



CENTRAL PENSION FUND OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND PARTICIPATING EMPLOYERS

4115 CHESAPEAKE STREET, NW, WASHINGTON, DC 20016-4665 TEL: 202-362-1000, FAX: 202-364-2913

September 8, 1993

MEMORANDUM

TO: ALL LOCAL UNIONS, AFFILIATED TRUST FUNDS AND
OTHER INTERESTED PARTIES

FROM: BOARD OF TRUSTEES

RE: NON-BARGAINING UNIT PARTICIPATION POLICY

At its 94th Regular Meeting, the Board of Trustees for the Central Pension Fund of the International Union of Operating Engineers and Participating Employers adopted a written policy regarding "non-bargaining unit" participation. Such policy was adopted in light of recent pronouncements issued by the Internal Revenue Service regarding the non-discrimination testing requirements applicable to non-bargaining unit participation.

In the case of the Central Pension Fund, non-bargaining unit groups are essentially in three categories:

1. Local Unions participating on behalf of their own employees;
2. Local Union Trust Funds participating on behalf of their own employees; and,
3. Participating Employers who wish to provide pension benefits to their supervisory employees, most of which were previously participants as journeymen.

By way of further explanation, the average group of participants in the Central Pension Fund automatically pass the non-discrimination tests, since their participation is governed by the terms of Collective Bargaining Agreements negotiated by participating Local Unions. Participants who are reported to the Central Pension Fund but who are not in a bargaining unit, however, must be treated as if they are in a series of separate single employer plans under these IRS rules. Therefore, the Central Pension Fund would be required to test each separate group of non-bargaining unit employees in order to satisfy the Internal Revenue Service that such participation complies with relevant rules and regulations.

In light of the foregoing, the Trustees have adopted a written policy, which is summarized below. The policy adopted by the Trustees will be effective with respect to all non-bargaining unit participation effective January 1, 1994. Furthermore, such policy requires that each group execute a standard Non-Bargaining Unit Participation Agreement, a copy of which is enclosed. The material terms and conditions of the policy are summarized as follows:

1. With respect to those Local Unions and their Affiliated Local Trust Funds, who wish to provide pension benefits via the Central Pension Fund, such employers must participate on a "wall to wall" basis. This would require contributions being made on behalf of all full-time employees, except those employees for whom pension benefits are the subject of good faith bargaining. To the extent a Local Union or Trust Fund has a Collective Bargaining Agreement calling for participation in the Central Pension Fund with a bona fide union representing its employees, such participation would not be considered non-bargaining unit participation and therefore, not governed by the terms of this policy.
2. The rate of contribution utilized by a Local Union or affiliated Local Trust Fund must be uniform and cannot exceed the negotiated rate applicable to a journeymen operating engineer within the relevant Local Union's jurisdiction. As far as the uniform rate of contribution is concerned, it is permissible to utilize a uniform percentage of gross compensation in order to satisfy this criteria.
3. For purposes of defining what constitutes the negotiated rate for each Local Union jurisdiction, such groups must use a contribution rate which does not exceed a rate set forth in a bona fide Collective Bargaining Agreement negotiated between a Local Union and an Employer Association, an Independent Agreement covering a substantial bargaining unit or a National Agreement negotiated by the IUOE and which is recognized by the Local Union.
4. With respect to those Local Unions who have dual participation in the Central Pension Fund and an independent fund, the appropriate rate of contribution can be measured in terms of the combined contribution rates negotiated with respect to a particular Local Union, regardless of the manner in which the Local Union Collective Bargaining Agreement allocates the contributions to the Central Pension Fund and the Independent Fund maintained by that Local.
5. Non-Bargaining Unit participation by employers on behalf of supervisory employees is not permissible in the event it would include a "Highly Compensated" or "Key

Employee," as defined in the Internal Revenue Code. It would only be permissible for an employer to report to the Central Pension Fund on behalf of a "Highly Compensated" or "Key Employee" if that employer further agrees to cover all its non-excludable non-collectively bargained employees and certify to the Pension Fund that such participation would not violate the Internal Revenue Service's top heavy requirements. Generally, a Plan is considered top heavy if the accrued benefits for Key or Highly Compensated Employees exceed 60% of the accrued benefits for all other employees.

6. The Central Pension Fund further reserves the right to demand any employer, whose non-bargaining unit participation may threaten the Fund's qualified status, to take appropriate remedial action to correct any such violation. In the absence of that employer's cooperation, the Fund itself may take any unilateral action necessary to protect the Fund's qualified status.
7. In order that we can monitor non-bargaining unit participation and satisfy the Internal Revenue Service that such participation complies with all requirements, all non-bargaining unit groups will be reassigned account numbers and remit their contributions directly to the Central Pension Fund Office. These account numbers will be assigned as we receive the executed Non-Bargaining Unit Participation Agreements.

We trust you understand the necessity of the Trustees adopting such a policy, in order to protect the Fund's tax qualified status. Should you have any questions or require additional information concerning the policy, please do not hesitate to contact our office and discuss same with the Fund's Administrative Manager and/or Fund Counsel.



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July 18, 1996

MEMORANDUM

TO: All Local Unions

FROM: Michael R. Fanning, Chief Executive Officer

RE: Central Pension Fund Non-Bargaining Unit
Participation Policy

At their 104th Regular Meeting, the Board of Trustees considered a number of policy issues concerning the Central Pension Fund's current Non-Bargaining Unit Participation Policy, as applied to Local Unions. As a result of those discussions, the Board of Trustees made a number of decisions of which we wish to make you aware, so that you may take appropriate action to ensure that your Local Union's participation conforms accordingly.

First, in the event your Local Union submits contributions on behalf of an officer, who is not a full-time employee, the number of hours for which contributions can be made shall be determined by dividing the gross compensation received by that officer from the Local Union by the wage scale set forth in the Collective Bargaining Agreement under which the officer is normally employed. For example, in the event an executive board member is working at the trade under a Collective Bargaining Agreement at a rate of \$15 per hour and the Local Union pays such individual an annual stipend of \$450, only 30 hours of pension contributions can be made on behalf of that individual for the year by his or her Local Union.

Secondly, the Trustees considered the situation of certain Local Unions which have lost all their bargaining units which participate in the Central Pension Fund. Under those circumstances, the Local Union will be permitted to continue to participate in the Central Pension Fund on behalf of the Local Union's employees, but their contribution rate will be capped at the rate in effect at the time it lost its last Central Pension Fund bargaining unit. In the event the Local Union would subsequently organize a new bargaining unit, which would agree to contribute to the Central Pension Fund, that employer's contribution rate would then determine the maximum rate of contribution for the Local Union.

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Thirdly, the Trustees have determined that Local Unions are generally limited to reporting contributions on behalf of their full-time employees at the rate of 2,080 hours per year. This can be reported either as 40 hours per week or 173.3 hours per month, whichever is more convenient for a Local Union. Furthermore, in the event any Local Union Officer's actual compensation is established by reference to a negotiated wage scale, such Local Union can request a variance from this general policy. Such request would be subject to review and approval by the Board of Trustees and must be adequately documented.

For example, in the event the salary of the Business Manager is set at 50 hours times the highest journeyman's scale under a Local Union's standard area agreement, the Local Union may be permitted to make contributions at the rate of 50 hours per month on behalf of that individual. The Local Union must submit to the Trustees satisfactory documentary evidence, such as an appropriate Executive Board Resolution identifying the Collective Bargaining Agreement in question and furnish a copy of the complete text of same to the Fund Office. Once the Board of Trustees has had an opportunity to review and consider any such request, the Local Union would be given written notice of the Trustees' determination.

The above policies are effective August 1, 1996 with respect to July 1996 hours of service. Therefore, please see that the appropriate personnel within your office who are responsible for the preparation of Central Pension Fund reports are notified immediately, so that your Local Union's contributions will conform accordingly. Should you have any questions or require additional information, please advise.

MRF/MAC/ng