



## MINUTES

### ATU Pension Committee Meeting Friday, June 25, 2021 – 3:00 p.m.

The pension committee meeting of the Amalgamated Pension/Disability Plan was held on Friday, June 25, 2021 via virtual conference.

#### **COMMITTEE MEMBERS PRESENT**

Bonnie Todd, JTA  
Chantel Daniels, JTA  
Darrell Jenkins, JTA  
Gregory Hayes, JTA  
Melvin Hicks, JTA

#### **JTA STAFF / ALEX BROWN/CBC**

Jelani Hooks, CBC  
Rick Burke, Gray Robinson  
Noor Rajah, CBC

#### **COMMITTEE MEMBERS ABSENT**

**CALL TO ORDER** - The meeting was called to order by Gregory Hayes at 3:09 p.m.

#### **Old Business:**

#### **New Business:**

Jelani Hooks began the Pension Committee meeting with confirming that there is only item on the agenda, the calculation audit results. Gregory Hayes confirmed the agenda item and presented some background on the calculation audit results. Gregory Hayes explained to the committee that Rick Burke prepared the memo to discuss the findings in the audit and provide options to the Pension Committee to come to an informed decision of corrective.

Rick Burke confirmed that CBC conducted a calculation audit and discovered a variety of discrepancies of previously calculated pension payments by PWC. It has been confirmed that PWC improperly applied certain actuarial calculations. This caused significant differences in calculated pension payments. Rick Burke provided the example of Charles Kohn whom the audit results confirmed has received approximately \$111,000 in overpayments. Rick Burke provided the following options that conform with IRS self-correction procedure, to correct the pension payment amount and attempt to retrieve the total overpayment from the participant, correct the pension amount and decrease the future payments of the participant over a period of time to retrieve the overpayment, or attempt to retrieve the overpayment from the employer or PWC. The alternative option provided by Rick Burke was to adopt a plan amendment that retroactively increased the benefit payments to a specific group of participants to a certain amount. In order to adopt the plan amendment Rick Burke explained that the pension Committee would need to go through the IRS voluntary correction program (VCP) which requires a detailed filing of specific forms in addition to developing what Rick Burke compared to an appellate brief that confirms the issue, explain the corrective action that has occurred to resolve the issue without violating any provisions of the law. If the IRS agrees, JTA would be provided with a compliance statement that essentially confirms that the plan qualifications are maintained. Rick Burke also confirmed that with the VCP, if desired, could re-install the total benefit and there does not have to be a change to the participants monthly payment which could essentially result in less hardship on the participant.

Jelani Hooks raised a question to Rick Burke regarding the VCP in which he would like to know if it is needed to the underpaid participants. Rick Burke confirmed that it is not necessary to utilize the VCP for the under paid participants that could be compensated with the self-corrective action. However, due to timing and potentially implementing the VCP the correction can be added into the adopted plan amendment. Gregory Hayes began to further explain the current status of participant payments and the items explained by Rick Burke to the Pension Committee for better understanding and detailed explanation of past events that resulted in the options available due to incorrect calculations by PWC.

Noor Rajah asked Rick Burke if the VCP is chosen can the Pension Committee still hold PWC accountable for the miscalculations that resulted in the overpayments? Rick Burke confirmed that the VCP would correct the mistake made by PWC. He did not have a clear answer in the question due to many approaches that PWC could take to clarify that the VCP corrected the issue but there is an option to perhaps retrieve any damages or funding that resulted in the miscalculations. Jelani Hooks proposed if Rick Burke's firm could potentially draft an informal letter that describes the overpayments, the time spent of finding and resolving the overpayment issues and confirm if there is any action that PWC could take to help resolve the discovered issues. Rick Burke confirmed he would look into the request in further detail to confirm if PWC is a client before moving forward. Jelani Hooks also gave the suggestion to calculate the overpayments, the damages to the plan due to the overpayments, and the fees incurred from the calculation audit to CBC and Gray Robinson to provide to PWC discussing the damages and if there is any conflict of interest resolving the damages with PWC then applying the VCP program. Gregory Hayes and Jelani Hooks opened the floor for the Pension Committee to discuss the available options of corrective action. Gregory Hayes strongly believed that there should be action taken place against PWC and the VCP seems to be the correct approach with no risks from the IRS. Darrell Jenkins and Bonni Todd agreed. Chantel Daniels agreed.

Melvin Hicks raised two questions. If the formal letter is drafted and sent to PWC and PWC decides not to be involved, what is the next course of action? Is the Pension Committee going allow PWC not be involved or continue to utilize funds in litigations and other costs? Also, is this financially feasible for the Pension Committee to continue to pursue? Gregory Hayes answered Melvin Hicks confirming the strategy is to send the formal letter as notification of the total damages to the plan with hopes that a settlement is offered and the case is closed. If PWC refuses, the Pension Committee would decide if the pursuance of legal action is needed.

Gregory Hayes made a motion to we as a committee want to take the steps necessary to notify PWC of the total liability incurred due to what the committee deems as their errors. Bonni Todd and Chantel Daniels moved the motion. All in favor, no committee member opposed. Motion carries.

Gregor Hayes made a motion to pursue the IRS VCP program through the IRS to put all of the effected participants to corrected the monthly payment amounts. Darrell Jenkins and Chantel Daniels seconded the motion. All in favor, motion carries.

Rick Burke asked Jelani Hooks and Noor Rajah how this group of individuals were discovered and if there are potential others that are not receiving the correct calculated benefit amount? Jelani Hooks answered and confirmed that CBC initially took the entire retirement population and conducted variance of what should be paid vs what was being paid based off of the benefit multiplier. The sample population that was discovered had a greater than about 1% variance. Jelani Hooks confirmed that the review was conducted on about 10% of the population. Noor Rajah stated that if the VCP option is selected every error should be discovered because that provides a good amount of protection. Jelani Hooks discussed that another check would be conducted at the discretion of the committee. Rick Burke confirmed that the process of the VCP may take up to a year. Jelani Hooks agreed that with this timeline every needed participant could be checked for discrepancies. After further discussion between Melvin Hicks, Jelani Hooks, and Noor Rajah it was established that the only population that was necessary to be checked are the late retirement participants. Jelani Hooks concluded with stating that CBC will continue to review the sample population, add any additional late retirement factor calculations that CBC finds that were not analyzed, calculate the total liability in regards to the paid overpayments, and work with Rick Burke in regards to drafting the informal letter to PWC detailing the total damages.

Because there was no further business, the Board adjourned the meeting.

Meeting adjourned at 3:50 p.m.