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THE BOARD OF TRUSTEES OF
FINANCE AND COLLECTIONS COMMITTEE OF THE
UNITE HERE LOCAL 25 AND HOTEL ASSOCIATION OF WASHINGTON D.C.
HEALTH AND WELFARE FUND
PENSION FUND
GROUP LEGAL SERVICES FUND
A MEETING HELD ON AUGUST 16, 2012
WASHINGTON, D.C.

The following members of the Subcommittee were present:

UNION TRUSTEE	EMPLOYER TRUSTEE
J. Boardman	S. Keene

Also present were:

A. Mayerson - Bredhoff & Kaiser, PLLC
F. Singerman - Seyfarth Shaw
E. Odell - Calibre CPA Group, PLLC
T. Geiman - Novak | Francella, LLC
J. Sergeant - Calibre CPA Group, PLLC
A. Sims - Associated Administrators, LLC
K. Walsh - Associated Administrators, LLC

I. CALL TO ORDER

A quorum being present, Chairman Boardman called the meeting to order.

II. CONFLICT WAIVER REQUEST

Mr. Singerman said that Seyfarth Shaw represents certain hotels that may be discussed in the meeting, including the Madison Hotel, the Jefferson Hotel, the Omni Shoreman Hotel, the Hyatt Regency Hotel, the Capitol Skyline Hotel and the Marriott Wardman Park Hotel, and that he has submitted a letter to the Trustees requesting that the Funds waive any conflicts of interest that may arise as a result of such representation in order to permit him to provide advice and counsel to the Trustees in connection with the issues raised in the Summary. The Trustees agreed to the waiver as described in the letter.

III. PAYROLL AUDITOR REPORT

The Trustees welcomed Ms. Ellen Odell and Mr. Justin Sergeant of Calibre CPA Group, PLLC (“Calibre”) to the meeting.

a. Omni Shoreham Hotel, Hyatt Regency Hotel and Capitol Skyline Hotel - Temporary Agency Issue

Mr. Sergeant reminded the Trustees that, during the audits of the Omni Shoreham, Hyatt Regency and Capitol Skyline Hotels, it was determined that these Employers were utilizing temporary agencies for “covered work” and the hours were not reported to the Fund. Mr. Boardman explained that this situation will not continue as the Union is pursuing a no-contracting clause as part of the current contract negotiations.

The Trustees directed Calibre to review the Employer’s accounts payable ledger and identify temporary service employees used for “covered work” and extrapolate a sample to determine the hours worked per invoice. Calibre recommended that the methodology to calculate the contributions due should be to divide the invoice amount by the contribution rate paid by similar service providers. The Trustees concurred with this recommendation and determined that these employees would not be considered “Participants” eligible for benefits under the Fund. Mr. Boardman requested that a draft of Calibre’s findings be sent to him so that the Union can pursue these claims and negotiate payment. The Trustees concluded that if the Employers were not in agreement with the finding, the issue would be presented to the Finance and Collections Committee, but that factual and interpretive matters relating to the CBA should be referred to the bargaining parties for resolution or arbitration if necessary.

b. Washington Marriot Wardman Park

Ms. Odell reported that Calibre had recently conducted an audit of Washington Marriott Wardman Park covering the period June 2007 through December 2010. She explained that, during the course of the audit, the Employer advised Calibre that it pays contributions for steady and extra banquet waiters based on five hours per function, capped at 40 hours per week. The Trustees advised Calibre that this practice is not consistent with the CBA, which requires contributions for banquet waiters to be based on all hours worked.

Ms. Odell further reported that the Employer advised that it does not track hours for steady or extra banquet waiters. Ms. Odell said that absent these records Calibre has no way of determining the contribution amount due for these employees. After discussion, the Trustees instructed the auditors to calculate the contributions due for the audit period by determining the number of functions that each banquet waiter worked during each week, assuming that each such function lasted the minimum length of time for which contributions are due (five hours). Further, because these calculations are outside of the normal scope of a payroll audit, and are necessary as a result of the Employer's failure to maintain appropriate records, the Trustees directed that the cost of this additional work will be billed to the Employer as permitted under the terms of the Funds' Collection Policies. The policies authorize the Board of Trustees to charge the Employer with audit costs "whenever the Employer impedes the audit process by failing to cooperate with the auditor." Ms. Odell reported that this process would be outside the scope of a traditional payroll audit and would require additional billing hours. She requested that the Fund provide Calibre with a letter outlining the approved methodology to calculate the contributions due and she would then provide a proposal with an estimate of cost to complete this audit for Trustee approval.

The Trustees requested that Ms. Mayerson draft a letter to the Employer explaining the payroll audit findings and the proposed calculation for contributions owed. Further, the Trustees directed that the Employer be advised that it is required to maintain records for all hours worked by extra and steady banquet waiters.

c. <u>The Jefferson Hotel</u>

Ms. Odell reported that Calibre recently completed the payroll audit of the Jefferson Hotel. She said a small underpayment to the Pension, H&W, and Legal Funds was found due to the Employer's failure to report the first pay periods after the Hotel re-opened. Additionally, she noted that the Employer is requesting credit on a large overpayment to the Pension Fund for the period March 2007 through December 2011 due to reporting incorrect pay type to the Fund. Ms. Odell said that Calibre reviewed the request and agrees with the Employer's overpayment findings and the credit request of $4, 022.06. She explained that the credit request was based on all payroll hours for the period, minus the hours that no contributions were due and minus reported hours for the entire audit period. Co-Counsel said that, per the Funds' Collection Policies, "The Employer shall be credited with such overpayments towards future obligations for the period of the payroll audit up to three years subject to an offset, in the Finance and Collection Committee's discretion, for the cost of the audit." After discussion, the Trustees directed that the credit request be approved, provided that: (1) the Employer must provide a detailed monthly report of the overpayment amounts with participant detail; (2) the credit is to be reduced by any expenses incurred by the Fund in verifying the overpayment; (3) no credit will be provided for overpayments on behalf of Participants in pay status; and (4) credit is conditional on all underpayments noted during the payroll audit being paid in full. Ms. Odell said that Calibre would work with the Employer to obtain the report, and upon review, provide it to the Administrative Manager to adjust Participant records affected by the overpayment.

d. <u>The Madison Hotel</u>

Ms. Odell reported that the payroll records for most of the period covering the audit of the Madison Hotel (January 1, 2009 through December 31, 2011) were located in New York, where the prior management group is headquartered. The Madison Hotel is unwilling to have these records sent to Calibre's Washington, D.C. office and has requested that the audit be performed in the New York office where the records are kept. Ms. Odell said that, in order for Calibre to conduct the audit in New York, additional audit fees of up to $1,000 per Fund would be incurred. Co-Counsel reported that, per Trustee directive, they reviewed the Collection Policies and determined that the Fund can require the Employer to pay for the additional payroll audit fees due to the extraordinary circumstances. Mr. Boardman said that he would call the Madison and/or Loews to determine whether anything can be worked out with respect to having the payroll records sent to DC. The Trustees decided to shorten the audit period to end on December 31, 2010, since the new management group took over shortly thereafter.

e. <u>The Woodner Hotel</u>

Ms. Odell reminded the Trustees that the Woodner Hotel was unwilling to send its original payroll records for the period January 1, 2003 through December 31, 2009 to Calibre's Washington, D.C. office and requested that the audit be performed in the New York office where the records are kept. Ms. Odell said that in order for Calibre to conduct the audit in New York, additional audit fees of up to $1,000 per Fund would be incurred. Mr. Boardman stated that, due to the small number of Participants, he would contact the Woodner Hotel and request two to three years of records so that Calibre can extrapolate the data. The Trustees discussed this issue and requested that the audit period be changed to January 1, 2003 through December 31, 2011 to capture the current records and make the audit current. The Trustees further directed, that if the Woodner Hotel was still unwilling to provide the requested data, the Employer would be advised that any costs associated with sending an auditor to New York to perform the payroll audit will be their responsibility.

III. ADJOURNMENT

There being no further business, the meeting was adjourned.

Respectfully submitted,

Anne Marie Sims
Account Executive

AMS/klw
(Rev.08-18-12)