

Direct Legal Branch Fax: 613-237-4213

April 4, 2011

Via Email (jswidnicki@regina.ca)

Executive Committee of the City of Regina
Office of the City Clerk
Queen Elizabeth II Court
2476 Victoria Avenue
Regina, SK S4P 3CR

Attention: Joni Swidnicki, Secretary

**Re: Regina Civic Employees' Superannuation and Benefit Plan ("Pension Plan")
Report to the Members of the Executive Committee for Consideration at their
meeting on April 6, 2011**

We write in anticipation of the meeting of the Executive Committee on Wednesday April 6, 2011 at 11:45 a.m. and in response to the report filed with the Committee on behalf of the Administration of the City of Regina (the "Employer's Report"). We ask that this letter be provided to the members of the Executive Committee in advance of the April 6 meeting.

We take issue with much of the contents of the Employer's Report and urge upon the Executive Committee consideration of the following key points in your deliberations as to whether you will approve the contribution rate increase that has been determined by the actuaries to the Pension Plan and prescribed in the December 31, 2009 Actuarial Valuation Report (the "2009 Valuation"), namely, from 9.42% and 13.96% (below and above the YMPE respectively) to 12.38% and 18.34%.

1. The Administration has urged the Executive Committee to deny approval for the contribution rate increase. In doing so the City is advocating a position which is in direct violation of its legal obligations under the Plan, the *Pension Benefits Act, 1992, c. P-6.001* ("PBA") and the Collective Agreements.

Section 21 of the Plan requires contributions from both employers and employees as "**determined by the Actuary**".

At pages 11-12 of the 2009 Valuation, the Actuary determined that contribution increases for both employees and employers are required effective January 1, 2010. That actuarial report was filed with the Superintendent of Pensions. The contributions requirements set out in that report are – or should be – in effect. By the terms of the Plan, employee contributions are required to be deducted and withheld, and employer contributions must match employee contributions, and be remitted to the Fund. To date, all of the employers have failed to implement the new contribution rates.

PAUL MOIST – National President / Président national CLAUDE GÉNÉREUX – National Secretary-Treasurer / Secrétaire-trésorier national

TOM GRAHAM – FRED HAHN – DANIEL LÉGÈRE – LUCIE LEVASSEUR – BARRY O'NEILL – General Vice-Presidents / Vice-présidents généraux



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Section 42 of the PBA states that an employer "shall, within the prescribed period, remit employer and member contributions due to the plan", failing which the "administrator or the fund holder who should have received them shall immediately notify the Superintendent in writing of the failure." The Superintendent may then make an order accordingly.

Section 37 of the Regulation to the PBA states:

(1) The period within which contributions must be remitted pursuant to subsection 42(1) of the Act is:

(a) in the case of member contributions, 30 days after the end of the month in which the contributions were received by the employer from a member or were deducted from the member's remuneration;

(b) in the case of employer contributions determined in accordance with a formula relating to a defined contribution provision:

(i) that relates to profits of the employer, 90 days after the end of the fiscal year;

(ii) that does not relate to profits of the employer, 30 days after the end of the month for which those contributions are payable; or

(c) in the case of employer contributions with respect to defined benefit provisions, 30 days after the end of each month with respect to which they are payable.

As noted in the memo of February 18, 2009 in respect of the last filed valuation for the Pension Plan, a copy of which is enclosed for your reference, the Administration, through Brent Sjoberg, General Manager and Byron Werry, City Solicitor, urged upon the Executive Committee the following in respect of the last filed actuarial valuation and requirement to increase contributions:

"If City Council were not to approve the rate change recommended in the 2007 Actuarial Report, the Pension Plan would be in breach of subsection 40(3) of the *Pension Benefits Act 1992*, which requires a plan to be funded in accordance with the applicable actuarial valuation report. In addition, the City would be in breach of subsection 40(4) of the Act which requires an employer to make contributions that are sufficient, in accordance with the prescribed test for the solvency of the plan, to provide for payment of all benefits under the plan.

If the provincial Superintendent of Pensions determines that the Pension Plan and/or any of the participating employers under the Pension Plan are in breach of the pension legislation, the Superintendent may rely on its statutory authority to seek a court order to compel the participating employers to remit their increased contributions required under the 2007 Actuarial Report."

The contribution increases required in the 2007 Actuarial Report were implemented in accordance with these recommendations.

The very same legal obligations exist with respect to the 2009 Actuarial Report which was filed with the Superintendent on October 13, 2010. Moreover, the Collective

Agreements to which the City of Regina is bound require compliance with the terms of the Pension Plan and the contributions requirements set out therein. The Pension Plan requires contributions to be made in accordance with the recommendations of the actuary, including those set out in the 2009 Valuation. Failure to remit contributions in accordance with the 2009 Valuation is a breach of those Collective Agreements.

The contribution rate increases have been approved by the Canada Revenue Agency by letter dated December 15, 2010.

2. The Administration states at page 3 of the Employer's Report as follows:

"The City of Regina has also met with the Superintendent of Pensions, and his office is not expected to intervene in the current process to either increase the contribution rates or revise the Plan."

The Superintendent of Pensions has no authority to make Plan changes. That role is reserved exclusively to the sponsors of the Plan through the Pension and Benefits Committee.

However, the Superintendent does have the statutory obligation as referenced above to enforce the contribution obligations of the employers. He has no discretion in this regard.

In the event the Executive Committee fails to approve the contribution increase and the employers fail to remit the contributions required by the 2009 Valuation, CUPE, on behalf of its members and the other employees who participate in the Pension Plan, will immediately seek enforcement of those obligations by the Superintendent of Pensions or court order.

3. At page 1 of the Employer's Report, the Administration urges, under Recommendation #2, that it be "directed to pursue an actuarial opinion on the feasibility of implementing the employers' proposal...as an alternative option to achieve the long term financial sustainability of the plan and maintain an attractive retirement benefit without an increase to the contribution rates." This recommendation completely ignores the reality of the governance requirements for the Pension Plan, which fundamentally require the agreement of the bargaining agents to plan changes. Those changes **cannot and will not** occur without agreement from the trade unions and employee groups that represent the Plan's members.

CUPE, for one, is cognizant of the need to make revisions to the Plan in order to meet the economic needs of its participants. CUPE has made it clear to the Administration and the other employers who participate in the Plan that it is ready and willing to bargain those changes. Only through that bargaining process can changes be made to the Plan. In the context of those negotiations, CUPE, and the other unions and employee groups, will certainly consider the proposal that has been put forward on behalf of the employers (Appendix "A" to the Employer's Report). However, CUPE is opposed to the massive and wholesale cuts that have thus far been proposed, and will not accept closure of the Plan. They constitute nothing less than an attempt to take away employees' pensions and offload costs and risks on to employees. There are fairer and less harmful methods to save costs and to achieve the objective of long-term sustainability. We must emphasize to you that since December, 2010 however, the employers, and specifically the City, have actively rejected all requests for formal negotiation.

4. The Pension Plan is subject to relief from solvency funding to December 31, 2012 following approval from the Superintendent. This three-year period of relief provides a significant opportunity for the parties, without immediate pressure from future contribution increases, to bargain a sensible and acceptable solution to the current financial circumstances, and develop a Pension Plan that is affordable and provides meaningful retirement benefits. In addition, permanent relief from solvency funding obligations for public sector plans is under consideration by the Government, which would go a long way to assisting the bargaining parties in attaining sustainability.
5. By publically identifying a tax increase as a likely consequence of not implementing its proposals, the City has deliberately appealed to citizens' concerns about tax increases and/or service cuts. This tactic appears to be designed not only to circumvent the negotiating process, but to foment public discontent and disinformation through misdirection.

In fact, this year's budgets have been established, and no tax increase will result in the short-term. Instead of attempting to replicate the conflict between public employees and the Republican Governor of Wisconsin, we urge you to recommend the City and other employers in the plan should re-engage in good faith negotiations to generate other options and a negotiated solution.

6. The employers and plan administrator have persistently refused to provide or authorize the provision of the Plan information that is necessary to allow CUPE to obtain its own actuarial advice. We recommend that this Executive Committee direct the City to release all necessary information to the employees' bargaining committee and actuary in order that meaningful negotiations, where all parties have the same, complete information, may take place.

CUPE will have representatives in attendance at the Executive Committee meeting on Wednesday, April 6, 2011, and looks forward to engaging in a productive dialogue about this matter.

Yours truly,



Anne M. Gregory
Acting Director
Legal Branch

c.c.: City Council
Superintendent of Pensions
Koskie Minsky LLP
Buck Consultants

