

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

SUNYAK, et al.,	:	Case Nos. 1:11-cv-445
	:	1:12-cv-329
v.	:	
	:	Judge Michael R. Barrett
CITY OF CINCINNATI, et al.,	:	
	:	
(City of Cincinnati Pension Litigation)	:	

[PROPOSED] CONSENT DECREE

Pursuant to the Court’s authorization and approval as demonstrated by its signature below, the City of Cincinnati (“City”), the Cincinnati Retirement System (“CRS”), John Cranley (“Mayor”), and City Manager Harry Black (“City Manager”), the Vice Mayor, the Members of City Council , and the Board of Trustees of the CRS (collectively, the “Defendants”), and Nick Sunyak, Jeffery Harmon, Jill Algeyer, Kim Kappel, Waleia Jackson, Finley Jones, and Richard Ganulin, on behalf of themselves and the Current Employees Class they represent, and Thomas A. Gamel, Sr., Paul Smith, Mark K. Jones, Dennis Davis, Ely Ryder, and Ann DeGroot, on behalf of themselves and the Retirees Class they represent, and the American Federation of State and Municipal Employees Ohio council No. (“AFSCME”), collectively “the Parties,” consistent with and in furtherance of implementing the Collaborative Settlement Agreement (“Settlement Agreement” or “Settlement”) approved by the Court on _____, 2015 (Doc. No. _____) which completely resolves and settles the City of Cincinnati Pension Litigation, do hereby agree, stipulate and consent to following:

1. This Consent Decree adopts and incorporates by reference in its entirety the Settlement Agreement, including all defined terms therein.

2. This Consent Decree establishes that the Court shall retain exclusive jurisdiction to oversee, enforce, interpret, implement, and administer the Settlement Agreement and this Consent Decree through the pending consolidated actions, *Sunyak v. City of Cincinnati*, Case No. 1:11-cv-445 (S.D. Ohio) and *Harmon v. City of Cincinnati*, Case No. 1:12-cv-329 (S.D. Ohio).

3. This Consent Decree establishes that each of the Parties expressly and irrevocably submits to the jurisdiction of the Court in connection with any proceedings related to the oversight, enforcement, interpretation, implementation, or administration of the Settlement Agreement or this Consent Decree until Termination.

4. This Consent Decree establishes that AFSCME shall have standing to enforce the terms of the Settlement Agreement and this Consent Decree.

5. The Parties shall, at all times prior to Termination, work together in good faith to effectively and efficiently implement all the terms of the Settlement and this Consent Decree. Further, each Party recognizes that they have an obligation to cooperate and use their best efforts in this regard and to take all reasonable steps necessary to effectuate the terms of the Settlement. These terms include, but are not limited to:

- a. The creation of the CRS Pension Trust Fund and the 115 Trust Fund (Collaborative Settlement Agreement, at p. 21)
- b. Transfer funds to the 115 Trust Fund (Id. at p. 22)
- c. CRS COLA Calculation (Id. at p. 22)
- d. Current Employees Class COLA Delay Period (Id. at p.23)
- e. Retirees Class COLA Suspension Period (Id. at 24)
- f. COLA Poverty Exception (Id.)

- g. Current Employees Class Retirement Eligibility (Id. at p. 25)
- h. Retirement Benefit Multiplier Calculation (Id.)
- i. Final Average Salary Calculation (Id.)
- j. Early Retirement Eligibility (Id. at p. 26)
- k. Annuity Adjustments (Id.)
- l. Employee Contributions (Id. at p. 27)
- m. The Group C Settlement Payments (Id.)
- n. The City's Annual Contribution to the CRS Pension Trust Fund (Id. at p. 28)
- o. Additional contributions to the CRS Pension Trust Fund (Id.)
- p. Deferred Retirement Option Plan ("DROP") (Id. at p. 29)
- q. Retirees Class Healthcare Benefits (Id. at p. 30)
- r. Current Employees Class Retirement Healthcare Benefits (Id.)
- s. Current Employees Class Retirement Healthcare Premium Percentages (Id.)
- t. Healthcare Modifications for Retirees (Id. at p. 32)
- u. Healthcare Funding Obligation (Id.)
- v. Retirees Class Death Benefit (Id.)
- w. Assumed Rate of Return (Id.)
- x. Pension Board Reforms (Id. at p. 33)
- y. Disgorgement provision (Id. at p. 35)
- z. Actuarial Confirmation provision (Id. at p. 36)
- aa. Reopeners provision (Id. at p. 37)
- bb. Enforcement Reporting (Id. at p. 50)
- cc. Compliance Reviews (Id. at p. 52)

dd. Recordkeeping (Id. at p. 53)

6. This Consent Decree shall be governed by and interpreted according to Ohio law.

7. Any action to enforce this Consent Decree (including enforcing any re-opener provision) shall be commenced and maintained only in the United States District Court for the Southern District of Ohio.

8. This Consent Decree may be signed in counterparts, each of which shall constitute a duplicate original. Electronic or facsimile transmitted copies of the signatures shall constitute a duplicate original.

9. The provisions of this Consent Decree, and all exhibits and documents relating thereto shall be binding upon and inure to the benefit of the respective successors and assigns of the Plaintiffs, members of the Classes, Class Counsel, and Defendants.

10. Additional Current Employees Class Representatives, additional Current Retirees Class Representatives, or additional counsel for any of the Parties may be approved by the Court as necessary due to health, availability, or other concerns or issues that may arise prior to Termination.

11. To assist the Court in monitoring the Parties' implementation of the Settlement Agreement, the Parties shall regularly conduct Compliance Reviews to ensure that they have implemented and continue to implement all measures required by this Agreement. Each Party shall designate counsel to serve as liaisons to the Court for compliance purposes. This counsel shall serve as a liaison between the City and the Court, and shall assist with the City's compliance with this Agreement. The City will provide access to such documents, records and other information reasonably needed to ensure compliance with the terms set forth in the Settlement Agreement and this Consent Decree.

12. Beginning six (6) months after the Effective Date, and every six (6) months thereafter until Termination (unless a different time period is ordered by the Court), the Parties shall file a joint status report with the Court, including any supporting documentation, delineating all steps taken during the reporting period to comply with the terms of the Settlement Agreement. These reports shall track the Parties' attainment of the requirements and goals contained in the Settlement Agreement, identify any areas of alleged non-compliance, instruct the Court as to how the Parties intend to remedy any areas of alleged non-compliance and, if necessary, request that the Court issue orders on compliance. If the Court issues any such order to ensure compliance with this Agreement and the related Consent Decree, the Party or Parties subject to the Order shall have 60 days from receipt of such Order to cure the asserted failure. On or before the termination of this 60 day period, the Party or Parties subject to the Order shall file an additional report with the Court documenting efforts taken to comply with the Court's Order.

13. For all periods of time until Termination of the Settlement Agreement, and subject to record retention requirements and procedures imposed by federal, state or local law, or any relevant collective bargaining agreement, the Parties shall maintain all records documenting compliance with the Settlement Agreement and all documents required by or developed pursuant to the Settlement Agreement.

14. No Party shall retaliate in any manner against any other Party, including any member of the Classes, for their participation in the this Settlement or for their participation in any actions related to the enforcement or reporting or recordkeeping provisions of this Settlement and this Consent Decree.

15. Any notice, request, instruction, Order, or other document to be given hereunder by any Party hereto to any other Party (other than class notification) shall be in writing and delivered personally or sent registered or certified mail, postage prepaid, to the Parties as follows:

To: City of Cincinnati

City Manager Harry Black
with a copy to City Solicitor Paula Boggs Muething
City Hall
801 Plum Street
Cincinnati, OH 45202

Steven P. Goodin
John B. Pinney
Graydon Head & Ritchey LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202

To: Current Employees Class Counsel

Christian A. Jenkins
Minnillo & Jenkins Co., LPA
2712 Observatory Ave.
Cincinnati, OH 45202

Marc D. Mezibov
401 E. Court Street, Suite 600
Cincinnati, OH 45202

Robert D. Klausner
Klausner Kaufman Jensen & Levinson
10059 Northwest 1st Court
Plantation, FL 33324

Jeffrey S. Goldenberg
Goldenberg Schneider, LPA
One West Fourth Street, 18th Floor
Cincinnati, OH 45202

To: Retirees Class Counsel

Robert A. Pitcairn, Jr.
James F. McCarthy, III
Katz Teller Brant & Hild
255 East Fifth Street, 24th Floor
Cincinnati, OH 45202-4724

To: AFSCME Council No. 8

R. Sean Grayson
6800 N. High Street
Worthington, Ohio 43085-2512

16. This Consent Decree is a public document and shall be posted on appropriate websites maintained by the City and the CRS.

17. Unless otherwise provided herein, this Consent Decree may only be modified in writing and with consent of the Parties, subject to the approval of the Court.

18. This Consent Decree will terminate 30 years after the Effective Date.

The below Parties have read and agree to the terms of this Consent Decree:

Current Employees Plaintiffs and Putative Class Representatives

Nick Sunyak

Date

Jeffrey Harmon

Date

Jill Allgeyer

Date

Kim Kappel

Date

Waleia Jackson

Date

Richard Ganulin

Date

Finley Jones

Date

The below Parties have read and agree to the terms of this Consent Decree:

Retirees Plaintiffs and Putative Class Representatives

Thomas A. Gamel, Sr.,

Date

Donald C. Beets

Date

Paul Smith

Date

Mark K. Jones

Date

Dennis Davis

Date

Ely Ryder

Date

Ann DeGroot

Date

The below Parties have read and agree to the terms of this Consent Decree and have been duly authorized and empowered to execute the Settlement Agreement and this Consent Decree as binding and lawful obligations of the Defendants:

Defendants

Honorable John Cranley
Mayor of City of Cincinnati

Date

Harry Black
City Manager of Cincinnati, on behalf of City Defendants

Date

Paula Boggs Muething
City Solicitor of Cincinnati

Date

As indicated below by their signatures, Counsel for the Parties affirm that they have read this Consent Decree, have conferred with their respective clients about the same who support this Consent Decree, agree to the provisions contained herein and shall be bound hereby:

Steven P. Goodin
John B. Pinney
GRAYDON HEAD & RITCHEY LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, OH 45202-3157
Of Counsel for the City Solicitor

Date

Marc D. Mezibov
Susan M. Butler
401 East Court Street, Suite 600
Cincinnati, OH 45202
Counsel for Current Employees Plaintiffs and Putative Current Employees Class

Date

Christian A. Jenkins
Minnillo & Jenkins, Co. LPA
2712 Observatory Ave.
Cincinnati, OH 45202
Counsel for Current Employees Plaintiffs and Putative Current Employees Class

Date

Jeffrey S. Goldenberg
Goldenberg Schneider, LPA
One West Fourth Street, 18th Floor
Cincinnati, OH 45202-2012
Counsel for Current Employees Plaintiffs and Putative Current Employees Class

Date

Robert D. Klausner
Klausner Kaufman Jensen & Levinson
7080 NW 4th Street
Plantation, FL 33317
Counsel for Current Employees Plaintiffs and Putative Current Employees Class

Date

Robert A. Pitcairn, Jr.
Katz, Teller, Brant & Hild
255 East Fifth Street, Suite 2400
Cincinnati, OH 45202
Counsel for Retirees Plaintiffs and Putative Retirees Class

Date

R. Sean Grayson
6800 North High Street
Worthington, OH 43085-2512
General Counsel for Ohio Council 8, AFSCME

Date

This Consent Decree governing the resolution of the Cincinnati Pension Litigation is authorized and approved this ____ day of _____, 2015.

Judge Michael R. Barrett