



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
Fax: (248) 758-3292

Dated: August 1, 2012

ORDER NO. S-225

RE: IAFF Local 376; Pontiac Police Officers Association; Pontiac Police and Supervisors Association; Contract Provision Termination, VEBA Contribution

TO: ✓ Sherikia Hawkins, City Clerk
Cathy Square, Human Resources Director
Pontiac Police and Firemens' Voluntary Employee Benefit Association

The Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011) in Section 17(1) empowers an Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. Section 19(1) provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: (g) Make, approve or disapprove any appropriation, contract, expenditure..."; (k) After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager's sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state's sovereign powers if the emergency manager and the state treasurer determine that all of the following conditions are satisfied...; (l) Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement; (ee) Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities...; and 19(2) ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

Unlike with the other bargaining units currently active in the City, I have been unable to negotiate any changes to any collective bargaining agreement to allow for termination of those sections of the Collective Bargaining Agreement with the respective unions listed above

concerning contributions to the VEBA for those individuals who are covered by these Collective Bargaining Agreements and retired after August 22, 1996 because these unions no longer exist at the local level and as such do not represent any active employees.

On July 10, 2012, I requested that the State Treasurer concur in my determination under Section 19(k) of the Local Government and School District Fiscal Accountability Act, Public Act 4 of 2011 (Act) to allow termination of those sections of the Collective Bargaining Agreement with the unions listed above concerning contributions to the VEBA for those individuals who are covered by these Collective Bargaining Agreements and retired after August 22, 1996 due to the nonexistence of the above listed unions (at least at the local level).

As stated in the July 10, 2012 correspondence to the State Treasurer, in my sole discretion and judgment, and due to the nonexistence of the above listed unions (at least at the local level), a prompt and satisfactory resolution of outstanding issues is unlikely to be obtained. Therefore, I determined that the four conditions of Section 19(k) of the Act had been satisfied.

On July 16, 2012, the State Treasurer concurred with my determination and made his separate determination (see attached) that the four conditions of Section 19(k) of the Act had been satisfied.

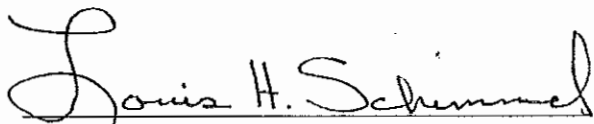
It is hereby ordered:

- Article III of the Trust Agreement, Section 1, subsections (a) and (b) are amended to remove Article III obligations of the City to continue to make contributions to the Trust as determined by the Trustees through actuarial evaluations.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (Public Act 442 of 1976, MCL 15.231, et. seq.).

This Order is necessary in order to carry out the duties and responsibilities required of the Emergency Manager as set forth in the **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** and the contract between the State of Michigan and the Emergency Manager.



Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

July 16, 2012

Louis H. Schimmel, Emergency Manager
City of Pontiac
47450 Woodward Avenue
Pontiac, Michigan 48342

Dear Mr. Schimmel:

Thank you for your July 10, 2012 letter, which is enclosed for reference. As the Emergency Manager for the City of Pontiac, you have asked for my concurrence with your determination to modify collective bargaining agreements related to Local 376, the Pontiac Fire Fighters Union, Pontiac Police Officers Association, and Pontiac Police Supervisors Association pursuant to Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act. The proposed modification would affect health care contributions to a VEBA for individuals who are covered by these collective bargaining agreements and retired after August 22, 1996.

As you are aware, the City is facing a broad, generalized economic problem, as illustrated by the following statistics;

1. The City lost approximately 22 percent of its tax base from 2010 to 2011. Due to restrictions in the Michigan Constitution upon property tax increases, even as economic conditions improve, the City will be able to recover its tax base only at the annual rate of 5 percent or inflation, whichever is less.
2. City property tax revenue decreased from \$12.9 million in fiscal year 2007 to \$10.9 million in fiscal year 2010.
3. City income tax revenue decreased from \$13.3 million in fiscal year 2007 to approximately \$8.7 million in fiscal year 2010.
4. While City general fund expenditures decreased from \$56.1 million in fiscal year 2007 to \$47.2 million in fiscal year 2010, general fund revenues decreased during the same period from \$54.2 million to \$38.4 million.
5. The City has a residential housing vacancy rate of 18 percent (per the 2010 Census compared to an 8 percent vacancy rate per the 2000 Census) and more than 4,700 vacant buildings.

6. The City population declined by 12 percent between 2000 and 2010, decreasing by 7,991 from 67,506 to 59,515.

Section 19(1) (k) of the Act authorizes emergency managers to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. In order to do so, however, the Emergency Manager and State Treasurer must both determine that the following four conditions of Section 19(1) (k) have been satisfied:

- (i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.
- (ii) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.
- (iii) Any plan involving rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public, as a whole.
- (iv) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

I have reviewed your determination in this regard and agree that all four statutory conditions have been satisfied. In particular, I find that:

1. The financial emergency in the City is such that it is reasonable and necessary for the State to intercede in this instance to serve a significant and legitimate public purpose. While improvements have been made to the City's financial condition, additional cost reductions remain essential to the City's long term viability.
2. The proposed modification of the collective bargaining agreements as to retiree health care contributions to a VEBA is reasonable and necessary to help address the City's broad generalized financial emergency. Analysis demonstrates that the proposed additional changes to language relating to retiree benefits can save the City approximately \$3.9 million annually, which would make a positive impact upon the City's deficit.
3. The modification of collective bargaining agreements is critical to permit further reduction in the total cost of retiree health care, and is directly related to and designed to address the City's financial emergency.
4. The proposed modification of the collective bargaining agreements is temporary, involves all retirees, and does not target specific classes of employees.

July 25, 2012

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Therefore pursuant to Section 19(1) (k) of the Act, I have also determined that the above statutory conditions have been satisfied and that the proposed changes to the collective bargaining agreements are necessary and appropriate.

Sincerely,

A handwritten signature in cursive script, appearing to read "Andy Dillon", written over a horizontal dashed line.

Andy Dillon
State Treasurer

Enclosure



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
Telephone: (248) 758-3133
Fax: (248) 758-3292

July 10, 2012

Hon. Andrew Dillon, Treasurer
State of Michigan
Michigan Department of Treasury
Lansing, MI 48922

Re: City of Pontiac/Action Under Section 19(k) of the Local Government and the School District Accountability Act Related to Local 376, Pontiac Fire Fighters Union ("PFFU"), Pontiac Police Officers Association ("PPOA") and Pontiac Police Supervisors Association ("PPSA")

Dear Treasurer Dillon:

During my tenure as Emergency Manager for the City of Pontiac, I have taken steps to reduce the cost of active employee and retiree healthcare. During the course of these efforts, I have worked with Meadowbrook Insurance ("Meadowbrook") in reviewing various healthcare, dental insurance plans and other plans provided to both active employees as well as retirees.

Part of the plans that were in existence when I arrived included a Declaration of Trust and Agreement of the City of Pontiac Police and Fire Retiree Pre-Funded Group Health and Insurance Plan dated August 26, 1996 (Police and Fire Retiree VEBA). This plan was a result of collective bargaining agreements between the above-captioned bargaining units on behalf of police officers and fire fighters which provided for a pre-funded Trust Agreement for retirees of the above-captioned bargaining units who retired on or after August 22, 1996. This plan and Trust provided for pre-funding of the obligations by the employer, City of Pontiac that covered retirees' healthcare benefits. As of March 31, 2012, the VEBA has assets of \$30,891,367. Police and fire retirees prior to August 22, 1996, do not have a similar pre-funded plan in place and the City is paying for their annual healthcare costs on a current cash flow basis.

Article III of the Trust Agreement, Section 1 provides;

"(a) The city-Employer shall be required to pay to the Trust Fund such amounts as the Trustees may determine are actuarially certified and are actuarially necessary to fund the Trust and provide benefits provided by the Plan consistent with actuarial valuations and calculations made by the Actuary for the Trust to result in Prefunded Plan.

Such contributions shall also be made in accordance with the Collective Bargaining Agreement between the collective bargaining associations and the employer and this Trust Agreement, and such other regulations of the Board of Trustees as are not inconsistent with the aforesaid authority.

(b) In addition to the amounts paid by the City on behalf of Participants as set forth above and in the Collective Bargaining Agreements, the City shall contribute to the Trust Fund such additional moneys which together with those contributions and return on investments shall be sufficient to fund the benefits provided on a sound actuarial basis."

It is anticipated that the City will be required by the Trustees of the VEBA to contribute \$3,915,371 during the fiscal year ending June 30, 2013. This amount exceeds the projected actual costs of the benefits for the retirees covered by this Trust for the same fiscal year by approximately \$915,000.

Given the City's current financial condition it is difficult for the City to make annual payments for current costs of retiree healthcare without the additional burden of the pre-funding costs of this VEBA as determined by the actuaries selected by the Trustees.

Article X, Section 1 of the Trust provides:

"The provisions of this Declaration of the Trust Agreement may be amended at any time, by (A) collective bargaining between the collective bargaining associations identified in Article 1, Section 8 and the City of Pontiac (B) by an unanimous vote of the five (5) Trustees, concurred in by the City Council of the City of Pontiac provided, however, that such Amendments are not inconsistent with any applicable Collective Bargaining Agreements and do not adversely affect the tax exempt status of the 501(c)9 Trust. Except as otherwise provided in this Trust Agreement, the Trustees shall have no power in amending the provisions of this Trust Agreement with respect to the amount of contributions required by the City."

This correspondence is to advise you that in my capacity as Emergency Manager of the City, I am seeking to invoke the actions allowed under Section 19(k) regarding collective bargaining agreements as provided in the Local Government and School District Accountability Act ("Act") MCL 141.1519(k). Section 19(k) provides that both the Emergency Manager and State Treasurer shall determine that four conditions are satisfied in order to allow modification of the existing collective bargaining agreement. I am seeking to amend the Trust Agreement through modification of the collective bargaining agreement to remove Article III, obligations of the City to continue to make contributions to the Trust as determined by the Trustees through actuarial evaluations. By eliminating the City's obligation to contribute to the Trust the Trustees can pay for the current annual obligations for healthcare for the retirees covered by the Trust Agreement until the Trust assets are exhausted.

I have not met with the PFFU, PPOA or PPSA since those unions no longer exist as a result of subcontracting out police and fire services for the City. Therefore, there are no active associations for any of these unions with which to negotiate this change.

In conversations with members of the Board of Trustees, I, as Emergency Manager, am aware that the five Trustees of the Trust would not unanimously agree to any modifications of this Trust Agreement with respect to the contribution by the City. Unanimous agreement of the Trustees is required under Article X of the Trust Agreement for any amendment initiated by the Trustees. Therefore based on my inability to negotiate with the unions and my inability to obtain amendment by the Trustees there is no prompt or satisfactory resolution to this problem other than exercise of my rights under Section 19(k) with concurrence by Treasury.

I have determined that all the following conditions of Section 19(k) have been satisfied to modify the Trust Agreement through collective bargaining agreement changes as set forth above.

(i) the financial emergency in a local government has created a circumstance in which it is reasonable and necessary for the State to intercede to serve a significant and legitimate purpose.

The City was unable to make its contributions as determined by the Trustees to this VEBA for the fiscal year ending June 30, 2011. As a result the VEBA sought to collect that amount through a lawsuit filed against the City which resulted in a judgment against the City in the amount of \$3,243,232. Unless action is taken to eliminate the VEBA contribution obligation the City anticipates that it will not be able to make the annual contribution required by the Trustees in June 2012, and for subsequent years thereafter. The Trust has adequate assets to pay for current obligations for healthcare benefits for the retirees covered by the Trust for a significant number of years going forward. I am also in the process of modifying the healthcare benefits for these retirees which over time will reduce the amount of the obligations of the City and/or Trustees to fund healthcare benefits for the retirees covered by this Trust.

(ii) any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement as reasonable and necessary to deal with the broad, generalized equalized problem.

The City will not be able to pay the expected VEBA contribution of \$4,381,269 for the fiscal year ending June 30, 2012, to the Trust. The termination of this obligation to the Trust will not create any hardship on the employees covered by the Trust who will continue to receive healthcare benefits paid for by the assets of the Trust. The amount saved in fiscal year beginning in July 1, 2012, by a modification of the collective bargaining agreements obligations to the Trust will significantly contribute to the City's ability to make the contributions to all other retirees and employees for healthcare benefits for the fiscal year beginning June 1, 2012, and thereafter.

(iii) any plan involving the rejection, modification, or termination of one or more terms of existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

The above action will not only produce cost savings to the City but will contribute to the City's ability to reach a balanced budget without affecting the healthcare benefits of the retirees covered by the Trust.

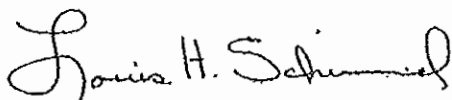
(iv) any plan involving the rejection, modification, or termination of one or more terms of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

The proposed modifications to the Trust through contract modifications are for the term of the emergency manager services and therefore are of a temporary nature subject to review and renewal by the City.

Should you approve this action the City will also seek appropriate concurrence from the Internal Revenue Service under an exemption for the Trust that was received from the IRS for the Trust, under Internal Revenue Code Section 501(3)(9) Employee Welfare Benefit Plans.

Based on the foregoing, I request your written concurrence with my determination pursuant to Section 19(k) of the Act. Time is of the essence. The new fiscal year starts July 1, 2012. In order to have maximum impact on the 2012/2013 fiscal year given the time frames of notice to the Trustees of this action, I urge prompt consideration for this request.

Sincerely,



Louis H. Schimmel
Emergency Manager

cc: Roger Fraser, Deputy State Treasurer

