

## MEMORANDUM

**TO: ALL EMPLOYERS WHICH CONTRIBUTE  
TO THE PENSION FUND**

**ALL LOCAL UNIONS WHICH HAVE MEMBERS  
WHO PARTICIPATE IN THE PENSION FUND**

**FROM: PLAN ADMINISTRATOR**

**RE: THE TRUSTEES' RIGHT TO REFUSE CONTRIBUTIONS WHICH  
ARE TENDERED IN AN UNACCEPTABLE MANNER**

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Article VI, Sec C, of the Pension Plan states:

“The Trustees may refuse to accept contributions if either the amount of such contributions or the conditions under which they are tendered are deemed by the Trustees to be contrary to the financial integrity, actuarial soundness or best interests of the Trust Fund or of the Employees.”

This provision serves a very important purpose. In setting the contribution rates necessary to support the various benefit levels available from the Pension Fund, the Trustees rely upon the estimates of the Pension Fund's actuary. The actuary's estimates are based upon a series of assumptions, one of which is that all similarly-situated employees covered by a collective bargaining agreement will have the same contributions made on their behalf.

This assumption of equal participation among all participants has two corollaries. The first is that some contributions will be made on behalf of employees who will not qualify for benefits because, e.g., they will not work long enough to vest. Contributions made on behalf of such employees are used to finance the benefits of employees who do vest. Second, there is an assumption that new employees will join each bargaining unit and, thus, engender new contributions which will help to finance the benefits of vested retirees.

Contributions on behalf of new employees and employees who are not expected to vest are an important source of income to the Pension Fund. If our actuary could not safely assume that such contributions will be made in the future, he would have to advise the Trustees to adjust the contribution/benefit levels.

At times, collective bargaining agreements are negotiated which attempt to permit an employer to contribute to the Pension Fund on behalf of senior employees or those employees whose benefits are expected to vest. These agreements are unacceptable because, in attempting to preclude contributions for new employees or those who are not expected to vest, such agreements effectively seek to prevent the Pension Fund from collecting the full amount of contributions reasonably predicted by the actuary. If the Pension Fund collects less than the actuary has anticipated, there is a danger that there may not be sufficient money to finance benefits for vested employees and their families.

The Trustees adopted Article VI, Sec. C to prevent such shortfalls. The provision codifies the Trustees' right to refuse to accept contributions tendered in any manner which threatens to injure the Pension Fund (e.g., by improperly limiting an employer's obligation to contribute as described above). A decision by the Trustees to implement Article VI, Sec. C could have extremely serious consequences, such as preventing the covered employees from accumulating Vesting Service and Benefit Service or subjecting the employer in question to withdrawal liability.

One of the Pension Fund's methods for enforcing Article VI, Sec. C is the requirement that it receive a copy of every collective bargaining agreement which calls for contributions to the Pension Fund. This requirement permits the Pension Fund to examine each contribution formula in accordance with Article VI, Sec. C. Contributions will be rejected in any cases in which the collective bargaining agreement is not provided to the Pension Fund.

It is not possible to provide a comprehensive list of all the contribution formulas which might run afoul of Article VI, C. Any specific questions you have should be referred to this office. However, the following guidelines are offered for your assistance:

1. As a general rule, a collective bargaining agreement must require that the same contribution rate be paid on behalf of all employees covered by a particular collective bargaining agreement. Hence, it is not acceptable for a collective bargaining agreement or other agreement:

- to require contributions on behalf of some, but not all, of the employees covered by the agreement, or
- to provide different rates of contribution on behalf of different employees covered by the same agreement.

2. The Pension Fund has already refused to accept contributions tendered under several contracts which have attempted to limit an employer's duty to contribute to the Pension Fund to certain named individuals or to employees with certain amounts of seniority.

3. An agreement which permits an employer to refrain from contributing on behalf of "casual," "part-time," "temporary" or other such employees will not absolve an employer from the obligation to contribute on behalf of employees who may be labeled as such but who, in fact, are full-time, long-term employees.

It should be emphasized that neither Article VI, Sec. C of the Pension Plan nor any of the policies discussed herein is intended to inject the Pension Fund into collective bargaining negotiations. To the greatest extent allowed by law, the Pension Fund intends to leave the issue of pension contributions to employers and unions. Article VI, Sec. C is simply a necessary measure for protecting the Pension Fund and, thus, the interests of all employees, employers and local unions.

Finally, we note that Section 302(c)(5) of the Labor Management Relations Act states that contributions to a multiemployer plan, such as the Pension Fund, can only be made if authorized by a written agreement which sets forth the basis for contributions. By requiring copies of all relevant labor agreements, the Pension Fund is taking a reasonable step to ensure that contributions comply with Section 302(c)(5).