



United States
**Office of
Personnel Management**

Washington, DC 20415-0001

In Reply Refer To:

SEP 16 2004

2004 SEP 17 11:55 AM
RECEIVED
CORRESPONDENCE # 119426
OFFICE OF PMG
Your Reference:

The Honorable John E. Potter
Postmaster General, CEO
United States Postal Service
475 L'Enfant Plaza, SW.
Washington DC 20260-0010

Dear Mr. Postmaster General:

This is in regard to your letter of January 26, 2004, addressed to the Board of Actuaries of the Civil Service Retirement System (Board of Actuaries), in care of the undersigned. In your letter, you requested that the Board of Actuaries reconsider the "Postal supplemental liability" and the methodology and computations for determining the amount of Postal Service obligations to the Civil Service Retirement System (CSRS) and the amount of Postal Service over funding of the Civil Service Retirement and Disability Fund (CSRDF) that resulted from computations in effect under prior law and which now, under the Act, are to be realized by the Postal Service as "savings." The "Act" refers to the Postal Civil Service Retirement Funding Reform Act of 2003, Public Law (P.L.) 108-18 (April 23, 2003).

In your letter, you maintain that the Office of Personnel Management's (OPM's) methodology understates the Federal share of the liabilities for pre-July 1, 1971, employees and proposed that a "service ratio" method should be used instead. Under your proposal, the Treasury would be allocated a share of the cost of retirement benefits attributable to salary increases granted by the Postal Service since June 30, 1971, while under the OPM methodology, the Postal Service would be responsible for these costs.

Your request for reconsideration fails to recognize the existence of P.L. 93-349 (July 12, 1974). Under this law the Postal Service was required to finance, through 30-year amortization payments, all increases in retirement liabilities that are attributable to salary increases granted by the Postal Service. The increases in liabilities were determined without regard to the amount of service the employees may have had before or after the Postal Service became independent on July 1, 1971.

House Report 93-120 (April 11, 1973), issued by the House Committee on Post Office and Civil Service, entitled "Postal Service Payments to Retirement Fund," on the legislation ultimately enacted as P.L. 93-349 states, at page 2, that "The purpose of this legislation is to clearly establish the responsibility of the U.S. Postal Service to finance increases in the liability of the Civil Service Retirement and Disability Fund, caused by administrative action of the Postal Service, as apart from increases in unfunded liabilities which are incurred by act of Congress." The Report continues by stating, at

RECEIVED

SEP 23 2004

page 4: *“The situation with respect to the Postal Service is quite unique and results from passage of the Postal Reorganization Act. The Congress now has no control – no oversight whatsoever – with respect to the pay machinery in the Postal Service. Since each future pay raise, negotiated or otherwise granted to employees in the Postal Service, will result in a specific unfunded liability and a new drain on the Retirement Fund, the cost of this liability should properly and equitably be borne by the Postal Service.”*

Under the static funding method used in the law in effect prior to the enactment of P.L. 108-18, not only was the Postal service required to finance the cost of increases in retirement liabilities attributable to the salary increases that it granted, but it was also required to finance the cost of COLAs for retired Postal employees. The financing of COLAs was established through a series of Omnibus Budget Reconciliation Statutes passed in the early 1990’s. Unlike the method for determining the Postal Service liability for salary increases under P.L. 93-349, the pro-rata approach was used to determine the Postal service liability for COLAs.

The approach recommended in your appeal would determine the Postal Service's liability for salary increases for pre-1971 hires based on the pro-rata approach that had been used for determining the Postal Service liability for COLAs. However, we believe that it is inappropriate to apply the methodology that had been used for allotting the funding of COLAs, which are controlled by a formula which is a part of CSRS, for the purposes of determining the Postal Service’s liability for salary increases that were exclusively under the control of the Postal Service. Under the provisions in effect prior to the enactment of P.L. 108-18, the question of how to determine the Postal Service liability for salary increases is specifically addressed in P.L. 93-349, and Congress chose not to apply a pro-rata approach with regard to salary increases.

You have asked that we submit your appeal of OPM’s methodology to the Board of Actuaries, and we have done so, although OPM takes the position that the Board lacks specific jurisdiction to review the methodology developed by OPM under section 3(b) of the Act for computing the amount of any annual savings realized by the Postal Service. At best, the allowable review goes to the computations derived from the OPM methodology. However, we also conclude that the Act does not forbid the Board of Actuaries from again analyzing the methodology in conjunction with our response to your appeal.

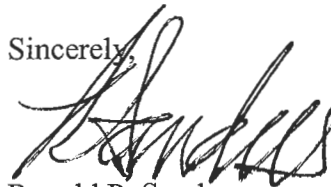
The Board of Actuaries has undertaken such analysis, and their conclusions are set forth in the enclosed letter to the undersigned. As you can see from that correspondence, the Board of Actuaries again considered OPM’s methodology and approved that methodology, as well as the computation of the resulting Postal supplemental liability. The Board clearly concluded that the methodology OPM used this year is valid and follows the intent of the Act. We believe the Board of Actuaries’ conclusion and OPM’s

concurrence with that conclusion resolves all substantive issues between our different approaches both for fiscal year 2003 as well as for future years.

Although you addressed your January 26, 2004, letter to the Board of Actuaries, I am responding, on behalf of the Director of OPM, in order to avoid any possibility that a constitutionally suspect action be taken by the Board of Actuaries. As the President noted in his statement issued upon signing P.L. 108-18, the Supreme Court stated in Edmond v. United States, 520 U.S. 651 (1997) that final decision-making authority for the United States must be vested in, or be subject to the control of, a principal officer of the United States, i.e., one who is appointed by the President subject to confirmation by the Senate. Because the Board of Actuaries is not composed of principal officers, a decision on an appeal under 5 U.S.C. § 8348(h)(4) and/or § 3 (b) of the Act must be subject to review by the Director of OPM or her designee under 5 U.S.C. § 1103(a).

We trust that this determination by OPM concerning the methodology and computations of the Postal Service obligations, clearly consistent with the conclusions of the Board of Actuaries, will be accepted by the Postal Service at this time. If you or your staff have any additional questions or concerns, my staff and I would be pleased to further discuss this matter.

Sincerely,



Ronald P. Sanders
Associate Director
for Strategic Human Resources Policy

Enclosure

BOARD OF ACTUARIES
United States Civil Service Retirement System
U.S. Office of Personnel Management
Washington, DC 20415-0001

Douglas C. Borton, FSA, Chairman
A. Norman Crowder III, FSA
Mary S. Riebold, FSA

August 18, 2004

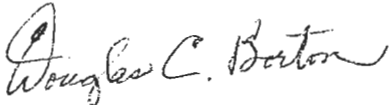
Dr. Ronald P. Sanders,
Associate Director for Strategic Human Resources Policy
U.S. Office of Personnel Management
1900 E Street NW, Room 6566
Washington, DC 20415

Dear Dr. Sanders:

The Board of Actuaries has reconsidered in detail the methodology used by the U.S. Office of Personnel Management to determine the obligations of the United States Postal Service under the United States Civil Service Retirement System. When private sector plans are transferring participants to a new employer, it is a common practice to allocate liabilities by using a method which reflects the fact that all obligations arising from future salary increases are the responsibility of the new employer. We find this approach to be the most appropriate way to determine the obligations of the Postal Service and further confirm our prior finding that this method clearly follows the intent of Congress in Public Law 93-349.

The OPM methodology was reviewed and described by the General Accounting Office in its report of January 31, 2003. This report was distributed to the Postal Service and members of Congress. Although the GAO suggested some adjustments to the OPM's calculations, it did not question the OPM methodology.

Sincerely yours,



Douglas C. Borton
Chairman, Board of Actuaries

cc: A. Norman Crowder, III
Mary S. Riebold
Michael R. Virga