



SECTION: Wind Up

INDEX NO.: W100-302

TITLE: Notice and Consent Requirements on Partial Plan Wind Up
- PBA, 1990 s. 68, s. 78 and O. Reg. 909 s. 8

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Note: Due to legislative changes, all references to “the Commission” or “the PCO” should now be read as “the Superintendent of Financial Services”. The answer to the third question has been replaced by Part II of s. 900-508. See also W100-301.

Decisions which clarify the obligations of the plan administrator and the employer with respect to notice and consent requirements where a partial wind up of a pension plan occurs have been made by the PCO.

The three areas of uncertainty which have been clarified are:

- 1) To whom should the written notice of proposal to wind up the pension plan be provided in accordance with subsections 68(2) and (3) of the PBA?

This question has been addressed by an administrative practice concerning “Written Notice of Proposal for Partial Wind Up of a Pension Plan” on page 23 of this issue of the PCO Bulletin, 4/1, August 1993 (Indexed as W100-301)

- 2) To whom should notice of the application to pay surplus out of a pension plan to an employer be provided in accordance with subsection 78(2) of the *Pension Benefits Act* (the “PBA”)?
- 3) Whose written agreement (consent) must be obtained under clause 8(1)(b) of the Regulation under the PBA before the Commission may consent to the payment of surplus to an employer in accordance with subsection 79 of the PBA?

These questions are clarified in this article.

Re: Notice of Application For The Commission's Consent to The Payment of Money That is Surplus Out of a Pension Plan to an Employer

Individual Written Notice by Personal Delivery or First Class Mail

In accordance with subsection 78(2) of the PBA, an employer who applies for the Commission's consent to pay surplus to the employer is required to transmit notice of the application to persons listed under that subsection. For the purposes of an application on partial plan wind up, individual written Notice of Application shall be required to be transmitted by personal delivery or first class mail to the following:

- a) each trade union that represents members of the plan **who are entitled** to receive payment from the pension plan as a result of the partial wind up;
- b) any advisory committee established in respect of the pension plan; and
- c) any of the following **who are entitled** to receive payment from the pension plan as a result of the partial wind up:
 - i) plan members;
 - ii) anyone defined by the pension plan text as a member or former member;
 - iii) where the partial wind up results from an event affecting the employment of the members, such as a plant closure, all members employed in the location on or after the date notice of the event is released who lose employment as a result of the event;
 - iv) former plan members entitled to a payment under the plan;
 - v) any other persons who are entitled to receive payments from the pension plan as a result of the partial wind up. This includes:
 - any former spouse or widow or widower of a member or former member who is receiving payments out of the pension fund, and
 - any dependent child of a former member who is receiving payments out of the pension fund.

Alternative Service of the Notice of Application

When authorized by the Superintendent, the employer may chose to provide an alternative form of Notice of Application by a method of service other than personal delivery or first class mail for those persons identified below. In accordance with subsection 112(3) of the PBA, the Superintendent may authorize alternative service by newspaper advertisement or otherwise, subject to approval of the contents of the proposed alternative form of notice and the method of service to the following:

- a) each trade union that represents members of the plan **who are not entitled** to receive payment from the pension plan as a result of the partial wind up; and
- b) any of the following **who are not entitled** to receive payment from the pension plan as a result of the partial wind up:
 - i) plan members;
 - ii) anyone defined by the pension plan text as a member or former member;
 - iii) former plan members entitled to a payment under the plan;
 - iv) any other persons who are entitled to payments under the pension plan on the date of partial wind up. This includes:

- any former spouse or widow or widower of a member or former member who is receiving payments out of the pension fund, and
- any dependent child of a former member who is receiving payments out of the pension fund.

The Commission's policy is that persons identified below are considered to be "former members" of the pension plan for the purposes of subsection 78(2)(a) of the PBA, and therefore on partial wind up are entitled to alternative service of the Notice of Application:

- a) former vested plan members who terminated employment within six years before the effective date of partial wind up, and who commuted or transferred their pension benefit out of the plan;
- b) former non-vested plan members who terminated employment within six years before the effective date of partial wind up;
- c) former plan members who had their pension benefits transferred to another pension plan sponsored by the same employer or another employer within six years before the effective date of partial wind up; and
- d) any plan beneficiary for whom the plan administrator has purchased a pension, deferred pension, or ancillary benefit.

Where considered appropriate in the circumstances, the Superintendent may require that any former member, as described in subparagraph d) above, whose pension, deferred pension or ancillary benefit was purchased before the date of partial wind up shall be entitled to service by personal delivery or first class mail of the Notice of Application and the Surplus Distribution Agreement. Accordingly, these former members may be required to consent to the application.

Re: Surplus Distribution Agreement

For the purposes of subsection 8(1)(b) of the Regulation where an application for the Commission's consent to the payment of surplus to an employer has been made with respect to a partial plan wind up, the employer must obtain the written agreement (consent) of:

- a) the collective bargaining agent who represents the members of the plan who are directly affected by the partial wind up, or if there is no collective bargaining agent, of at least two-thirds of the members of the plan who are entitled to receive payment from the pension plan as a result of the partial wind up; and,
- b) such number of former members and other persons entitled to receive payment from the pension plan as a result of the partial wind up as the Commission considers appropriate in the circumstances.

Accordingly, all persons who are entitled to receive individual written notice by personal delivery or first class mail shall be required to receive both the Notice of Application and the Surplus Distribution Agreement.

In order to satisfy subclause 8(1)(b)(iii), the written consent of two-thirds of the aggregate of those former members and other plan beneficiaries who are included in paragraph b) above must be obtained. This requirement is subject to the Commission's discretion following a review of the circumstances which are applicable to each individual application.

The Commission must be satisfied that all persons entitled to consent to the payment of surplus to an employer have received a copy of the written notice which fully discloses the surplus agreement proposed with respect to all parties who are to participate in the surplus allocation.