January 11, 2008

**BY CERTIFIED MAIL; RETURN RECEIPT REQUESTED**

Carpenters Pension Fund Board of Trustees

c/o Harry R. Dow

350 Fordham Road

Wilmington, MA 01887

Re: Doris D\_\_\_\_\_\_\_\_ Soc. Sec. No. 002-16-0432

(Surviving spouse of Leo P. D\_\_\_\_\_\_\_\_, Soc. Sec. No. 001-09-6831

Dear Mr. Dow:

As you are aware, Doris D\_\_\_\_\_\_\_\_ has requested the assistance of the New England Pension Assistance Project with respect to the matter of her survivor’s benefits pursuant to the pension fund. **This letter is an appeal of the plan’s decision to terminate payment of the survivor’s benefits which Mrs. D\_\_\_\_\_\_\_\_ had been receiving since her late husband’s death in 1984.**

Statement of Facts

The late Leo P. D\_\_\_\_\_\_\_\_, Doris D\_\_\_\_\_\_\_\_’s husband, was a long-time member of the Northern New England Carpenters’ Union. In October 1982, at the age of 64, he applied for a disability pension from the Northern New England Carpenters pension fund. Upon verification of his medical condition, including diagnoses of emphysema, bronchitis, and lung cancer, and upon verification of his vesting and service credits, the pension fund administrator found Mr. D\_\_\_\_\_\_\_\_ eligible for a disability pension pursuant to the terms of the union’s pension plan.

Mr. D\_\_\_\_\_\_\_\_ elected to receive his pension in the form of a 100% joint and survivor annuity in order to provide survivor’s benefits for his wife of 40 years, Doris. Mr. D\_\_\_\_\_\_\_\_ began to receive a disability pension from the Northern New England Carpenters Fund in October of 1982. Sadly, he died only eighteen months later at the age of 65. From the time of his death in April 1984 until October of 2007, his widow Doris has received the monthly survivor’s benefit provided for in Mr. D\_\_\_\_\_\_\_\_’s benefit election. Her survivor’s benefit was $87.19 per month. Although this is a small monthly benefit, it has been an important source of income for Mrs. D\_\_\_\_\_\_\_\_, whose only other income is a Social Security benefit of approximately $1,040 per month, or approximately $12,480 per year.

On or about January 2006, the Northern New England Carpenters Pension Fund merged with the Carpenters Benefits Fund Pension Fund. In November of 2007, the Carpenters Benefits Pension Fund notified Mrs. D\_\_\_\_\_\_\_\_ that it would no longer pay her the $87.19 monthly survivor benefit because her late husband was not actually eligible for the disability pension he had received beginning in October 1982. The letter informed her that, because Mr. D\_\_\_\_\_\_\_\_ had 13.5 years of past service credit and 1.5 years of future service credit, he had not been eligible for the disability pension, which required a total of 10 years of credited service, including 2 years of “covered employment”.

On November 6, 2007, this office requested on Mrs. D\_\_\_\_\_\_\_\_’s behalf, all of the relevant records upon which the plan relied to reach the decision to terminate Mrs. D\_\_\_\_\_\_\_\_’s survivor’s benefit. We specifically requested “the actual contemporaneous and detailed records” showing “names of employers, hours worked and periods worked” . The plan administrator responded that the employment records were not available, and provided us with a computer printout compiled in 2006, a manual data card from the Northern New England Carpenters’ Fund, Mr. D\_\_\_\_\_\_\_\_’s application, and the former administrator’s manual calculation of Mr. D\_\_\_\_\_\_\_\_’s benefit. These items are enclosed for the Board’s review.

Argument

We note as a preliminary matter that ERISA evidences a strong public policy favoring the payment of survivors benefits in the context of pension and retirement benefits. This public policy is evidenced through the stringent procedural protections of survivors benefits outlined in Section 205 of ERISA and is also underscored by case law from all jurisdictions. Some notable recent examples include the decisions in Alfieri v. Guild Times Pension Plan, 446 F. Supp. 2d 99 (E.D.N.Y. 2006) and Lowe v. McGraw-Hill, 361 F. 3d 335 (7th Cir. 2004).

ERISA also provides that participants and beneficiaries are entitled to a full and fair review of any decisions to deny benefits. The claims process required by ERISA requires a “reasoned opinion”, providing both findings of fact and the rationale supporting the decision, Richardson v. Central States, Southeast and Southwest Pension Fund, 645 F. 2d 660 (8th Cor. 1981). As noted in Grossmuller v. International Union, 715 F. 2d 853 (3rd Cir. 1983), “the persistent core requirements of review intended to be full and fair include knowing what evidence the decision-maker relied upon, having an opportunity to address the accuracy and reliability of that evidence, and having the decision-maker consider the evidence presented by both parties”. A reviewing board must, at a minimum, state upon what evidence it relied, invite comment or rebuttal on that evidence, and make an effort to ascertain all relevant facts.

The evidence upon which the decision to terminate the survivor’s benefit which Mrs. D\_\_\_\_\_\_\_\_ had been receiving falls short in all these respects. As noted above, we had requested on her behalf the specific records which justified the plan’s decision, and anticipated receiving names of particular employers, as well as hours and periods worked. We were provided with nothing that gave this type of detail, just with a summary which consisted of conclusions about years of accrued credit. Without any specificity from the plan, Mrs. D\_\_\_\_\_\_\_\_ is unable to challenge the conclusions. Mr. D\_\_\_\_\_\_\_\_ may very well have accrued more credit in covered employment than is shown in the records in the plan’s possession. It is not possible to argue that Mr. D\_\_\_\_\_\_\_\_ may have actually had more service when we have no evidence of the factual information upon which the plan’s conclusions were based. As the court in Richardson noted, “Bald-faced conclusions do not satisfy “ ERISA’s due process requirements. Richardson, supra, at 665. To rely on summary documents with no supporting detail deprives Mrs. D\_\_\_\_\_\_\_\_ of her right to full and fair review of this matter.

As noted above, the current plan is the successor to the Northern New England Carpenters plan in which Leo D\_\_\_\_\_\_\_\_ was a participant. The administrator of that plan, in 1982, made the determination that Mr. D\_\_\_\_\_\_\_\_ was eligible for a disability pension based upon his “past service” credits as well as his “future service” credits. The old records show that the decision was based upon 13.5 years of past service credit and 1.5 years of future service credit.

Apparently the original plan administrator interpreted the plan provisions in a manner to find Mr. D\_\_\_\_\_\_\_\_ eligible. As the plan document at the time stated that eligibility required at least two years in “covered employment”, the plan administrator obviously interpreted the phrase “covered employment” for vesting purposes to include the past as well as the future service credit. This type of interpretation is, in fact consistent with the legislative history of ERISA. As noted in the ERISA Conference Report, “ If the plan provides past service credits for purposes of benefit accrual, it must also provide past service credits for purposes of participation and vesting”. See ERISA Conf. Rep., 3 ERISA LEG. HIST. 4535, note 72 at 268. In any event, had the plan intended to exclude “past service” from the calculation of vesting, it could quite clearly have stated, at Section 3.4, that the participant must have at least two years “future service”. It did not do so.

The current plan administrator has no new or additional evidence which was not relied upon by the original plan administrator; in fact, it undoubtedly has less. It is virtually certain that the original decision-maker had contemporaneously-prepared records of Mr. D\_\_\_\_\_\_\_\_’s union employment. The current administrator is apparently displacing the original administrator’s interpretation of the plan 27 years after the fact. Failure to defer to the plan’s history of interpretation of plan provisions raises issues of abuse of discretion on the part of the current administrator. Furthermore, it is unconscionable to deprive Mr. D\_\_\_\_\_\_\_\_’s 85-year old widow of the extremely modest monthly survivor’s benefit upon which she has relied since her husband’s untimely death in 1984.

Conclusion

For the reasons outlined above, we hereby request that Doris D\_\_\_\_\_\_\_\_’s monthly survivor benefit be restored effective November 1, 2007. Please feel free to call me at 617-287-7332 if you need any further information. Please direct any written response to me at: New England Pension Assistance Project, Gerontology Institute, Univ. of Massachusetts Boston, 100 Morrissey Blvd. Boston, MA 02125. Thank you for your attention to this matter.

Sincerely,

Enclosures Jeanne M. Medeiros, Esq.

cc: Doris D\_\_\_\_\_\_\_\_

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