

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

NICK SUNYAK, *et al.*, : Case Nos.: 1:11-CV-445
Plaintiffs, : (Judge Michael R. Barrett)
v. : AGREED ORDER
CITY OF CINCINNATI, *et al.* :
Defendants. :

Pursuant to Paragraph 30 of the Collaborative Settlement Agreement approved by this Court, the parties have negotiated reforms for the administration of the Cincinnati Retirement System (“CRS”), including the composition of the Board of Trustees and the administration of the CRS. The parties have reached agreement on such reforms and consistent with that agreement, the Court orders that the City shall reform the Board of Trustees of the CRS and the administration of the CRS as follows:

- (a) A Board of Trustees shall be established. The Board shall have nine Trustees. Four Trustees will be appointed by the Mayor, three Trustees will be elected by retired members and two Trustees will be elected by employee members. Any Trustee of the Board elected by the retired members must be a retired member of the CRS. Any Trustee of the Board elected by employee members must be an employee member of the CRS.
- (b) Trustees shall serve a term of four years. However, the initial term for each Trustee shall vary in length (four years or less each) in such a way as to create terms that end two years and four years after initial

appointment/election. The objective is to have the terms overlap to establish continuity in membership from year to year.

- i. The initial term for the three retiree elected Trustees shall be two four-year terms and one two-year term. The elected retiree candidates receiving the greatest number of votes shall serve the initial four-year terms, the elected retiree candidate receiving next higher number of votes shall serve the two-year term. The initial terms of the two employee elected Trustees shall be a four-year term and a two-year term. The elected employee candidate receiving the greatest number of votes shall serve the initial four-year term and the elected employee candidate receiving the next lower number of votes shall serve the two-year term.
- (c) Subject to the limitations set forth herein, in the Collaborative Settlement Agreement and the Consent Decree, the Mayor's appointees shall also be subject to any subsequent ordinances adopted by City Council. The Mayor shall appoint four Trustees to the Board for the length of a term as decided by the Mayor subject to the four-year per term limitation as set forth above.
 - (d) At least two of the Mayor's appointed Trustees shall have the following qualifications:
 - i. Baccalaureate degree from an accredited college or university in finance, economics, business or other field of study involving financial management;
or

- ii. A minimum of ten years of experience in pension administration, pension actuarial practice, institutional investment management, employee benefits/investment law, banking, asset/liability management for an insurance company, or university or college professor with a focus on fiduciary or trust fund law or a quantitative background in financial theory or actuarial math.
- iii. No appointed Trustee shall have any business, personal, or family interests related to the City or the retirement system that would constitute a conflict of interest, or that would create the appearance of a conflict of interest, with the duties of a Trustee. Being a member of the Cincinnati Retirement System or a beneficiary of the Cincinnati Retirement System shall not constitute a conflict of interest.
- iv. Residency shall not be considered as a qualification for any appointed Trustee.
- v. Not more than two current or former elected City officials shall be eligible to simultaneously serve as Trustees of the Board.
- (e) The Trustees present shall vote on issues before the Board. There shall be no voting by proxy or designated representative.
- (f) The Board shall establish the rules for all elections of the elected Trustees.
- (g) The Trustees shall elect the chair and vice chair who shall serve for two years. The chair (or vice chair in the absence of the chair) shall be responsible for communicating the concerns of the Board to the CRS Director (Director of Retirement Department), setting Board meeting

agendas and, after consulting with the Board as a whole, establishing priorities for the CRS Director and CRS staff. Any Trustee may communicate with or pose a question to the Director, the actuary, or other individuals dealing with the business of the Board. The Director and the Chair of the Board will be copied on any question or communication with the actuary. Should the Director find that Trustees' communications are incurring expense to the CRS, the Director shall bring such cost to the attention of the Board. If answering any specific question or providing further information will incur considerable expense to the CRS, for example, running new projections, agreement to proceed is required of at least three Trustees.

- (h) The Board shall be responsible for determining and approving the CRS budget and all components in a timely fashion.
- (i) The Board shall administer the CRS for the benefit of the members of the CRS. The Board shall have the exclusive authority to govern the CRS Pension Trust Fund and the 115 Trust Fund, subject to the terms and provisions of the Collaborative Settlement Agreement and the Consent Decree issued by the United States District Court, the Internal Revenue Code and the Cincinnati Municipal Code, provided that, in the event of any conflict, the Collaborative Settlement Agreement and Consent Decree shall control. Each member of the Board shall have fiduciary responsibility as defined under the laws of the State of Ohio. The fiduciary responsibility shall be solely to the active and retired members of the CRS.

- (j) The Board shall be guided by principles of full transparency. The public and the CRS members shall have a right to be fully informed of the Board's concerns, considerations, and decisions. Examples include: (a) upon the request of persons at the Board meetings, public reports by and to the Board shall be made available to attendees; (b) Board minutes shall be published in a timely fashion; (c) Board meeting agendas shall be made available to the public at least 48 working hours prior to the meeting time of the Board; and (d) members of the public shall have opportunity to speak to the Board on items under consideration at the time such items are considered and before the Board's vote on such items. Each public speaker's comments may be limited consistent with the Board's rules, as amended. Other opinions and comments shall be welcomed in writing, by email, or by other similar means.
- (k) The Board shall generate, maintain, and make publicly available a governing manual for guidance of Board matters, procedures, rules and regulations. A published version of the Roberts Rules of Order shall be incorporated by reference within the governing manual.
- (l) The Board shall provide to the City Manager and Class Counsel any information and documentation needed for the reports required by the Collaborative Settlement Agreement and the Consent Decree.
- (m) The City Manager shall be the appointing authority for the Director of the Retirement Department and shall supervise his or her performance. The

Board will actively participate in any searches for a new Director, whether by committee or otherwise, and may present candidates for consideration. The City Manager and the Board shall develop formalized procedures for the evaluation of the Director and the Board's annual written evaluation of the Director's performance shall be submitted to the City Manager in accordance with the City's policies and procedures regarding performance reviews for Directors. The City Manager may also dismiss the Director if warranted by circumstances and performance. The City Manager shall dismiss the Director of the Retirement Department at the request of a two-thirds majority of the Board of Trustees. The City Manager shall be responsible for fixing the compensation of the Director with the advice and consent of the Board of Trustees.

- (n) The Board will follow the City's established procurement process for its selecting and contracting with any actuaries, investment advisors and other professionals deemed necessary for the administration of the CRS. Any actuaries, investment advisors and investment consultants hired shall be experienced and reputable professionals in the field. They shall have experience and competencies in the areas of management of funds for large public pension plans. They shall be experienced in assessing index funds, assessing, comparing, choosing and administering appropriate asset allocation plans, and satisfying objectives. Any firm(s) chosen shall also have records of positive achievement regarding integrity and attaining plan goals. The term of any contract for actuaries, investment advisors, and

other professionals deemed necessary for the administration of the CRS shall be three years, with one additional three year extension, for a maximum term of six years. Prior to the end of the six year term, these contractual services must be rebid, but nothing herein is intended to preclude selection of the former contractor.

- (o) The Board may determine the format and subjects of any reports from the actuary and investment managers. However, the Board shall not limit, in any way, the right and duty of the actuaries, investment advisors, and other professionals deemed necessary for the administration of the CRS to provide content deemed by those actuaries, investment advisors, and other professionals deemed necessary for the administration of the CRS to be important for the Board, the members, staff, or public. All reports made to a committee of the Board shall be provided to all Trustees of the Board, and any Trustee may request additional reports as needed provided that such request is approved by at least two other Trustees.
- (p) The Board shall create committees. Any committee shall have at least one retiree Trustee, one employee Trustee and one Mayor-appointed Trustee.
- (q) Any deposits, expenditures, transfers, loans, or withdrawals for the CRS Pension Fund, the 115 Trust, or staff funds that were not identified by category in the annual budgets of the Retirement Department and the City must be approved by a vote of two-thirds of the Trustees present. All such actions shall be included and identified as a line item in the budget which

shall be approved annually by the Board by a two-thirds vote of those present.

- (r) Board and committee meetings shall be considered meetings of a public body and be open to the public.
- (s) The new Board and its Director are to be put in place and functional as soon as possible and no later than July 1, 2016.

IT IS SO ORDERED.

/s/ Michael R. Barrett
JUDGE MICHAEL R. BARRETT