KM&M

KAUFF McGUIRE & MARGOLIS LLP

TO: Board of Trustees of the Industry and Local 338 Pension Fund

CC: Alicia Cochran
Rachel Grant
Mary Ann Dunleavy

FROM: Kauff McGuire & Margolis LLP

DATE: October 16, 2023

RE: Report for the October 20, 2023 Board of Trustees' Meeting

---

We will report on the following matters at the upcoming Board of Trustees' meeting:

I. Pension Plan: Proposed Plan Amendment #5

We have drafted the enclosed proposed Amendment #5 to the Pension Plan. The draft Amendment addresses the following two provisions of the SECURE 2.0 Act of 2022 ("SECURE 2.0").

- **Updating the dollar limit for mandatory distributions.**

  In accordance with current law, the Fund provides for benefits to be paid in the form of a single lump sum if the actuarial value of the vested benefit is ***$5,000 or less***. Section 304 of SECURE 2.0 permits plans to increase the limit from $5,000 to ***$7,000*** for distributions made after December 31, 2023. The proposed Amendment amends 6.15 of the Plan ("Small Benefit Cashout") to include this optional provision of SECURE 2.0.

- **Recovery of overpayments.**

  Section 301 of SECURE 2.0 allows plan fiduciaries, subject to certain conditions being satisfied, the latitude to decide not to recoup overpayments that were mistakenly made to retirees. It also provides that if fiduciaries choose to recoup overpayments, the fiduciary must comply with new limitations on recoupment. The law does not apply to benefit reductions or payment plans that had been implemented prior to December 29, 2022. Nor does it apply to overpayments due to a violation of a fund's suspension of benefits rules or in cases of fraud or misrepresentation by a participant.

  For plans that choose to seek recoupment of overpayments, the main limitations imposed by SECURE 2.0 are as follows:

1. Except in cases of fraud or misrepresentation, recoupment may not be sought if the first overpayment occurred more than 3 years before the overpayment recipient is first notified in writing of the error.

2. If the plan seeks recoupment by (a) reducing future benefit payments or (b) entering into a payment plan, the amount recouped each year via either method cannot exceed 10% of the total overpayment.

3. Future benefit payments may not be reduced to below 90% of the amount otherwise payable under the plan.

4. The plan may not seek interest or other additional amounts (such as collection costs or fees) on overpayment amounts.

5. Efforts to recoup overpayments must not be accompanied by litigation threats unless the fiduciary determines that there is a reasonable likelihood of success to recover an amount greater than the cost of recovery.

Section 7.12 of the Pension Plan ("Recovery of Overpayments") has a very broad provision regarding the Trustees' right to recover overpayments. The second part of the proposed Amendment reflects compliance with SECURE 2.0's overpayment provisions.

II. Pension Plan: Current Suspension Rules

We understand that there may be interest in reviewing the Fund's current suspension rules and possibly changing the current rules. The current suspension rules as applicable to working in Covered Employment for a Contributing Employer are summarized below. In addition, the suspension provisions in the Plan are enclosed.

- If a retiree is younger than age 65, they can't work any hours in Covered Employment without having their pension suspended.

- If a member has 30 credits and reaches age 65, they can continue to work in Covered Employment and receive a pension. In other words, the Plan allows in service distributions for members age 65 and older if they have 30 credits.

- If a retiree is age 65 or older (but does not have 30 credits), they can work in Covered Employment **under 40** hours per month without having their benefit suspended. At 40 hours or more, their benefit would be suspended.

- At a member's Required Beginning Date (April 1 after reaching age 70½), they can receive a benefit even if they continue to work.

AMENDMENT NUMBER 5 TO THE INDUSTRY AND LOCAL 338 PENSION PLAN (EFFECTIVE AS OF JULY 1, 2014 AND AS AMENDED THROUGH NOVEMBER 2014)

In accordance with Section 8.01 of the Industry and Local 338 Pension Plan (Effective as of July 1, 2014 (As Amended Through November, 2014)) (the "Plan"), the Plan is hereby amended as follows.

1. Section 6.15 of the Plan, as amended, is hereby further amended by adding the following new paragraph immediately after the first paragraph of Section 6.15.

6.15 Small Benefit Cashout

Effective for distributions made after December 31, 2023, and notwithstanding any other provision of the Plan regarding benefit payment options and Plan distributions, if the Actuarial Value of the vested benefit of a Participant, Beneficiary or alternate payee is $7,000 or less as of the Annuity Starting Date, the benefit shall be paid out in a single lump sum. Notwithstanding anything herein to the contrary, if the present value of a Participant's or Beneficiary's or alternate payee's accrued benefit is $7,000 or less as of the Annuity Starting Date, such individual may apply for a benefit at any time and such benefit shall be paid in the form of a single lump-sum.

2. Section 7.12 of the Plan is hereby amended by adding the following new paragraph immediately to the end thereof.

7.12 Recovery of Overpayments

Notwithstanding the above paragraph, recovery of any benefit overpayment that is not governed by Sections 6.06 and 6.07 of this Plan or for which a payment plan or benefit reduction had not been implemented prior to December 29, 2022 shall comply with the provisions of the SECURE 2.0 Act of 2022.

IN WITNESS WHEREOF, the Trustees have adopted this Amendment Number 5 on October 20, 2023.

UNION TRUSTEE		**EMPLOYER TRUSTEE**	
By:	______________________	By:	______________________
Date:	______________________	Date:	______________________

(iii) Federal, state and local income tax and any other applicable taxes, will be withheld from the benefit payments as required by law or determined by the Trustees to be appropriate for the protection of the Fund and the Participant.

Section 6.06 Employment Causing Withholding of Benefits

(a) Retirement Before Normal Retirement Age. The pension benefits of a Pensioner who retired before attaining Normal Retirement Age will be permanently withheld to the extent provided in Section 6.07(a) if he takes employment (i) in the states of New York or Connecticut or in Bergen County, New Jersey or in Susquehanna County, Pennsylvania, (ii) in an industry in which employees covered by this Plan were employed and accrued benefits under this Plan as a result of such employment at the time that the payment of his benefits commenced or would have commenced if he had not remained in or returned to employment, and (iii) in a position covered by a Collective Bargaining Agreement.

(b) Retirement After Normal Retirement Age. The pension benefits of a Pensioner who retired after attaining Normal Retirement Age will be permanently withheld to the extent provided in Section 6.07 (a) if he is employed in the same trade or craft in the same industry in the states of New York or Connecticut or in Bergen County, New Jersey or in Susquehanna Country, Pennsylvania. As used in this subsection 6.06 (b):

(i) a Pensioner will be considered "employed" if during a calendar month, or during a 4- or 5-week payroll period ending in a calendar month, he completes 40 or more hours of service;

(ii) a Pensioner will be considered employed in the "same trade or craft" if he performs any job function which he performed while in Covered Employment; and

(iii) a Pensioner will be considered employed in the "same industry" if he is employed in the same industry in which he was last employed and accrued benefits under this Plan.

Notwithstanding the provisions of Subsection (b)(i), a Pensioner who is receiving benefits under Section 6.05(b) will not have his benefits suspended.

(c) Permissible Employment.

(i) A Pensioner will not be considered to be engaged in employment under Section 6.06(a) if such employment is in an industry which first became covered by a Collective Bargaining Agreement after the Pensioner commenced employment in that industry.

(ii) Notwithstanding anything herein to the contrary and the provisions of this subsection (b), effective July 1, 2004, a Participant who is employed in Covered Employment, has attained Normal Retirement Age, and has at least 30 years of

Pension Credits may commence receiving his monthly pension benefit while both continuing to work in Covered Employment and accruing additional Pension Credits under the Plan.

(d) Status Determination. A Participant may request a determination of whether specific contemplated employment will be employment within the meaning of Section 6.06 by written request delivered to the Fund Office setting forth the nature and details of such contemplated employment. The Trustees shall respond to any such request within the times provided in Section 6.04.

Section 6.07 Withholding of Benefits and Suspension for Failure to Verify Status

(a) Benefits Permanently Withheld. Unless a Participant or Pensioner is eligible to commence his monthly pension benefit payments while continuing to work in Covered Employment pursuant to Section 6.06(c) above, a Participant's or Pensioner's benefit shall be permanently withheld in an amount equal to his accrued benefit for each calendar month during which he is employed within the meaning of Section 6.06.

(b) Notice Required for Resumption of Benefits. If a Pensioner whose benefits have been permanently withheld under this Section 6.07 ceases to be employed within the meaning of Section 6.06, he must promptly notify the Trustees by letter delivered to the Fund Office of the date such employment ceased.

(c) Resumption of Benefits. Payment of monthly benefits to a Pensioner whose benefits have been permanently withheld under this Section 6.07 shall be resumed no later than the first day of the third calendar month after the calendar month in which he ceased to be employed within the meaning of Section 6.06, provided, however, that in no event must benefits be resumed earlier than 60 days after receipt at the Fund Office of the notice required by Section 6.07(b). The initial payment upon resumption shall include the payment for the calendar month when payments resume, plus any payments withheld in months after the Pensioner ceased being employed within the meaning of Section 6.06, less amounts subject to offset under Section 6.07(d).

(d) Offset Upon Resumption of Benefits. Upon resumption of benefits pursuant to Section 6.07(c), there shall be offset from the initial benefit payment an amount up to the total amount of any payments previously made to the Pensioner during those calendar months in which he was employed within the meaning of Section 6.06. If the initial payment otherwise owed to the Pensioner is less than the total amount of such payments previously made for months of employment within the meaning of Section 6.06, then there shall be deducted from each subsequent payment an amount equal to no more than 25% of such subsequent payments until the total amount previously paid is offset.

(e) Verification Procedures and Suspension of Benefits.

(i) A pensioner who takes employment within the meaning of Section 6.06 must so advise the Fund Office in writing within 21 days of the commencement of such employment. Each Pensioner shall, in addition, as a condition of receiving future benefits, comply with requests of the Trustees that he either certify that he is unemployed or provide factual information sufficient to establish that any employment does not constitute employment within the meaning of Section 6.06. There shall be no more than one such request each 12 months unless the Trustees determine that additional verification is reasonable under the circumstances. If a Pensioner fails to comply with a request of the Trustees for verification of his status, the Trustees may suspend the payment of benefits until the required information is furnished. All payments suspended under this Section 6.07(c) shall be forwarded to the Pensioner affected at the next regularly scheduled time for payment of benefits following the furnishing of the required certification or information, except to the extent that payments may be offset or withheld pursuant to Section 6.06 or other provisions of this Section 6.07.

(ii) If a Pensioner has failed to comply with the requirements of Subsection 6.07(e)(i) or has made any material misrepresentation with respect thereto, the Trustees shall have the right to recover any and all payments made to the Pensioner with respect to periods of employment within the meaning of Section 6.06.

(f) Presumption of Hours of Employment. A Pensioner who has become employed within the meaning of Section 6.06(b) and who has been notified of the verification requirements of Section 6.07(e) and who has failed to notify the Trustees that his employment has ceased or that he is employed fewer than 40-hours per month shall be presumed to have been employed for at least 40 hours during each calendar month (or 4- or 5-week payroll period ending in a calendar month) of such employment, unless the Pensioner provides the Trustees with information sufficient to rebut such presumption, or unless it is unreasonable for the Trustees to make such presumption under the circumstances.

(g) Review Procedure. Any Pensioner who is affected by application of Section 6.06 or 6.07 may request review thereof in writing in the same manner and within the time specified in Section 6.04 and such review shall be considered and determined as provided in Section 6.04.

Section 6.08 Benefit Payments Following Suspension

A Pensioner who returns to Covered Employment for an insufficient period of time to complete a Year of Vesting Service shall not be entitled to a higher pension amount on subsequent termination of employment.

If a Pensioner who returns to Covered Employment completes a Year of Vesting Service, he shall, upon his subsequent retirement, be entitled to a recomputation of his pension amount, based on any additional Pension Credits and on his attained age upon resumption of his pension, but reduction of his age by the number of months for which he previously received pension benefits.