

New York State Teamsters Conference Pension and Retirement Fund

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May 18, 2018

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 another update regarding the status of your retirement benefits following the December 2013 transfer of C&S's warehouse operations to Tops. Last week, representatives from the Pension Fund, Tops/Erie, C&S, and Local 264 participated in a two-day mediation with a well-known mediator and finally reached a resolution.

The Pension Fund has received calls from many of you about what occurred at that mediation, and we have learned of several inaccurate reports that have been circulated. In particular, it has been reported that: "As the process evolved, the Fund made clear that it would not accept us as participants under any circumstances (new employer, or existing) Because of this position by the Fund, we had to look at alternatives that would enable us to recover as much of the past contributions as possible and provide a replacement savings plan going forward."¹ This is not true, and is particularly surprising given that Local 264 never once asked the Pension Fund about participating in its plan at any time during the mediation.

As many of you know, the Pension Fund has, since May 2014, repeatedly offered Tops the opportunity to participate in the Pension Fund as a new employer at discounted rates. Tops has refused each time, stating that paying the discounted rates was against "Tops' best business interests."² The week before the mediation, Tops advised the Bankruptcy Judge, that: "Regardless of the outcome of the Arbitration, [Tops] will seek relief in this Court to exit the Teamsters Pension Fund."³ The very first question the mediator asked was whether Tops was interested in participating in the Pension Fund, including at discounted rates. Tops' bankruptcy lawyer confirmed – with all parties present, including a representative from Local 264, as well as Frank Curci and Jack Barrett – that Tops did not want to participate in the Pension Fund (or any other multiemployer pension fund) in any way, shape, or form. Instead, Tops expressed a desire to fund retirement accounts for you in a different retirement plan not associated with the Pension Fund, which plan we understand is to be, or has been, identified by Tops and Local 264.

Tops, however, spent all of the more than \$20 million in retirement contributions that Local 264 has indicated Tops was supposed to set aside for your benefit.⁴ In the Spring of 2017,

¹ May 10, 2018 Letter from Brian Dickman, President/PEO of Teamsters Local 264. See also Pension punch for Tops warehouse employees, *WKBW*, available at <https://www.wkbw.com/news/pension-punch-for-tops-warehouse-employees> (May 14, 2018).

² A copy of this e-mail from Tops' lawyers at Hodgson Russ LLP, copying Local 264 lawyer Joe Giroux, is available at <https://highq.in/2v5661cgvk>.

³ A copy of Tops' filing with the Bankruptcy Judge is available at <https://highq.in/2v58hnlrap>.

⁴ On May 4, 2018, Local 264's lawyers and Local 264 President Brian Dickman advised the Bankruptcy Judge that: "Tops consistently and repeatedly maintained – in

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Local 264 discovered that Tops was dipping into the retirement contributions that Tops was holding for your benefit. As Local 264 told the Bankruptcy Judge earlier this month: “[b]ecause [Tops] did not and do[es] not have a participation agreement with the Pension Fund, the Pension Fund could not accept [Tops]’ monthly pension contributions made on behalf of Teamsters’ members.”⁵ The Pension Fund therefore filed a lawsuit in federal court against both Local 264 and Tops to resolve this issue.⁶ While Local 264 initially filed a claim to protect the retirement contributions, it ultimately determined to leave the money with Tops to use at its discretion. Now, all of that money is gone. The decision to leave that money with Tops was made by Local 264 – not the Pension Fund or its Trustees.

Nevertheless, at the mediation last week, we were able to reach the following agreement:

- The Pension Fund, C&S and Tops’ owners/executives each agreed to contribute a total of approximately \$15 million to Tops, to be used for the sole purpose of providing you with additional benefits in a different plan not associated with the Pension Fund.
- While the allocation of that \$15 million to you is a matter of collective bargaining between Local 264 and Tops, we understand that if all \$15 million was credited to retirement accounts for your benefit, you would each receive, on average, between \$23,000 and \$25,000.
- C&S has agreed to pay to the Pension Fund a substantial portion of the assessed withdrawal liability, which will help protect the Pension Fund’s ability to pay the benefits you accrued under the Plan prior to December 22, 2013.

While the agreement remains subject to approval by the Judge presiding over Tops’ bankruptcy, the Pension Fund is pleased that years of litigation and uncertainty will be brought to an end. More important, the Pension Fund was successful in securing payment of withdrawal liability from C&S to help protect the benefits of some 35,000 participants and beneficiaries in the Plan. The remaining details of your retirement accounts will be worked out between Local 264 and Tops – and the Pension Fund will not be involved going forward. Accordingly, you should direct any further questions to your union leadership.

Sincerely,

Board of Trustees

repeated conversations with the Teamsters and on the website they maintained to communicate with Teamsters’ members and pension-eligible retirees, that the segregated account [that was supposed to be holding your retirement contributions] was ‘trued-up’ monthly [through] at least March 8, 2018. . . . *This statement was not and is not true.*” A copy of Local 264’s filing is available at <https://highq.in/2v5azsu5an>. On May 15, 2018, Tops filed a report with the Bankruptcy Judge indicating that there was no money left in its “Erie Logistics Pension” bank account. A copy of that report is available at <https://highq.in/2v5cpgrsj8>.

⁵ A copy of Local 264’s filing is available at <https://highq.in/2v5azsu5an>.

⁶ A copy of that lawsuit is available at <https://highq.in/2v5euaipw9>.