

New York State Teamsters Conference Pension and Retirement Fund

Mailing Address:
PO Box 4928
Syracuse, NY 13221-4928
Telephone: 315.455.9790
Fax: 315.234.1047
E-mail: benefits@nytfund.org



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Dear Participants and Beneficiaries,

On behalf of the New York State Teamsters Conference Pension and Retirement Fund (the "Pension Fund"), we write to provide you with an update regarding the ongoing pension matter involving Tops Markets, LLC ("Tops") and Erie Logistics, LLC ("Erie").

As you know, on May 27, 2014, the Pension Fund assessed withdrawal liability against C&S Wholesale Grocers, Inc. /Erie Logistics, LLC ("C&S") following C&S's December 2013 sale of Erie and certain other assets to Tops. The Pension Fund made this assessment after determining that C&S's sale failed to comply with a federal law known as the Employee Retirement Income Security Act of 1974 ("ERISA"), and that a principal purpose of the sale was to evade or avoid C&S's withdrawal liability obligations to the Pension Fund. The assessment has been the subject of arbitration between the Pension Fund and C&S since November 2014, and is expected to continue into 2018.

In May 2014, the Pension Fund offered Tops the opportunity to participate in the Pension Fund as a new employer (the "New Employer Offer")—which would have allowed warehouse employees to continue to accrue credited service for pension purposes back to December 2013—while the withdrawal liability assessment was litigated.

- The Pension Fund has renewed its New Employer Offer to Tops many times over the past three years, but Tops has rejected it each and every time.
- Tops once again rejected the offer on April 25, 2017, and its lawyer made clear why: "[s]tated simply, it would undermine Tops' best business interests to pay these rates," even though the rates would result in a lower monthly payment than Tops has been submitting to the Pension Fund.

Over the past three years, the Pension Fund has returned monthly payments submitted by Tops, since Tops is not a participating employer in the Pension Fund. During this time, Tops repeatedly advised us—and Local 264—that the returned payments were being held in "a segregated account" for the benefit of warehouse employees.

- Local 264, however, recently advised us that Tops has apparently been using those monies for its own purposes, which Tops has not denied (despite our multiple requests for information). Local 264 also advised us that it was considering legal action to ensure that the monies at issue were held solely for the benefit of warehouse employees.

- Additionally, Tops' credit rating was recently downgraded again.
- For these reasons, the Pension Fund advised Tops on May 11, 2017 that it would temporarily retain the payment submitted on May 10, 2017 while Local 264 and Tops worked out an agreement as to which of them should receive the payment. The Pension Fund also expressly advised that its decision to temporarily retain the payment while an agreement was worked out did not alter the Pension Fund's view that neither Tops nor Erie were participating employers.

On May 22, 2017, the Pension Fund received a number of calls from warehouse employees, stating that a Tops' Human Resource official was advising warehouse employees that the Pension Fund had accepted contributions from Tops and that the Fund was allowing Erie to participate in the Plan—thus resolving the ongoing pension matter and allowing you to accrue past (and future) pension credits. **These statements are not accurate.**

- In fact, on May 22, 2017, the Pension Fund filed a lawsuit against Tops in federal court, seeking to place any payment(s) tendered by Tops for pension contributions in a *court-controlled* escrow/trust account. This lawsuit was filed following the inability of Tops to reach an agreement with Local 264 as to which of them should control the money, and serious concerns regarding Tops' current financial condition. These concerns have been discussed with your representatives at Local 264, who have a copy of the lawsuit and the Pension Fund's recent communications with Tops.

Although the Pension Fund is not optimistic that Tops will ever accept the New Employer Offer, it remains on the table for its consideration. We will continue to notify you of any changes in events or circumstances if they occur in the future.

Sincerely,

Board of Trustees