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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 an Intended Decision of the Superintendent of Financial Services to make an order under section 88 of the *PBA* relating to the UNITE HERE pension plan registration number 0481838 (the “Plan”).

TO:

**Board of Trustees of the H.E.R.E. Union Local 75 Pension Trust Fund
c/o Soben Ltd.
302-150 Consumers Road
Toronto ON M2J 1P9**

Attention:Robert Keedwell

NOTICE OF INTENDED DECISION

I INTEND TO MAKE AN ORDER:

1. Under section 88 of the PBA to require the **Board of Trustees of the H.E.R.E. Union Local 75 Pension Trust Fund** (“ Board of Trustees”) of the Plan to file, within 60 days from the date of this Notice, a revised valuation report as at December 31, 2009 that meets the requirements of the PBA and Regulation 909, R.R.O. 1990 (the “Regulation”) and, in particular, that:
 - a. Sets out the minimum contribution levels that are sufficient to provide benefits under the Plan without reduction; and
 - b. Sets out only options available to the administrator of the Plan that will have the result that the required contributions will be sufficient to provide the benefits under the Plan as required by section 6(4)(b) of the Regulation, including specification of actual benefits reductions and/or contribution increases.
2. Under section 87 of the PBA, to require the Board of Trustees of the Plan pursuant to sections 6(5)(c) and (d) take such action as will result in the Plan meeting the funding

requirements of section 6, and advise the Superintendent of the action taken to meet the funding requirements.

REASONS:

1. The Plan is a multi-employer pension plan ("MEPP") established pursuant to a collective agreement and administered by a Board of Trustees. The obligation of employers to contribute to the plan is a limited amount set out in a collective agreement. The Plan has both defined benefit and defined contribution components. This intended decision relates only to the defined benefit component of the plan.
2. Section 14 of the Regulation requires the administrator of a pension plan, including a MEPP that has a defined benefit component, to file with the Superintendent of Financial Services, a report prepared by an actuary containing an actuarial valuation of the pension plan.
3. Section 6(4) of the Regulation requires the actuary, as a part of the report required under section 14 in respect of a MEPP established pursuant to a collective agreement or a trust agreement, to do the following:
 - a. perform such tests as will demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the benefits set out in the plan without consideration of any provision for reduction of benefits set out in the plan; or
 - b. where the contributions are not sufficient to provide the benefits under the plan, propose options available to the administrator of the plan that will have the result that the required contributions will be sufficient to provide the benefits under the plan.
4. Where an actuary has prepared a report under section 14 of the Regulation that identifies a going concern deficiency and has proposed options to remedy the deficiency in accordance with section 6(4)(b), section 6(5) of the regulation requires:
 - a. the actuary shall submit a copy of the report containing the proposed options to the administrator;
 - b. the actuary shall file a copy of the report within thirty days after submitting the report to the administrator and within the time period referred to in subsection 14 (10);
 - c. the administrator shall take such action as will result in the plan meeting the funding requirements of this section within ninety days after the date on which the actuary submitted the report to the administrator; and

- d. the administrator shall advise the Superintendent of the action taken in order for the plan to meet the funding requirements of this section within 120 days after the date the actuary submitted the report to the administrator and shall file all documents relevant to the action taken.
5. A valuation report for the Plan as of December 31, 2009 was prepared on June 28, 2010 by Jason Vary of Actuarial Solutions Inc. and submitted to FSCO (the "Valuation Report"). The Valuation Report concluded that as of December 31, 2009 the Plan had a solvency excess and a going concern deficit of \$151,846.00. As a result of the going concern deficit, the Valuation Report presented (at page 7) the following options to the Plan administrator:
 1. Reduce benefits payable to members
 2. Negotiate special payment contributions to be made by participating employers to fund the going-concern funding deficiency outlined in this report
 3. Change the going-concern actuarial basis to more liberal assumptions
 4. Take no immediate action in order to see if experience gains in the next valuation period eliminate the deficit
6. The Valuation Report did not comply with section 6(4) because it did not disclose the contributions needed to rectify the going concern deficiency in the report. In addition, in proposing an option 4, not to take immediate action, the report did not comply with section 6(4)(b), because taking no immediate action would not result in the Plan meeting the funding requirements of section 6 . In addition where an actuary proposes options to remedy the deficiency identified in a valuation report under section 6(4)(b) the options must be capable of remedying the deficiency within 90 after the date on which the actuary submitted the report to the administrator as required by section 6(5)(c). Taking no immediate action would result in the administrator not complying with section 6(5)(c).
7. The administrator of the Plan has failed to the action needed that will result in the Plan eliminating the going concern funding deficiency identified in the Valuation Report as required by section 6(5)(c), and to advise the Superintendent of the action taken within 120 days after the date the actuary submitted the Valuation Report as required by section 6(5)(d).
8. 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 **14th** day of **February, 2013**.

Original Signed By

K. David Gordon
Deputy Superintendent, Pensions

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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