death benefit which this Plan is required to provide in respect of the deceased Member by the Pension Benefits Act, R.S.O. 1990, of Ontario, and the Regulations made thereunder.

If a Member dies leaving a spouse as defined in section 4.18 of Article IV of this Plan, the aforesaid death benefit shall be paid to such spouse.

If a Member dies without leaving a spouse as defined in section 4.18 of Article IV of this Plan, the aforesaid death benefit shall be paid to the beneficiary nominated by the Member, or failing such nomination then to the Member's estate.

10. Section 4.18 of the Plan text states:

The term "spouse" means a person of the opposite sex of a Member who is

- a. married to the Member, or
- b. not married to the Member and living in a conjugal relationship with the Member
 - i. continuously for a period of not less than three years, or
 - ii. in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Family Law Act

but does not include

- a. a person who is living separate and apart from the Member at the earlier of the date retirement commences or the date the Member dies, and
- b. a person who becomes a spouse of a Member of this Plan following commencement of his pension benefit thereunder.

The PBA

11. Section 48(1) of the PBA provides that if a member dies before payment of the first instalment of his pension is due, the person who is his or her spouse on the date of death is entitled to receive a pre-retirement death benefit from the member's pension plan, which can be settled by payment of a lump sum equal to the commuted value of the pension, payment of an amount equal to the commuted value of the pension into a registered retirement savings arrangement, or the provision to the spouse of an immediate or deferred pension, the commuted value of which is at least equal to the commuted value of the member's pension.

12. Section 1 of the PBA defines spouse as:
either of two persons who,

- a. are married to each other, or
- b. are not married to each other and are living together in a conjugal relationship,
 - i. continuously for a period of not less than three years, or
 - ii. in a relationship of some permanence, if they are the natural or adoptive parents of a child, both as defined in the Family Law Act.

13. At the time of N.N.'s death, section 48(3) of the PBA provided that section 48(1) does not apply where the member and his or her spouse are living separate and apart on the date of death.
14. At the time of N.N.'s death, section 48(6) of the PBA provided that a member may designate a beneficiary and the beneficiary is entitled to be paid an amount equal to the commuted value of the member's pension if the member does not have a spouse on the date of death or the member is living separate and apart from his or her spouse on the date of death.
15. Section 19(1) of the PBA states that the administrator of a pension plan has an obligation to ensure that the pension plan is administered in accordance with the PBA and the regulations.
16. Section 19(3) of the PBA states that the administrator of a pension plan has an obligation to administer the pension plan in accordance with the filed documents in respect of which the Superintendent has issued a certificate of registration or certificate of registration of amendment, which documents include the pension plan text.
17. In failing to make settlement to the eligible recipient(s) of the pre-retirement death benefit in section 17.01 of the Plan text and section 48 of the PBA, IUOE is failing to administer the Plan in accordance with section 17.01 of Plan text and sections 19 and 48 of the PBA.
18. Any person who has claimed entitlement to the pre-retirement death benefit and who may be affected by IUOE's determination regarding eligibility should be provided with notice of IUOE's determination so that any such person will have the right to challenge the determination, as appropriate.
19. Section 87(2)(a) of the PBA states that the Superintendent may make an order if the Superintendent is of the opinion, upon reasonable and probable grounds, that the pension plan or pension fund is not being administered in accordance with the PBA, the regulations or the pension plan.
20. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the PBA. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

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

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416- 590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **10th** day of **September, 2014**.

Original Signed By

Brian Mills
Deputy Superintendent, Pensions

¹NOTE - 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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