



Date: September 24, 2020
Current Meeting: October 1, 2020
Board Meeting: October 1, 2020

BOARD MEMORANDUM

TO: Santa Clara Valley Transportation Authority
Board of Directors

APPROVED ACCEPTED ADOPTED AMENDED DEFERRED REVIEWED
Santa Clara Valley Transportation Authority
Board of Directors
Elaine F. Baltao, Board Secretary
BY: *[Signature]*
DATE: 10/1/20

FROM: General Counsel, Evelynn Tran
Deputy GM/Chief Financial Officer, Raj Srinath

SUBJECT: Resolution to Begin the Process for a Section 218 Agreement for the VTA/ATU Pension Plan and CalPERS

Policy-Related Action: No

Government Code Section 84308 Applies: No

ACTION ITEM

RECOMMENDATION:

Adopt, and authorize the Board Chairperson to execute, resolutions as to each of the VTA/ATU Pension Plan Coverage Group and the CalPERS Pension Plan Coverage Group (as defined herein) substantially in the following form:

- a) Requesting authorization from the State Social Security Administrator to conduct a majority vote election for Social Security coverage (Election);
- b) Establishing the effective date(s) of Social Security coverage;
- c) Stating that no optional exclusions from Social Security coverage are to be requested;
- d) Naming Elaine Baltao, Board Secretary, as the Local Election Officer who will conduct the Election on behalf of VTA; and
- e) Specifying whether the plan of combination of Social Security and the respective pension plan(s) will be modified or unmodified.

BACKGROUND:

The federal Social Security system provides benefits to retirees, the disabled, and their families. Social Security is funded by taxes paid by both employees and employers.

Employees of public agencies that offer pension plans that meet a certain minimum benefit do not automatically participate in Social Security. To participate in Social Security, those employees have to voluntarily "opt in" by voting for an agreement between the public agency

and the federal Social Security Administration. That agreement is called a “Section 218 Agreement.”

The federal Social Security Administration has designated a “State Social Security Administrator” for each state. The State Social Security Administrator is in charge of overseeing and maintaining Section 218 Agreements for that state. In California, the State Social Security Administrator is CalPERS.

VTA and its predecessor the Santa Clara County Transit District have been withholding Social Security taxes from employees’ paychecks and paying the employer portion of Social Security taxes since the early 1970s. This shows the intent has always been to have VTA’s employees participate in and be covered by Social Security.

However, the State Social Security Administrator conducted an audit and found that there is no Section 218 Agreement on file for VTA. VTA searched its records and did not find a Section 218 Agreement either. VTA is one of several agencies in California that does not have a Section 218 Agreement.

DISCUSSION:

Because VTA does not currently have a Section 218 Agreement, VTA employees and former employees are at risk of seeing their Social Security benefits being reduced or, in some cases, potentially eliminated.

The federal Social Security Administration’s current practice is to continue honoring past Social Security tax payments as though there were Section 218 Agreements in place. But there is no legal requirement for the Social Security Administration to keep doing that. Further, without a Section 218 Agreement in place, VTA will be required to stop deducting and making Social Security contributions for its employees. As a result, VTA employees will cease to be covered by Social Security for all future service. Medicare coverage for a small number of employees (those who have been in continuous employment with VTA since March 31, 1986) may also be impacted.

To address this issue, the Board formed a subcommittee consisting of Board Chair Cindy Chavez, Vice Chair Glenn Hendricks, and Alternate Member Howard Miller. That subcommittee, staff, and union leadership have been working together since July to find a solution that protects Social Security benefits for all past, present, and future VTA employees.

Fortunately, there is a solution that does just that. VTA employees can hold a “majority vote” Election for a Section 218 Agreement to cover all past, present and future employees.

Under the law, only current employees can vote in an Election for a Section 218 Agreement. The State Social Security Administrator has advised that each of VTA’s pension plans constitute a different “coverage group” requiring a separate Election for each. The VTA/ATU Pension Plan and a CalPERS plan will constitute two different Coverage Groups: the “VTA/ATU Pension Plan Coverage Group” and the “CalPERS Pension Plan Coverage Group.”

To hold a vote, VTA must follow a detailed and thorough process laid out by federal and state law. The first step in that process is the Board's adoption of a resolution for each Coverage Group requesting permission from the State Social Security Administrator to hold an Election. The form of the resolution is mandated by state law. VTA is working with the State Social Security Administrator to finalize the resolutions. If the resolutions are finalized before the October 1, 2020 Board meeting, they will be provided to the Board and to the public as add-on items. In the event the resolutions are not finalized by the time of the Board meeting, the recommended action will authorize the Board Chairperson to execute the resolutions on the Board's behalf.

Once the resolutions have been executed, VTA will work with the State Social Security Administrator on the remaining steps to hold an Election for each of the Coverage Groups. The Election date is currently scheduled for early March 2021.

If a simple majority (50% +1 vote) of the eligible voters for each Coverage Group votes YES, then Social Security benefits tied to VTA employment will be protected for all current and former VTA employees and will allow all future VTA employees to participate in Social Security.

In other words, a YES vote in early March keeps things in place the way everyone has always understood them to be.

ALTERNATIVES:

There are no practical alternatives to protect everyone's Social Security benefits. Only a successful majority vote Election for each Coverage Group ensures that all past, current, and future VTA employees will receive full credit for their and VTA's Social Security tax payments.

FISCAL IMPACT:

There is a filing fee of \$650 per Election. Otherwise, there is no immediate fiscal impact from the recommended actions. Failure to adopt the resolutions, however, would delay the solution of the issue and would further potentially jeopardize our current and past employees' Social Security benefits.

Prepared by: J. Carlos Orellana
Memo No. 7541

DATE: OCTOBER 1, 2020
TO: VTA BOARD OF DIRECTORS
RE: BOARD ACTION - SOCIAL SECURITY COVERAGE- ITEM 7.3

I am a VTA retiree. I am writing because retirees were recently advised that it has been discovered that VTA did not "take the steps as may be necessary to obtain coverage for the VTA and its employees under Title 2 of the Federal Social Security Act, as amended, and the related provisions of the Federal Contributions Act, as amended." as required by VTA's enabling legislation.

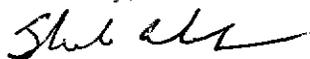
I am glad that VTA and its Unions appreciate the importance of Social Security coverage and are working diligently to resolve this situation. My concern is that the approach that is being taken requires majority votes of eligible active employee voters within each retirement plan (ATU & CALPERS). Unfortunately, there is reason to be concerned that one or more of these referendums will not pass because so many people are concerned about the long-term viability of Social Security. Eligible employees who do not vote are counted as a no vote. It is much harder to get a majority vote when failure to cast a vote is considered a no vote. Hopefully both Social Security referendums would pass with the required majority of each pension plan. If they pass, and Social Security approves retroactive coverage, this would correct the problem for active employees and existing and future retirees.

If a majority vote referendum is held and does not pass, we have been advised that Social Security coverage will end. We were advised that, when coverage ends, there are no guarantees that our benefits will not be impaired, as it is up to Social Security to determine what will occur. It is expected that Social Security will honor contributions and service occurring more than three tax years ago, but will refund contributions and remove years of service and average final earnings for three years. These are likely a retiree's highest earnings years and this could substantially decrease their monthly income. Retirees whose covered service is reduced may also find that they no longer have the required service to not be affected by the Government Pension Offset or the Windfall Elimination Provision. A new referendum can take place, but there is a waiting period and coverage would not be retroactive. This would harm many existing and future retirees who were advised when they transferred from the County to VTA there would be no impairment to their benefits.

There is an alternative to this approach. VTA could choose to use a divided vote referendum. This would separate each retirement plan into two groups, those who choose coverage and those who do not. There is no requirement for a majority vote as all voters get what they want. I understand the administrative complexity of administering multiple groupings, but if employee sentiment indicates a majority vote is not likely to pass, this method could be used to ensure that employees and retirees will not be harmed (as will occur if a majority vote referendum doesn't achieve the required majority to pass).

Could you also please provide an explanation of what "7.3e) Specifying whether the plan of combination of Social Security and the respective pension plan(s) will be modified or unmodified" means. Thank you very much for your consideration in this matter.

Sincerely,



Shellie Albright