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November 11, 2020

Dave Hennessy, Chairman
City of Lauderhill Police Officers' Retirement Plan
6279 West Oakland Park Blvd.
Lauderhill, FL 33313

Re: Earnable Compensation
Our File No.: 95-0035

Dear Chairman Hennessy:

At the City of Lauderhill Police Officers' Retirement Plan's (the "Plan") Board of Trustees' meeting held on October 14, 2020, the Board of Trustees (the "Board") inquired about payment received by City police officers for the different types of services they render. Specifically, the Board asked for an opinion as to which types of pay are considered pensionable and which, if any, are not.

The facts as I understand them are that police officers receive different types of pay. Members of the Plan are divided into two tiers. Although similar, the definition of Earnable Compensation for Tier One and Tier Two members differs. Further, on June 29, 2020, the City and the Union negotiated a new type of pay referred to as "7(k) time." 7(k) time has not yet been codified in the City of Lauderhill Code (the "City Code"). For the reasons which follow, it is likely that all types of "leave time" and "pay incentives" be included in a member's Earnable Compensation and therefore be considered pensionable wages.

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APPLICABLE PLAN PROVISION

Pursuant to section 2-75, Definitions, “[t]ier One means the defined benefit pension program for police officers hired prior to March 23, 2009. Tier Two means the defined benefit pension program for police officers hired on or after March 23, 2009.”

Section 2-75, Definitions, also governs Earnable Compensation. This section provides in relevant part:

Earnable compensation for Tier One members . . . who retired or were eligible for normal retirement on or before April 28, 2014, shall mean such member’s cash remuneration for services rendered. . . Effective April 25, 2011, the payouts of accrued holiday/incentive time will be treated as earnable compensation only for employees who will be eligible for normal retirement under the plan within ten (10) years of the date such employees makes the election to sell back their accrued holiday/incentive time. For said employees, the city will deduct pension contributions from the payouts of accrued holiday/incentive time and such payouts will be treated as earnable compensation provided the money is paid out in the employee’s calculating years for retirement under the plan.

Earnable compensation for Tier One members. . . who did not retire and were not eligible for normal retirement as of April 28, 2014, shall be defined as a member’s base pay, longevity pay, education incentive pay. . . assignment pay, up to three hundred (300) hours of overtime per calendar year and payouts for accrued holiday/incentive, vacation and/or sick time earned prior to September 30, 2013.

Earnable compensation for Tier Two members. . . shall be defined as a member’s base pay, longevity pay, education incentive pay. . . assignment pay and up to three hundred (300) hours of overtime per calendar year.

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APPLICABLE ARTICLE OF THE 2020 COLLECTIVE BARGINING AGREEMENT (the "2020 CBA")

Article 15, Hours of Work and Overtime, governs the application of 7(k) time. This Article provides, in pertinent part:

Eighty-four (84) hours in a fourteen (14) day cycle shall constitute the normal work period. Such hours shall be compensated at straight time. Nothing herein shall guarantee a minimum number of hours per day, per week or per month. Effective October 1, 2019, bargaining unit employees shall accrue two (2) hours of 7(k) time per pay period. The 7(k) time bank will be capped at fifty (50) hours. 7(k) can only be used for leave time and can never be exchanged, sold, donated or cashed in for monetary value. Should a member fail to use his 7(k) time prior to separation from the City, that time will be forfeited. . .

ANALYSIS OF LAW AND FACTS

The definition of Earnable Compensation for Tier One members differs slightly depending on whether a member retired or was eligible for normal retirement on or before April 28, 2014. For those Tier One members who retired or were eligible for normal retirement on or before April 28, 2014, Earnable Compensation means the "member's cash remuneration for services rendered." Further, accrued holiday/incentive time is treated as Earnable Compensation for qualifying Tier One members.

The City Code contains a broad definition of Earnable Compensation for this group of Tier One members. Based on this broad language, all pay received for services rendered, irrespective of the label given, is pensionable. There would be no reason to infer or narrow this language to exclude certain types of payment from Earnable Compensation.

For those Tier One members who did not retire or were not eligible for normal retirement on or before April 28, 2014, Earnable Compensation is defined "as a member's base pay, longevity pay, education incentive pay. . . assignment pay, up to three hundred (300) hours of overtime per calendar year and payouts for accrued holiday/incentive, vacation and/or sick time earned prior to September 30, 2013." Finally, Earnable Compensation for Tier Two members includes "a member's base pay, longevity pay, education incentive pay. . . assignment pay and up to three hundred (300) hours of overtime per calendar year."

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These definitions are a bit narrower in scope and specifically identify the types of payment considered Earnable Compensation. Additionally, these definitions cap the number of overtime hours worked along with a Tier One member's payout of accrued holiday/incentive, and vacation and/or sick time earned that can be included in a member's Earnable Compensation.

Historically, base pay has included payment from several sources, for example, the usage of one's sick and vacation leave as well as night shift deferential pay. Pursuant to the 2020 CBA, 7(k) time is considered leave time; therefore 7(k) time should be treated as Earnable Compensation like any other type of leave time. Although not expressly provided, an on-call pay incentive, similar to the night shift differential pay incentive, appears to be includable in a member's base pay. However, even in the event of ambiguity, Florida case law has held that "pension statutes are to be liberally constructed in favor of the intended recipients." *Board of Trustees of Town of Lake Park Firefighters' Pension Plan v. Town of Lake Park*, 966 So. 2d 448, 451 (5th DCA 2007).

CONCLUSION

Earnable Compensation is defined in section 2-75 of the Plan document. The definition of a member's Earnable Compensation differs based on their tier and further, whether they retired or were eligible to retire on or before April 28, 2014. Based on the Plan language, it seems likely that 7(k) time would be considered Earnable Compensation as would all other types of leave pay. Further, on-call pay, similar to night shift differential pay, should be included in a member's base pay, and therefore considered Earnable Compensation.

I trust this opinion has addressed your question. Please contact me should you need anything further on this matter.

Sincerely,

/s/ Cassandra M. Harvey
CASSANDRA M. HARVEY