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June 24, 2013

Retiree Health Care Trust Fund Board
c/o Office of the Controller
City Hall, Room 488
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4694

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CCSF CONTROLLER
HUMAN RESOURCES

**Re: Contributions by Participants Who Became Employees of Participating Employers
Prior to January 10, 2009 and Transferred to San Francisco City and County After
January 10, 2009**

Dear Retiree Health Care Trust Fund Board:

This office represents Service Employees International Union, Local 1021 ("SEIU"). SEIU is the collective bargaining representative of numerous employees of participating employers. It has come to our attention that San Francisco City and County ("the City") has been charging the new hire contribution to workers who became employees of other participating employers prior to January 10, 2009, and transferred or bumped to the City sometime after January 10, 2009. As discussed below, we believe such workers should not be required to contribute as if they were hired after January 10, 2009. Proposition B in the 2008 election amended the Charter as follows:

There is hereby created a Retiree Healthcare Trust Fund ("RHCTF") for the purpose described in section 12.204. The Retiree Health Trust Fund Board ("Board") described in section 12.204 shall have exclusive authority and control over the administration of the RHCTF investments of Trust assets and disbursements from the Trust in accordance with the provisions of the Charter.

Active officers and employees of the City and County and participating employers who commenced employment with the City and County or the participating employers on or after January 10, 2009, shall contribute their respective employer's "normal costs" to the RHCTF. The annual active employee contribution rates shall be the employer's "normal cost" as determined by the employer's respective General Accounting Standards Board ("GASB") actuaries computed as a percentage of compensation not to exceed two percent of pre-tax compensation to the RHCTF. The employer's GASB actuaries shall determine the employer's "normal costs" on an annual basis.

The City and County and participating employers shall each contribute one percent of compensation for officers and employees hired on or after January 10, 2009. Once an employer has no unfunded actuarial accrued liability and the Retiree Health Trust Fund is fully funded, then the employer and its active officers and employees hired on or after January 10, 2009, shall instead each contribute fifty percent of the “normal costs” as determined by the employer’s respective GASB actuaries, not to exceed two percent of pre-taxed compensation and the one percent employer contribution shall no longer be required.

Contributions to the RHCTF from the City and County and its officers and employees and each participating employer as their officers and employees shall be segregated from each other and only used as a funding source to defray each employer’s obligations to pay for retiree healthcare under section A8.428 and each employer’s share of administrative expenses. The fund may be pooled for investment purposes only.

(Emphasis supplied.) It should also be noted that section A8.428 was amended to provide various definitions relating to employer contributions to the Health Service System Fund for retired employees. In that section, “hired on or before January 9, 2009” means “employees of the City and County, the School District and/or the Community College District who were hired on or before January 9, 2009”

The goal in interpreting a voter-enacted measure is to determine and effectuate voter intent. To determine intent, the first consideration is the language of the measure in the context of the whole proposition. Here, another provision of Proposition B indicated that in section A8.428 of the Charter, “hired on or before January 9, 2009” means employees of the City and County, the School District and/or the Community College District who were hired on or before January 9, 2009. This suggests that conversely, anyone hired before January 10, 2009 at any of the participating employers was not a new employee.

The argument and analysis contained in the official ballot pamphlet also is relevant to voter intent. The digest of Proposition B in the ballot pamphlet stated in relevant part:

The way it is now: The City Charter, City employees and certain employees of the School District, the Superior Court, and the Community College District who retire under the San Francisco Employees Retirement System or the California Public Employees Retirement System are eligible for employer funded retiree health care benefits after five years of service

Proposition B would establish a separate Retiree Health Care Trust Fund to pay for the City’s future costs related to retiree healthcare. This Trust Fund would be funded by employer and employee contributions for employees hired on or after January 10, 2009. These new employees would contribute up to two percent of their pre-tax pay and employers would contribute one percent. The School District and Community College District would have the option to participate in and contribute to this Trust Fund if their Governing Boards approve.

The language of the digest in the voter information pamphlet supports an inference that voters would have understood Proposition B to charge the two percent contribution to “new employees” hired after January 9, 2009. These “new employees” were distinct from the already existing employees, who could be existing employees of the School District, Superior Court, or the Community College District, as voters were informed in the digest. Similarly, in the arguments in favor of Proposition B in the voter pamphlet, the measure was characterized as requiring “new hires” and “future employees” to contribute to the Retiree Healthcare Trust Fund.

SEIU requests that the Retiree Health Care Trust Fund Board provide administrative relief to all affected participants by directing the City to cease and desist from charging the two percent contribution to those who were employed with participating employers prior to January 10, 2009, and who became employed with the City after January 10, 2009 without a break in service, and by providing reimbursement to affected participants who have been incorrectly charged the two percent contribution.

Please advise the undersigned how the Board would like to proceed. Thank you for your consideration and attention to this matter.

Sincerely,



Anne I. Yen

AIY:mp
opeiu 3 afl-cio(1)

cc: David Canham
Dennis McLaughlin