NOVA SCOTIA GOVERNMENT & GENERAL EMPLOYEES UNION

OFFICE OF THE PRESIDENT

www.nsgeu.ca
lbouchard@nsgeu.ca

UPDATE TO NSGEU VON MEMBERS: VON CANADA PENSION PLAN

July 27, 2021

Dear member:

VON has recently circulated a new Booklet and Report to members of the VON Canada Pension Plan (referred to below as the "Pension Plan" or the "Plan"). As you may be aware, **we have serious concerns about the way the VON is administering and funding the Pension Plan** and, in our view, some of the information contained in the Booklet and Report is inaccurate and misleading. As a result, we are writing to provide more information about VON's obligations in administering and contributing to the Pension Plan and an update on our fight to:

- Oppose a proposed amendment to the Pension Plan that we think is unfair to members,
- Hold VON to account for their alleged failure to comply with the funding provisions of the Plan, and
- Ensure that VON keeps its promise to improve retirement benefits, so that they're adequate and fair to members.

We are not working on these pension issues alone. We are part of a coalition of Unions representing VON employees in Ontario and Nova Scotia, including CUPE, NSGEU, NSNU, ONA, OPSEU/SEFPO and SEIU. A version of this letter is being sent to VON employees represented by each of these Unions.

VON's obligation to contribute to the Pension Plan

The VON Canada Pension Plan is a defined benefit plan, meaning that when members retire, they are entitled to a monthly pension based on their salary and years of service as determined by a formula set out in the Plan text. The amount of the members' monthly pension is guaranteed, it is not dependent on how much they paid into the Plan or the return on the Plan's investments.

The VON Canada Pension Plan is also a "contributory" plan, meaning that both employees and the employer make regular contributions. When the regular contributions of employees and the employer, combined with the assets held by the Plan, are not enough to fund the retirement benefits owing to members, additional payments must be made; these are called "**special payments**."

The Pension Plan text specifies the rate at which the employer and employees must make regular contributions. It also specifies that the employer is responsible for making special payments. Section 5.2.1 of the Pension Plan text says that employees contribute at a rate of 7% for earnings below YMPE, a figure set annually by Revenue Canada, and 9% for earnings over YMPE.[1]

Section 5.3 of the Pension Plan text sets out VON's contribution obligations. VON and the Unions have differing opinions of the meaning of this section, which reads as follows (underlining added):

> *5.3 VON CONTRIBUTIONS*
>
> Subject to the requirements of the *Pension Benefits Act* and of the *Income Tax Act*, *VON*, along with participating provincial and local branches authorized to carry on the objects of *VON*, shall remit to the *Plan* <u>amounts equal to contributions remitted by *members* in accordance with clauses 5.2.1(a), (b), (c) and (d). In addition *VON*,</u> along with participating provincial and local branches authorized to carry on the objects of *VON*<u>, shall remit contributions which in the opinion of the *Actuary* are required to amortize any unfunded liability or solvency deficiency, determined in accordance with the provisions of the *Pension Benefits Act*, that may arise from time to time</u>. *VON*, along with each participating provincial and local branches shall pay a proportionate share of such special payment contributions based on the ratio of their annual current service contributions to the total annual current service contributions of *VON* and the participating provincial and local branches.

In the Unions' view, and in the opinion of the Unions' legal counsel, this language is clear: VON must contribute amounts that equal what members contribute and "in addition" VON must make contributions that "in the opinion of the *Actuary* are required to amortize any unfunded liability or solvency deficiency," which are special payments. In other words, VON is required to contribute annually as follows:

> **(Amount equal to member contributions) + (special payments, if any) = (VON contributions)**

<u>VON says that when it has to make special payments, its contributions can be less than members'</u>

VON interprets section 5.3 differently: It says that its contributions must equal member contributions, but that special payments are included in calculating this amount. In effect, VON is ignoring the words "In addition" at the beginning of the second sentence of section 5.3. VON also says that it can calculate its contribution obligations by including premium payments to the Pension Benefits Guarantee Fund (PBGF), a mandatory insurance scheme that protects Ontario employees' pension benefits in case of employer bankruptcy. In VON's view, as long as the total amount of its regular annual contributions, plus special payments and PBGF premiums is at least equal to member contributions, it has satisfied section 5.3 of the Plan text. In other words, VON sees its contributions obligations as follows:

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[1] YMPE for 2020 was $58,700, in 2021 it is $61,600. The figure is used to determine pensionable earnings for the Canada Pension Plan (CPP). Like a lot of pension plans, the VON Pension Plan is integrated into CPP, so contributions are at lower rate for earnings below YMPE. Note that the current rate of contributions has been in place since 2007. The rate was 6.75%/9%;for service between January 1, 2006 and January 1, 2007; 5.25%/7% for service between July 1, 2004 and January 1, 2006; 4.5%/6% for service between April 1, 1993 and July 1, 2004; and 3.5%/5% for service prior to April 1, 2004. The different rates are set out at section 5.2.1 (a), (b), (c) and (d) of the Plan text.

(VON contributions) + (special payments, if any) + (PBGF premiums) = (Amount equal to member contributions)

In fact, VON has had to make significant special payments to the Pension Plan for a number of years, this means that its interpretation of section 5.3 has had a huge impact on how the Plan has been funded.

For example, between 2010 and 2018, VON contributed $71.6 million to the Plan, slightly more than member contributions for the same period, which were $68.5 million, but special payments accounted for nearly three quarters of those contributions, $51.6 million. If VON had contributed to the Plan in the way that the Unions say it was obligated to, its contributions during that period would have been $120.1 million ($68.5 million + $51.6 million), that's over two thirds more than what VON actually contributed.

PBGF premiums account for a much smaller amount of VON's contributions, about $2.2 million for the period between 2010 and 2018, or 3%. Nevertheless, it is unreasonable for VON to calculate its contributions to include these premiums because it is contrary to VON's obligations under section 5.3 of the Plan text. It is also highly unfair to VON's Nova Scotia members because the PBGF only applies to employment in Ontario, yet VON is discounting its contributions for PBGF premiums relative to the contributions of all plan members, including those in Nova Scotia.

VON has proposed to amend the Pension Plan to conform with its interpretation

The Pension Plan is registered under the Ontario *Pension Benefits Act* ("PBA").[2] The Financial Services Regulatory Authority of Ontario ("FSRA") is responsible for ensuring that VON administers the Plan in accordance with the PBA, which requires, among other things, that administration of a pension plan is consistent with the registered plan text.[3]

In April 2020, VON gave notice that it would be submitting an amendment to FSRA that would change the language of section 5.3 so that it is consistent with the way that VON has been calculating its contributions to the plan. VON says that the change only clarifies its contribution obligations; the Unions say that VON's contributions obligations are clear, as described above, and the amendment would change those obligations significantly.

VON has the right under the Plan text to amend the Pension Plan and FSRA will register an amendment as long as it complies with the PBA. However, **VON is asking for the amendment to be made retroactive all the way to 2006**. In the Unions view this demonstrates that VON has been administering the Plan in a manner that is contrary to the Plan text since at least 2006. As such, **the Unions have filed submissions with FSRA opposing the proposed amendment and complaining that VON's administration of the Plan has violated the PBA**. We are awaiting a decision from FSRA.

VON's recent communications to members about the Pension Plan

VON's recent communications about the Pension Plan contain statements about its contribution obligations that are different from previous communications and are consistent with its

[2] A little more than half of the members of the Pension Plan (about 55%) are located in Ontario. The rest are located in Nova Scotia, and a small number in Manitoba (about 3%).

[3] Section 19.3.

obligations under the proposed amendment. For example, the 2015 Pension Plan Booklet stated as follows under the heading "Who Pays for My Benefits?" (underlining added):

> Both you and your employer pay towards your pension. Upon enrolment in the Plan you pay a percentage of your pensionable earnings (earnings while a member of the Plan). After allowing for investment earnings and other factors, employers contribute the balance of the cost of member pension benefits.
>
> VON Canada contributes an amount equal to the respective members' required contributions <u>as well as any additional amounts</u> as determined by the Actuary in order to comply with funding requirements.

The underlined portion of the text strongly suggests VON contributes to the Plan in the way the Unions say it should, pursuant to section 5.3 of the registered Plan text. The 2021 Pension Plan Booklet contains similar language under the heading "Who Contributes to the Plan?" but the following new language has been added:

> VON's contributions will at least equal the members' required contributions.

This reflects VON's interpretation of its contribution obligations as reflected in the proposed plan amendment: that as long as VON's total contributions, including special payments and PBGF premiums, are at least equal to members' contributions, VON has satisfied its matching obligations. The statement is technically true, based on section 5.3 of the registered Plan text, but it is misleading because VON must always contribute the same amount as members and "in addition" it must make special payments as necessary.

The VON Pension Member Report contains the following statement under the heading "Financial Position of the Plan":

> The Plan text provides that, should the Plan be terminated, any surplus in the pension fund will revert to the employer. This surplus may also be used to reduce employer contributions to the extent permitted by legislation.

The first part of this statement is true, but also misleading: Section 17.3 (iv) of the Plan text provides for the distribution of surplus to Plan members up to the maximum level of pension benefits under the *Income Tax Act*; only surplus remaining in the Plan after that distribution would revert to VON.

More importantly, the second sentence is false based on the language in section 5.3 of the Plan as it is currently registered. VON must contribute to the Plan according to the prescribed formula and there is no provision for reducing VON's contributions, regardless of any Plan surplus. VON's proposed amendment to section 5.3 would permit it to reduce its contributions to the Plan where there is a surplus. Again, the proposed amendment is not merely a "clarification" but reflects a significant revision of VON's contribution obligations.

<u>VON has promised to improve retirement benefits when the Pension Plan achieved a surplus</u>

VON's obligation to contribute to the Pension Plan is especially important because VON has committed, by agreement with the Unions, to improving retirement benefits when the Plan has achieved a surplus. Here is a summary of the history related to that promise:

- **Effective January 1, 2006, VON significantly reduced retirement benefits**. For each full or partial year of service before that date, members are entitled to 1.5% of their five-years best average earnings under YMPE, plus 2% for earnings over YMPE. For service after January 1, 2006, those rates are reduced to 1% and 1.33% respectively, notwithstanding that members continue to contribute to the Plan at a relatively high rate.

- In 2010 VON asked the Unions to support a request to the Ontario pension regulator that it would allow it to pay down a Plan deficit over a long period of time. In exchange **VON agreed that it would restore benefits to their pre-2006 levels once the Plan had achieved a surplus**. VON reached a similar agreement in 2012, committing to provide further benefit improvements, beyond restoration to pre-2006 levels.

- It has now been over a decade and VON has yet to make good on its promise. If VON was contributing to the Plan according to its clear obligation under section 5.3, the Plan would have achieved a surplus long ago. Conversely, the proposed Plan amendment would permit VON to reduce its contributions whenever the plan achieves a surplus, thereby preventing the Plan from ever holding sufficient funds to satisfy the terms of the 2010 and 2012 agreements.

- According to financial information recently provided by the Plan actuary, the Plan has finally achieved a surplus (as reflected in the VON Pension Member Report, which states that the Plan has a transfer ration of 1.18; the Plan effectively is fully funded when the transfer ration is 1). **The Unions have filed coordinated grievances alleging that VON has breached the 2010 and 2012 agreements and will be seeking full restoration of retirement benefits to pre-2006 levels and *ad hoc* improvements.** The Unions are currently considering whether to engage in settlement discussions with VON and are preparing to take a representative grievance to arbitration.

We continue to fight for members' interests and are prepared to litigate through the pension regulatory process and before a labour arbitrator. Pension matters are complex, and litigation of pension issues can take time, but we are working hard to achieve a fair and timely resolution. We are committed to keeping members informed about their pension. If you have questions, please direct them to your Local representatives so that they can be relayed to staff members working on this matter.

In solidarity

Jason MacLean
President

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