



CITY OF PONTIAC
OFFICE OF THE EMERGENCY MANAGER
LOUIS H. SCHIMMEL

47450 Woodward Avenue
Pontiac, Michigan 48342
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Dated: April 25, 2012

ORDER NO. S-204

**RE: American Federation of State, County, and Municipal Employees, AFL-CIO
Local 202 (AFSCME), Contract Provision Termination, Retiree Health Care**

**TO: Sherikia Hawkins, City Clerk
Cathy Square, Human Resources Director**

The **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** in **Section 17(1)** empowers an Emergency Manager to issue the orders the Manager considers necessary to accomplish the purposes of the Act and any such orders are binding on the local officials or employees to whom they are issued. **Section 19(1)** provides that an Emergency Manager may take on one or more additional actions with respect to a local government in receivership: **(g)** Make, approve or disapprove any appropriation, contract, expenditure...”; **(k)** After meeting and conferring with the appropriate bargaining representative and, if in the emergency manager’s sole discretion and judgment, a prompt and satisfactory resolution is unlikely to be obtained, reject, modify, or terminate 1 or more terms and conditions of an existing collective bargaining agreement. The rejection, modification, or termination of 1 or more terms and conditions of an existing collective bargaining agreement under this subdivision is a legitimate exercise of the state’s sovereign powers if the emergency manager and the state treasurer determine that all of the following conditions are satisfied...; **(l)** Act as sole agent of the local government in collective bargaining with employees or representatives and approve any contract or agreement; **(ee)** Take any other action or exercise any power or authority of any officer, employee, department, board, commission, or other similar entity of the local government, whether elected or appointed, relating to the operation of the local government. The power of the emergency manager shall be superior to and supersede the power of any of the foregoing officers or entities...; and **19(2)** ...the authority of the chief administrative officer and governing body to exercise power for and on behalf of the local government under law, charter, and ordinance shall be suspended and vested in the Emergency Manager.

The City had previously engaged in good faith collective bargaining with the AFSCME Local 202 and requested that the union agree to changes in the provisions concerning health insurance. The union refused to negotiate any changes to current retirees.

On April 17, 2012, I requested that the State Treasurer concur in my determination under Section 19(k) of the Local Government and School District Fiscal Accountability Act, Public Act 4 of 2011 (Act) to allow termination of those sections of the Collective Bargaining Agreement with the union listed above concerning health insurance, dental insurance, life insurance, disability insurance, optical insurance, and hearing insurance for the retirees due to the previous refusal of the union to negotiate.

As stated in the April 17, 2012 correspondence to the State Treasurer, in my sole discretion and judgment, and after conferring with the AFSCME Local 202 and its representatives, a prompt and satisfactory resolution of outstanding issues is unlikely to be obtained. Therefore, I determined that the four conditions of Section 19(k) of the Act had been satisfied.

On April 25, 2012, the State Treasurer concurred with my determination and made his separate determination (see attached) that the four conditions of Section 19(k) of the Act had been satisfied.

It is hereby ordered:

- I. By operation of law, as provided in Section 19(k) of the Act, pursuant to the determinations made by me and the State Treasurer, the provisions set forth below (A through E) shall be incorporated into Collective Bargaining Agreements between the City and AFSCME Local 202 concerning only retirees* to the extent the retirees are eligible and currently receive the benefits of health insurance. Any provision of any Collective Bargaining Agreement that is inconsistent with provisions A through E below shall be considered null and void.

Healthcare

- A. The City shall provide all pre-age 65 retirees with healthcare insurance in the form of Humana PPO - 08 Plan or a comparable plan with another carrier. The Medicare aged retirees will be provided one Medicare Advantage Plan, Plan G with \$10/\$20/\$40/\$40 RX. (Provision retained from previous Order.)
- B. It is mandatory for current and future retirees to enroll in Medicare upon reaching eligible age. The retirees may, at the City's discretion, be required to participate in a Medicare Advantage plan. (Provision retained from previous Order.)
- C. The City will not pay any Medicare Part B premium. (Provision retained from previous Order.)
- D. Current pre-65 age retirees shall pay by deduction from their pension checks the amount above the "hard-cap" (as defined in Public Act 152 of 2011), or twenty percent (20%) of the annual rates, whichever is higher, to be effective July 1, 2012.

***Unless otherwise noted, retirees shall include both eligible spouses of retirees as well as eligible dependent.**

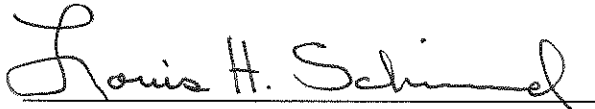
E. The City shall be permitted to modify the existing health insurance coverage for pre-65 age (non-Medicare) retirees, including the authorization to use any type of plan (PPO, EPO, HMO, etc.), provided by any carrier (BC/BSM, HAP, Humana, Aetna, etc.) and use any plan design (HAS, HRA, fully-insured, self-funded, etc.), to be effective July 1, 2012.

II. The Human Resources Director is directed to take all steps necessary to advise the retirees and the various insurance providers of the changes in coverage.

The Order shall have immediate effect.

Copies of the documents referenced in this Order are to be maintained in the offices of the City Clerk and may be reviewed and/or copies may be obtained upon submission of a written request consistent with the requirements of the Michigan Freedom of Information Act and subject to any exemptions contained in that state statute and subject to any exemptions allowed under that statute (**Public Act 442 of 1976, MCL 15.231, et. seq.**).

This Order is necessary in order to carry out the duties and responsibilities required of the Emergency Manager as set forth in the **Local Government and School District Fiscal Accountability Act (Public Act 4 of 2011)** and the contract between the State of Michigan and the Emergency Manager.



Louis H. Schimmel
City of Pontiac
Emergency Manager

cc: State of Michigan Department of Treasury
Mayor Leon B. Jukowski
Pontiac City Council



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

April 25, 2012

Louis H. Schimmel, Emergency Manager
City of Pontiac
47450 Woodward Avenue
Pontiac, MI 48342

Dear Mr. Schimmel:

Thank you for your April 17, 2012 letter, which is enclosed for reference. As the Emergency Manager for the City of Pontiac, you have asked for my concurrence with your determination to modify the most recent collective bargaining agreement of AFSCME Local 2002 pursuant to Public Act 4 of 2011, the Local Government and School District Fiscal Accountability Act. The proposed modifications would affect healthcare coverage of retirees who are covered by this collective bargaining agreement.

As you are aware, the City is facing a broad, generalized economic problem, as illustrated by the following statistics:

1. The City lost approximately 22 percent of its tax base from 2010 to 2011. Due to restrictions in the Michigan Constitution upon property tax increases, even as economic conditions improve, the City will be able to recover its tax base only at the annual rate of 5 percent or inflation, whichever is less.
2. City property tax revenue decreased from \$12.9 million in fiscal year 2007 to \$10.9 million in fiscal year 2010.
3. City income tax revenue decreased from \$13.3 million in fiscal year 2007 to approximately \$8.7 million in fiscal year 2010.
4. While City general fund expenditures decreased from \$56.1 million in fiscal year 2007 to \$47.2 million in fiscal year 2010, general fund revenues decreased during the same period from \$54.2 million to \$38.4 million.
5. The City has a residential housing vacancy rate of 18 percent (per the 2010 Census compared to an 8 percent vacancy rate per the 2000 Census) and more than 4,700 vacant buildings.
6. The City population declined by 12 percent between 2000 and 2010, decreasing by 7,991 from 67,506 to 59,515.

Section 19(1)(k) of the Act authorizes emergency managers to reject, modify, or terminate one or more terms and conditions of an existing collective bargaining agreement. In order to do so, however, the emergency manager and State Treasurer must both determine that the following four conditions of Section 19(1)(k) have been satisfied:

(i) The financial emergency in the local government has created a circumstance in which it is reasonable and necessary for the state to intercede to serve a significant and legitimate public purpose.

(ii) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is reasonable and necessary to deal with a broad, generalized economic problem.

(iii) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is directly related to and designed to address the financial emergency for the benefit of the public as a whole.

(iv) Any plan involving the rejection, modification, or termination of one or more terms and conditions of an existing collective bargaining agreement is temporary and does not target specific classes of employees.

I have reviewed your determinations in this regard and agree that all four statutory conditions have been satisfied. In particular, I find that:

1. The financial emergency in the City is such that it is reasonable and necessary for the State to intercede in this instance to serve a significant and legitimate public purpose. While improvements have been made to the City's financial condition, additional cost reductions remain essential to the City's long term viability.
2. The proposed modification of the collective bargaining agreement as to retiree health-care and dental coverage is reasonable and necessary to help address the City's broad, generalized financial emergency. Analysis demonstrates that the proposed, additional changes to language relating to retiree benefits can save the City approximately \$3,365,000 annually, which would make a positive impact on the City's deficit.
3. The modification of the collective bargaining agreements is critical to permit the further reduction in the total cost of retiree health care, and is directly related to and designed to address the City's financial emergency.


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4. The proposed modification of the collective bargaining agreements is limited to the term of these most recent contracts, involves all retirees, is temporary, and does not target specific classes of employees. These retirees' health benefits will now be the same as all other retirees and active City employees and be subject to changes as are all other employees' health care.

Therefore, pursuant to Section 19(1)(k) of the Act, I have also determined that the above statutory conditions have been satisfied and that the proposed changes to the collective bargaining agreements are necessary and appropriate.

Sincerely,


Andy Dillon
State Treasurer

Enclosure