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Superintendent of
Financial
Services



Surintendant des
services
financiers

IN THE MATTER OF the *Pension Benefits Act, R.S.O. 1990, c. P.8, as amended (the "PBA")*;

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to refuse to make an Order under section 77.3 of the PBA, respecting the INVISTA Canada Pension Plan, Registration No. 0242727.

TO:

R.H.

Applicant

AND TO:

INVISTA (Canada) Company
455 Front Road, PO Box 2100
Kingston Ontario K7L 4Z6

Attention: Mark Lichty
Director Human Resources

Employer and Administrator

NOTICE OF INTENDED DECISION

I INTEND TO REFUSE TO MAKE AN ORDER in respect of the INVISTA Canada Pension Plan, Registration No. 0242727 (the "Plan") under section 77.3 of the PBA.

REASONS:

1. The Applicant is seeking an order that the Plan be partially wound up and an order declaring that he receives the benefit of this partial wind up in accordance with either section 7.08 of the Plan or section 77.7 of the PBA (which provides for the application of sections 73 and 74 of the PBA to a partial wind-up with any necessary modifications).
2. INVISTA Canada Company ("INVISTA") is the administrator of the Plan as well as the contributing employer to the Plan and was the administrator and employer at all relevant

times.

3. At the relevant time, INVISTA operated a number of facilities in Canada including one in Maitland, Ontario. Portions of the Maitland facility dedicated to the production of Adipic acid, dibasic esters and hexamethylenediamine ("HMD") were closed on and after April 21, 2009.
4. INVISTA amended the Plan to provide grow-in benefits to members "whose employment terminated on or after April 21, 2009 as a result of the shutdown of portions of the Maitland site of the Company dedicated to production of Adipic acid, dibasic esters" and HMD (section 7.08 of the Plan) (the "Amendment").
5. On February 26, 2010, INVISTA sold its contract manufacturing operations located in Maitland, Sarnia and Ajax to E.I. DuPont Canada ("DuPont"). According to information provided by INVISTA, of the 256 employees in the contract manufacturing operations, 245 transferred employment to DuPont and became members of DuPont's successor pension plan. The employment of a small number of members who worked in several different geographic locations was terminated as a result (including that of the Applicant).
6. From February 2009 to June 2010, according to information provided by INVISTA, 26 non-unionized Plan members had their employment involuntarily terminated as a result of a series of restructuring initiatives. The terminations were spread across a number of geographical sites of INVISTA.
7. The Applicant was employed with INVISTA for over 19 years when he was given a notice of termination of employment on April 15, 2010. He was provided a salary continuation by INVISTA up to February 28, 2011 at which point his salary and pensionable service came to an end.
8. The Applicant's position, as expressed in correspondence with the Superintendent, is that there are grounds to order a partial wind up with respect to the Maitland closure, that the Superintendent would have ordered such a partial wind up but for the Amendment and that the termination of his employment falls within that partial wind up as his termination was contemporaneous with the Maitland closure and was related to the Maitland closure. In addition, the Applicant contends that he would still be working for INVISTA had the Maitland closure not occurred. In the alternative, the Applicant's position is that the sale of the contract manufacturing operations to DuPont also provided grounds for the Superintendent to order a partial wind up of the Plan.
9. The Applicant was denied inclusion in the group covered by the Amendment by INVISTA on the basis that the Amendment covered only those employees whose employment terminated on or after April 21, 2009 as a result of the shutdown of portions of the Maitland site dedicated to the production of adipic acid, dibasic esters and HMD. The Applicant's duties involved a broad finance manager responsibility for INVISTA in a number of areas including, but not limited to, contract manufacturing operations. His duties were not specific to the Maitland site but related to the broader company. INVISTA's

position is that the Applicant's termination of employment was related to and was contemporaneous with, the sale of the contract manufacturing assets to DuPont and/or to certain other restructuring initiatives undertaken and he would not still be working for INVISTA even if the Maitland closure had not occurred.

10. Section 77.3(1) of the PBA sets out the grounds on which the Superintendent may order a partial wind up. Where one of these conditions exists, the Superintendent may order the wind up but it is within the Superintendent's discretion whether or not to do so in any particular case.
11. The Superintendent is of the opinion that there are not grounds for the Superintendent to order a partial wind-up with respect to the sale of the contract manufacturing operations to DuPont as the successor employer provided a pension plan and, therefore, paragraph 77.3(1)(c) of the PBA does not apply.
12. The Superintendent is of the opinion that there are grounds on which he could exercise his discretion to order a partial wind up of the Plan with respect to the Maitland closure under both paragraphs 77.3(1)(a) and 77.3(1)(b) of the PBA. However, the Company has amended the Plan to provide members affected by the Maitland closure with similar benefits to those that they would receive were a partial wind up ordered and there was no Plan surplus at the time of the Maitland closure. Therefore, the Superintendent is of the opinion that this is not an appropriate case for the exercise of the Superintendent's discretion to order a partial wind up as long as the Amendment is interpreted and administered so as to include all members who would have been part of the partial wind up group were a partial wind up ordered.
13. The Superintendent is of the opinion that the Applicant would not be properly included in this partial wind up group were a partial wind up to be ordered as his termination was not sufficiently related to the Maitland closure; his employment would have been terminated regardless of the Maitland closure.
14. Such further and other reasons as may come to my attention.

YOU ARE ENTITLED TO A HEARING by the Financial Services Tribunal (the "Tribunal") pursuant to section 89(6) of the PBA. **To request a hearing, you must deliver to the Tribunal a written notice that you require a hearing, within thirty (30) days after this Notice of Intended Decision is served on you.**¹

YOUR WRITTEN NOTICE must be delivered to:

Financial Services Tribunal
5160 Yonge Street
14th Floor
Toronto, Ontario
M2N 6L9

Attention: The Registrar

FOR FURTHER INFORMATION on a Form for the written notice, please see the Tribunal website at www.fstontario.ca or contact the Registrar of the Tribunal by phone at 416-590-7294, toll free at 1-800-668-0128, ext. 7294, or by fax at 416-226-7750.

IF YOU FAIL TO REQUEST A HEARING WITHIN THIRTY (30) DAYS, I MAY CARRY OUT THE INTENDED DECISION AS DESCRIBED IN THIS NOTICE.

DATED at Toronto, Ontario, this **23rd** day of **January, 2014**.

Original Signed By

Brian Mills
Deputy Superintendent, Pensions

CC: Chris Rootham
Nelligan O'Brien Payne
50 O'Connor, Suite 1500
Ottawa, ON K1P 6L2

Counsel for the Applicant

¹*NOTE - Pursuant to section 112 of the PBA any Notice, Order or other document is sufficiently given, served or delivered if delivered personally or sent by regular mail and any document sent by regular mail shall be deemed to be given, served or delivered on the fifth day after the date of mailing.*

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