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December 18, 1996

Ms. Carmen Domonkos
President, Board of Representatives
Stamford, CT

Re: Correction of scrivener's error in Charter § C7-30-7(b)

Dear Ms. Domonkos:

Enclosed please find proposed resolution, seeking to correct a scrivener's error in Charter § C7-30-7(b). The background/history for this error may help you, and the Board, understand the desire to have this error corrected.

In late October, Barry Kaplan, Benefits Manager, submitted a request for an opinion concerning the age at which a former employee, with a vested retirement benefit, would be eligible to begin collecting a pension. I directed his attention to Charter § C7-30-7, which indicates that there would be a right to begin collecting a pension at age 60. Mr. Kaplan had previously raised some questions about the manner in which changes had been made to the Charter provisions governing CERF; in this instance, he suspected that there had been an erroneous change in the Charter provision.

Mr. Kaplan began researching the history of the pension provisions in the Charter. He provided me with some materials he had found (with the assistance of Ms. Weller of your office), and a memo that reflected his extensive research (copy attached). I then began to examine the available materials — I found that Ms. Weller had been extremely thorough, and had obtained additional materials pertaining to this issue.

It seems quite clear that, in 1973, an effort was made to change the Charter so that it would reflect the then-current operation of the

pension plan, based on then-recent collective bargaining agreements (including an arbitration award). In particular, the publisher of the Charter was told that the normal retirement age had been changed, via collective bargaining, from age 65 to age 60, and that the relevant Charter provisions should reflect that change. A footnote was added, identifying the collective bargaining process as the source of some of the changes in the Charter. It appears that in the process of making that change, in what is now Charter § C7-30-5, a similar change was made in § C7-30-7(b). A later effort was made to undo the changes so that the Charter would revert back to the way it had been worded, but the change in § C7-30-7(b) was not picked up in that process.

Thus, there were probably three separate errors leading to the inclusion of the age 60 reference in § C7-30-7(b). First, as correctly noted in a letter from then-Corporation Counsel Robert Wise (in 1976), the fact that collective bargaining may have changed the operation of the pension plan did not amount to an automatic amendment of the Charter. Collective bargaining may supersede the Charter, but it does not amend it. No proper procedure appears to have been followed for any of the Charter changes that were made in 1973 concerning CERF, based on collective bargaining.

Second, the relevant change probably was not intended to be made at all. The collective bargaining-based modifications to the operation of CERF pertained to employees, not former employees. The age component of the age/service qualifications for pension eligibility was addressed by collective bargaining; the age/service qualifications in § C7-30-7 does not correspond to <u>any</u> of the age/service criteria for retirement set forth in § C7-30-5, and does not appear to have been independently addressed in collective bargaining. The effect, then, was that a directive to change the Charter to reflect that age 60, rather than 65, was the normal retirement age, resulted in a change to an unrelated provision because it, too, had a reference to age 65. While understandable in hindsight, it does not appear to have been intended.

Third, when an attempt was made to change the Charter back to its former (authorized) language, § C7-30-5 and other provisions were corrected, but the unauthorized and unintended change to § C7-30-7 was missed.

The nature of this error can best be shown by comparing operation of Charter § C7-30-7(b) with the operation of Charter § C7-30-5 (assuming that the change was valid, and deferring, for the moment, the effect of collective bargaining). Even assuming that the twenty year requirement of § C7-30-7 is both a service requirement and vesting standard, such that the change (via collective bargaining) in the vesting standard to ten years would not affect service-based eligibility to collect a pension,[1] this provision would still allow someone at age 60 and with 20 years of service, to collect a pension. Under § C7-30-5, however, retirement at age 60 requires 25 years of service. The net effect, then, would be that someone at age 60 and with 20 years of service could not retire, but nonetheless could collect a pension by quitting and then seeking a pension.

Collective bargaining, of course, has changed the actual operation of CERF with respect to employees, but the question at hand involves only the Charter. If one looks at the effect of collective bargaining, an anomalous situation can still arise. As noted above, § C7-30-7 contains a requirement of 20 years of service. The fact that someone with less than 20 years of service would only be entitled to a refund of contributions indicates that it is at least in part a vesting standard. The vesting standard, however, has been reduced through collective bargaining to 10 years. If the 20 years of service is also perceived to be part of a service/age combination, for purposes of eligibility, then what happens to someone who left employment with more than 10, but less than 20, years of service — when would that person be eligible to receive pension benefits? If the reference to 20 years is only a vesting standard, then a former employee could begin to collect a pension at age 60 with only 10 years of service (the minimum for vesting), again a situation that is more favorable than the one applicable to actual employees under collective bargaining.

What makes § C7-30-7 of some significance is the fact that it is one of the few areas of CERF operation that is almost exclusively governed by the Charter, rather than by collective bargaining.

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[1]Such an interpretation would limit the impact of the current language, but would not eliminate the inconsistencies nor validate the manner in which the changes were originally made.

It could be argued that this change has been "ratified" by at least two Charter revisions that "adopted" the changed language. Given the procedural irregularity and substantive error involved with this change, it probably was not recognized as a change. If this were a matter of only a procedural irregularity, the ratification argument would be more appealing. Under these circumstances, however, we do not believe that an undisclosed and unauthorized change was intended to be ratified. The recognition that these changes were unauthorized, and the effort to undo them — unsuccessful as to this provision — confirm that analysis while reinforcing the characterization of the problem as scrivener's error.

We trust that this is an adequate explanation of why we believe that the current language of § C7-30-7 is erroneous, and should/can be corrected as a scrivener's error.

Yours truly,

Thomas M. Cassone
Director of Legal Affairs

By _____
Kenneth B. Povodator
Assistant Corporation Counsel

KBP

enc.

PROPOSED RESOLUTION CONCERNING CORRECTION OF A SCRIVENER'S ERROR IN § C7-30-7 OF THE CHARTER OF THE CITY OF STAMFORD CONCERNING PENSIONS[1]

WHEREAS, in 1973, Supplement 3 to the then-current Charter attempted to change the Charter to reflect changes in the operation of the Classified Employees Retirement Fund ("CERF") that had been brought about through collective bargaining; and

WHEREAS, the changes to the operation of CERF were not accurately reflected in the change made to what is now § C7-30-7(b) of the Charter; and

WHEREAS, the changes to the operation of CERF made by collective bargaining, while they may supersede the Charter, do not have the effect of amending the Charter, such that the change to what is now § C7-30-7(b) should not have been made without following the formal procedures for making changes in the Charter; and

WHEREAS, this change has been perpetuated without review, despite the procedural and substantive errors in origin; and

WHEREAS, the continuation of this erroneous provision can only cause confusion such that it is in the best interests of the City of Stamford to correct the scrivener's error by restoring the original language of what is now § C7-30-7(b).

NOW THEREFORE BE IT RESOLVED BY THE 25th BOARD OF REPRESENTATIVES THAT:

1. The scrivener's error which changed the age of eligibility for benefits under Charter § C7-30-7(b) from age 65 to age 60 shall be corrected, and said section shall now read as follows:

> "(b) If such a member has twenty or more years of service, the member may elect to receive the contributions with interest, as provided above, or may elect a vested benefit in lieu thereof. The amount of the vested benefit shall be determined as provided in Section C7-30-6 and pension payments shall commence on the first day of the month coinciding with or

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[1]Strikeout indicates language being replaced; underlining indicates restored language

following the member's ~~sixtieth~~ sixty fifth birthday. Upon the commencement of pension payments, such member shall be treated in all respects as a retired member. In the event a member who has elected a vested benefit shall die, the contributions, with interest, as provided above, shall be paid to the designated beneficiary, if living; otherwise to the estate."

2. This resolution shall take effect upon its passage by the Board of Representatives.

CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

December 9, 1996

TO: Ken Povodator
Asst. Corporation Counsel

FROM: Barry Kaplan BK
Benefits Manager

RE: Your Letter of November 6- Pension Eligibility of Former Employees- Age 60 vs Age 62

The best way to respond to your issues raised in the above letter is to explain how I believe the CERF Plan is meant to be interpreted, based on the existing documentation that I am aware of. What I will hope to prove by implication, if not through explicit references contained throughout this letter, is that Charter Section 7-30-7 was changed long ago in error, and therefore, should not be literally interpreted as it now stands.

Whereas there may have been Charter revisions to specific areas of Charter sections dealing with the CERF Pension Plan, there have not been any changes to its overall structure, at least going back to the 1960's. With respect to that structure, I believe we need to define certain terms as to what they represent:

1) "Old Charter" Section 748, current Charter's Section 7-30-5.
   (a) This Section seems to define a mandatory retirement age compared to subsequent sections, which do not require a member's written request for retirement.
   (b) This Section seems to be the Plan's Normal Retirement definition, specifying a specific age and years of service requirement.
   (c) This Section seems to define the Plan's Early Retirement provisions, based on attaining a specific age and completing certain service. By cross reference, we interpret this to be for early retirement, because a following Charter section mandates a reduction factor to be applied to anyone leaving on this basis.
   (d) This Section defines Disability Retirement.

2) "Old Charter" Section 750, current Charter Section 7-30-7.
   (a) This Section helps to define the Plan's Vesting provisions. A member with less than a certain number of years of service, may only receive a refund of their money.
   (b) This Section completes the vesting provisions, defining those employees who may be eligible for an annuity, assuming they have a minimum level of service.

What must be stressed at this point are that Mandatory Retirement, Normal Retirement, Early Retirement, Disability Retirement and Vesting are all separate concepts, and it seems clear that the Charter has them in separate sections or sub-sections because, they are meant to be distinct from each other. This would be standard in any defined benefit pension plan.

According to my research, Charters going back to (at least) the1973 revision, contained all the CERF information in Chapter 73A, starting in Section 744. Apparently, there were at least ten "Supplements" to the original 1973 Charter, and herein lies where the problems occur.

I am not going to go into the details of my research, as I assume you will want to do your own. This is what I think happened. There are three Supplements that are applicable: Suppl. 3, 4 and 10. Based on the footnote to the Chapter 73 A heading, it appears the author was trying to incorporate the normal retirement age change from 65 to age 60, occurring in the 1973 MEA contract. (Note: the retirement age actually came down to 60 in two stages. First to age 62 in the 1968 MEA contract and then the 1973 contract revision. Also note that there is a typo in the Supplemental 3 footnote, corrected in Supplement 4, noting the correct year of the contract was 1973, not 1972). Supplement 3 changed Section 748(b), the Normal Retirement criteria, changing the age component from 65 to 60. It also made similar revisions in Section 749 dealing with when benefits would be calculated and changed the age reference in the Vesting Section 750. As the there is nothing in the MEA contract with respect to the vesting provisions, and the Arbitration Settlement in 1971 changed the Vesting criteria to 62 and 10, it appears that the change in Section 750 was incorrect. At least, I know of no justification for it.

Attached to this memo is a letter to then Mayor Clapes from Corporation Counsel Robert Wise, which indicates a error in the Charter. However, the Corporation Counsel seems to feel that Section 748 was incorrectly changed to age 60, not Section 750. My guess is that this is part of the justification for the revision in Supplement 10, which changed Section 748(b) back to age 65.

The Plan has always been administered such that Normal Retirement is 62 and 10 (per the

Arbitration Agreement) or age 60 with 15 years of service (the apparent correct interpretation of the contract). Vesting has always been administered as per the Arbitration Agreement, at 62 and 10.

Based on the above, I contend that what I originally questioned in my October 22 memo, would lead you to conclude that the Vested terminees should be payable at age 60, only **if they had 15 years of service**.

It is apparent to me that the Charter contains erroneous information, and not only to the Sections I've eluded to. Other information is outdated from past negotiated union contracts. Is there a way that we could "Supplement" the current Charter in the manner that was attempted in the 70's, to fix this problem?

I would be happy to discuss this in more detail.

BK/pb
Attachment