

**BOROUGH OF ALBURTIS  
LEHIGH COUNTY, PENNSYLVANIA**

Ordinance No. 366

(Duly Adopted April 14, 1999)

AN ORDINANCE AUTHORIZING AND DIRECTING THE TRUSTEES OF THE BOROUGH OF ALBURTIS NONUNIFORMED PENSION PLAN AND TRUST TO TRANSFER THE ACTUARIAL SURPLUS WHICH EXISTED IN THE TRUST UPON ITS CONVERSION FROM A DEFINED BENEFIT PLAN TO A DEFINED CONTRIBUTION PLAN, TOGETHER WITH THE INTEREST EARNED THEREON SINCE THE DATE OF CONVERSION, TO THE BOROUGH OF ALBURTIS POLICE PENSION PLAN AND TRUST; AND MAKING TECHNICAL CONFORMING AMENDMENTS TO THE NONUNIFORMED PENSION PLAN AND TRUST.

**WHEREAS**, the Borough of Alburdis has established a pension plan for its nonuniformed employees; and

**WHEREAS**, by Ordinance 322, adopted December 13, 1995, Borough Council converted the Borough of Alburdis Nonuniformed Pension Plan and Trust from a defined benefit plan to a defined contribution plan; and

**WHEREAS**, under Ordinance 322, if the amount of Trust Fund assets in the Nonuniformed Pension Plan and Trust as of the date the plan is converted exceeds the accrued benefits of the participants in the Plan, the excess is to be allocated to the Forfeiture Account under the Plan and be used to provide future allocations to participant plan accounts as those allocations are earned; and

**WHEREAS**, there was a surplus in the Nonuniformed Pension Plan at the time of its conversion, and the excess was allocated to the Forfeiture Account; and

**WHEREAS**, the surplus in the Nonuniformed Pension Plan was derived from grants by the Commonwealth under the General Municipal Pension System State Aid Program; and

**WHEREAS**, the state Department of the Auditor General has opined that state aid funds contributed to a defined benefit plan which is later converted to a defined contribution plan, and which are not allocable to the accrued benefit of any participants at the time of conversion, may not be retained in the defined contribution plan, but must either be returned to the Commonwealth or allocated to another defined benefit pension plan which qualifies for state municipal pension aid; and

**WHEREAS**, Borough Council accepts the determination of the Department of the Auditor General and desires to transfer the excess funds from the Nonuniformed Pension Plan and Trust to the Police Pension Plan and Trust;

**NOW, THEREFORE**, be it **ORDAINED** and **ENACTED** by the Borough Council of the Borough of Alburdis, Lehigh County, Pennsylvania, that Sections 203(a), 401(b), 403, and 504(d) of Ordinance 322 (relating to Nonuniformed Pension Plan) be amended as follows (with additions indicated by double underlining, and deletions by ~~strike-outs~~):

**§ 203 Treatment of Excess or Shortfall.**

**(a) Excess.**

If, after the purchase of all annuities required to be purchased under Section 202, the value of remaining Trust Fund assets is greater than the amount to be allocated to Participant accounts under Section 202(e), the excess shall be allocated to the Forfeiture Account.

As soon as practicable after April 14, 1999, the Trustees are hereby authorized and directed to transfer all Trust Fund assets derived from the excess of Plan assets over the cost of providing annuities or individual account balances under Section 202, to the Borough of Alburdis Police Pension Plan and Trust. In determining the amount of such transfer, transactions in the Plan shall be recharacterized (if necessary) such that:

- (1) Closed Employer Contribution Accounts and Employee Contribution Accounts are established for each Participant who elected in early 1996 to allocate his/her accrued benefit under the defined benefit plan to his/her individual accounts in the defined contribution plan. These accounts are established as of the Conversion Date, and the total of the two accounts for each affected Participant as of the Conversion Date is equal to the single-sum Actuarial Equivalent of the Participant's Accrued Benefit in this Plan as of the Conversion Date (as defined and determined under the Provisions of the Defined Benefit Plan).
- (2) All remaining Plan assets as of the Conversion Date are allocated to a Transition Account as of the Conversion Date.
- (3) All distributions of monthly benefits to persons in pay status in 1996 (prior to the commencement of benefits under annuity contracts) are debited from the Transition Account as of the date of distribution.
- (4) A special valuation of Plan assets and determination of Income was made as of June 26, 1996 to reflect the payment received from PSAB in transferring the Plan's assets to the new Trustees. As determined by the Pension Committee on June 26, 1996, each Participant's Closed Employer Contribution Account and Employee Contribution Account is credited with Income as of June 26, 1996, in an amount equal to 3.30519% of the balance in such account as of the Conversion Date.
- (6) Each Participant's Closed Employer Contribution Account and Employee Contribution Account was then individually invested in accordance with Participant directions (and/or invested in the default investment option until directions were received.) The Income earned on those investments is allocated to those Accounts as of each valuation date for those investments. The Transition Account was also in-

vested in the default investment option, and the Income earned on its investments is allocated to that Account.

- (7) The purchase price for all annuities required to be purchased under Section 202 is debited from the Transition Account as of the date of payment.
- (8) Upon the final payment under paragraphs (3) and (7), the remainder of the Transition Account is allocated to a Surplus Account and invested in the default Plan investment option.
- (9) Distributions from a Participant's accounts is debited from the affected accounts as of the date of distribution.
- (10) Any forfeitures of nonvested benefits from a Participant's account under Article IX is allocated to the Forfeiture Account, invested in the Plan's default investment option, and used to provide benefits for other Participants as described in paragraph (12) and Section 503.
- (11) Contributions made by the Employer are allocated when made to the Early Employer Contributions Account, and invested in the default Plan investment option.
- (12) As of the last day of the 1996, 1997, and 1998 Plan Years, the Employer Contribution Account of each Qualified Employee is credited with an amount equal to 4.65% of the Qualified Recipient's Compensation for the portion of each such year during which he/she was an Active Participant. These allocations are transferred first from the Forfeiture Account (if any) and then from the Early Employer Contributions Account. Each Participant's Employer Contribution Account is individually invested in accordance with Participant directions (and/or invested in the default investment option until directions are received.) The Income earned on those investments is allocated to those Accounts as of each valuation date for those investments.

(13) The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee's qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions.

(A) If the amount in the Early Employer Contributions Account as of the last day of the Plan Year is insufficient to cover the required allocations under paragraph (12), the Employer must contribute the amount of the shortfall to the Plan as soon as possible, together with interest as described in Section 504(c).

(B) If there remains a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations under paragraph (12), and after the Income of that Account during the Plan Year has been allocated under paragraph (14), then that portion of the Early Employer Contributions Account as of the last day of the Plan Year which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Surplus Account, together with the interest earned on that amount from the last day of the Plan Year until the date of the transfer. That portion of the Early Employer Contributions Account which is *not* attributable to state aid shall either be returned to the Employer, or be treated as a new Employer contribution for the following Plan Year

and be retained in the Early Employer Contributions Account.

(C) For purposes of this Plan, Employer contributions to the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program to the extent the governing body of the Employer allocates the grants to this Plan, and all amounts allocated to Participant accounts under paragraph (12) from the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program until the amount of such grants allocated to this Plan has been exhausted.

(14) As of the last day of the 1996, 1997, and 1998 Plan Years, all Income earned by the segregated investment of the Early Employer Contributions Account is allocated *pro rata* among the other Plan accounts in accordance with Section 403.

(15) As soon as practicable after April 14, 1999, the Trustees shall transfer the balance of the Surplus Account (including the Income earned by the segregated investments in the Surplus Account through the date of transfer) to the Borough of Alburtis Police Pension Plan and Trust.

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**§ 401 Accounts.**

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**(b) Paper Accounts of the Plan.**

The Administrator shall create and maintain adequate records to disclose the portions of the Trust Fund which represent

amounts not currently allocated to the accounts of persons with an interest in the Plan. There shall be three such accounts created with respect to each particular Employer which maintains this Plan (unless there would be zero balances in any such account):

**Forfeiture Account** (to hold amounts forfeited from the accounts of Inactive Participants ~~and any excess amounts under § 203(a), until allocated to Active Participants,~~ plus any earnings).

**Suspense Account** (to hold amounts which could not be allocated to the accounts of Active Participants because of the Maximum Additions limitations of Article VII).

**Early Employer Contributions Account** (to hold amounts contributed to the Plan for a Plan Year before the end of that Plan Year; see Section 504(a)).

In addition, the Administrator shall create, maintain, and dispose of a **Transition Account** and a **Surplus Account** in accordance with the provisions of Section 203(a).

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**§ 403 Allocation of Income.**

The Income of each segregated portion of the Trust Fund shall be allocated to the accounts described in Section 401(a) through (c) (*except* the Suspense Account and the Early Employer Contributions Account) as of the day the Income is determined, **but only** to those accounts which have a positive balance on such day and which have been assigned to that segregated portion of the Trust Fund. If more than one of those accounts have been assigned to that segregated portion of the Trust Fund, ~~When a given segregated portion of the Trust Fund consists of assets assigned to more than one such account,~~ the Income will be allocated among the accounts according to each account's portion of the following total:

- (a) the balances in the accounts as of the last asset valuation date (to the extent the accounts are assigned to that segregated portion of the Trust Fund given group of assets are assigned to such accounts);
- less** (b) the amount of any distributions from the accounts during the period concerned (to the extent the segregated portion of the Trust Fund is given group of assets are used to make such distributions) **multiplied by** a fraction whose numerator is the number of days in the period after the date of distribution and whose denominator is the total number of days in the period;
- plus** (c) the amount of any contributions or transfers to the accounts during the period concerned (to the extent the contributions or transfers are assigned to the segregated portion of the Trust Fund included within the given group of assets) **multiplied by** a fraction whose numerator is the number of days in the period after the date as of which the contributions or transfers were credited to the accounts and whose denominator is the total number of days in the period.

If the only account(s) assigned to a segregated portion of the Trust Fund are the Suspense Account and/or the Early Employer Contributions Account, the Income of such segregated portion shall be allocated among all the other accounts described in Section 401(a) through (c) with a positive balance as of the day the Income is determined, according to each account's portion of the following total:

- (d) the balances in the accounts as of the last asset valuation date of the segregated portion of the Trust Fund;
- less** (e) the amount of any distributions from the accounts during the period concerned **multiplied by** a fraction whose numerator is the number of days in the period after the date of distribution and whose denominator is the total number of days in the period;



**plus** (f) the amount of any contributions or transfers to the accounts during the period concerned multiplied by a fraction whose numerator is the number of days in the period after the date as of which the contributions or transfers were credited to the accounts and whose denominator is the total number of days in the period.

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**§ 504 Payment of Employer Contributions.**

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**(d) Mistake of Fact.**

~~If, due to a mistake of fact, the Employer contributes an amount to the Plan for a given Plan Year in excess of the amount the Employer would have contributed had there not been a mistake of fact, the Administrator may direct the Trustees to return the excess to the Employer, or place the excess in the Early Employer Contributions Account, within one year after the date the contribution was made.~~

The actual required Employer contributions for a given Plan Year cannot be known until the end of the Plan Year, since an employee's qualification for a contribution and the amount of his/her Compensation for the Plan Year cannot be determined until that time. Consequently, the estimates made by the Employer in determining the minimum municipal obligation for the Plan Year and in making contributions to the Plan during the Plan Year most likely will be either higher or lower than the actual required contributions. Therefore, for the 1999 and succeeding Plan Years:

(1) If the amount in the Early Employer Contributions Account as of the last day of the Plan Year is insufficient to cover the required allocations to Participants under Section 501, the Employer must contribute the amount of the shortfall to the Plan as soon as possible, together with interest as described in subsection (c).

(2) If there remains a positive balance in the Early Employer Contributions Account as of the last day of the Plan Year after making the required allocations to Participants under Section 501 (and after the Income earned by any segregated portion of the Trust Fund to which the Early Employer Contributions Account is assigned has been allocated to other accounts under Section 403), then that portion of the Early Employer Contributions Account as of the last day of the Plan Year which is attributable to grants by the Commonwealth under the General Municipal Pension System State Aid Program shall be transferred to the Borough of Alburdis Police Pension Plan and Trust, together with the Income earned on that amount from the last day of the Plan Year until the date of the transfer. That portion of the Early Employer Contributions Account which is *not* attributable to state aid shall either be:

(A) returned to the Employer (if so directed by the Administrator within one year after the date the contributions were made to the Plan); or

(B) treated as a new Employer contribution for the following Plan Year, and retained in the Early Employer Contributions Account.

(3) For purposes of this Plan, Employer contributions to the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program to the extent the governing body of the Employer allocates the grants to this Plan, and all amounts allocated to Participant accounts under Sections 501 and 503 from the Early Employer Contributions Account shall be deemed to be attributable to grants under the General Municipal Pension System State Aid Program until the amount of such grants allocated to this Plan has been exhausted.

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**DULY ORDAINED** and **ENACTED** by the Borough Council of the Borough of Al-  
burtis, this 14<sup>th</sup> day of April, 1999, in lawful session duly assembled.

**BOROUGH COUNCIL  
BOROUGH OF ALBURTIS**

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Steven R. Hill, President

Attest:

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Louise Stahley, Secretary

**AND NOW**, this 14<sup>th</sup> day of April, 1999, the above Ordinance is hereby AP-  
PROVED.

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Ronald J. DeIaco, Mayor