

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

NICK SUNYAK, <i>et al.</i> ,	:	Case Nos.: 1:11-CV-445 and
	:	1:12-cv-329
vs.	:	
	:	Judge Michael R. Barrett
CITY OF CINCINNATI, <i>et al.</i> ,	:	
	:	
(City of Cincinnati Pension Litigation)	:	ORDER GRANTING PRELIMINARY
	:	APPROVAL OF CLASS ACTION
	:	SETTLEMENT
	:	
	:	

WHEREAS, Current Employees Plaintiffs Nick Sunyak, Jeffery Harmon, Jill Allgeyer, Kim Kappel, Waleia Jackson, and Finley Jones, and Retiree Plaintiffs Thomas A. Gamel, Sr., Paul Smith, Mark K. Jones, Dennis Davis, Ely Ryder, and Ann DeGroot (collectively the “Named Plaintiffs”), individually and on behalf of two proposed Classes, and Defendants the City of Cincinnati, the Mayor of Cincinnati, the City Manager, the Vice-Mayor, the City Council Members, the Cincinnati Retirement System (“CRS”), and the appointed Board of Trustees of the CRS (“Board”) have entered into a Collaborative Settlement Agreement (the “Agreement”) intended to resolve certain litigation, including litigation pending in this Court; and

WHEREAS, the Settlement Agreement, together with supporting materials, sets forth the terms and conditions for the proposed settlement;

WHEREAS, the Court has before it the Parties’ Motion for Preliminary Approval of Settlement and Memorandum in Support of Motion for Preliminary Approval of Settlement, together with the Agreement and related materials; and

WHEREAS, the Court is satisfied that the terms and conditions set forth in the Agreement and exhibits attached thereto were the result of good faith, arm’s length settlement

negotiations between competent and experienced counsel for both Named Plaintiffs and Defendants.

IT IS HEREBY ORDERED this 12th day of May, 2015, as follows:

1. The terms of the Agreement including all exhibits are hereby conditionally approved, subject to further consideration thereof at the Fairness Hearing provided for below.

2. The Agreement is adopted by the Court and made part of this Order as if set out in full herein.

3. The Agreement and the terms contained therein are hereby preliminarily approved as fair, reasonable, adequate, and in the best interests of the Current Employees Class and the Retirees Class.

4. The Court approves the proposed Notice Program set forth in Section 38 of the Agreement. The Notice Program is reasonably calculated to apprise Class Members of their right to object, constitutes due, adequate, and sufficient notice to all persons entitled to receive notice, is the best notice practicable under the circumstances, and meets all applicable requirements of the Federal Rules of Civil Procedure, the Class Action Fairness Act, the United States Constitution (including the Due Process Clause), the Rules of the Court, and any other applicable law. Subject to amendment if the need arises, the Notice Program shall be initiated within thirty (30) days of this Preliminary Approval Order and executed as set forth in the Settlement Agreement.

5. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(1) and (b)(2), and for purposes of settlement only, the Court makes the following preliminary findings of fact and conclusions of law:

a. The Current Employees Class and the Retirees Class (as defined,

respectively, in the Agreement) are sufficiently definite and identifiable;

b. The Current Employees Class and the Retirees Class are so numerous that joinder of all Members is impracticable;

c. There are questions of law and/or fact common within the Current Employees Class including but not limited to: (1) whether the Current Employees Class was fully vested in their CRS benefits on July 1, 2011; (2) whether Defendants improperly revoked and/ or impaired the Current Employees Class' vested CRS benefits when it enforced Ordinance No. 84-2011; (3) whether Defendants impaired contractual rights of the Current Employees Class when they enforced Ordinance No. 84-2011; (4) whether Defendants are estopped from enforcing Ordinance No. 84-2011 so as to prevent the revocation and/or impairment of the contractual rights of the Current Employees Class; and (5) whether Defendants' enforcement of Ordinance No. 84-2011 operated as an unconstitutional taking of the vested property interest of the Current Employees Class.

d. There are questions of law and/or fact common within the Retirees Class including but not limited to: (1) whether Defendants' offer of retirement benefits to the Retirees Class created a fundamental property right, giving each of them a vested right in those retirement benefits which cannot be reduced, impaired, revoked, or eliminated; (2) whether Defendants' actions as explained in the Retirees Class Complaint constitute an unlawful taking of the Retirees Class Members' property rights in violation of the United States Constitution and/or the Ohio Constitution; (3) whether the Defendants have a contractual obligation to provide the Retirees Class with certain retirement benefits, which cannot now or afterwards be reduced, impaired, revoked, or eliminated; (4) whether the unilateral reduction, impairment, revocation, and/or elimination of the

Retirees Class Members' retirement benefits constitutes a breach of the Defendants' fiduciary duty; and (5) whether the Defendants are estopped from reducing, impairing, revoking, or eliminating the retirement benefits owed to the Retirees Class;

e. The Current Employees Plaintiffs' claims are typical of the claims of the Members of the Current Employees Class as all subgroups were represented and no conflict exists between or among the subgroups, and the Retiree Plaintiffs' claims are typical of the claims of the Members of the Retirees Class;

f. Current Employees Plaintiffs and the Current Employees Class Counsel have and will fairly and adequately represent and protect the interests of the Current Employees Class, and the Retiree Plaintiffs and the Retirees Class Counsel have and will fairly and adequately represent and protect the interests of the Retirees Class;

g. Current Employees Plaintiffs' interests do not conflict with the interests of the Current Employees Class in the maintenance of this action and this Settlement, and the Retiree Plaintiffs' interests do not conflict with the interests of the Retirees Class in the maintenance of this action and this Settlement;

h. The questions of law and/or fact common to the Current Employees Class and those common to the Retirees Class predominate over the questions affecting only individual members of those Classes;

i. Certification of the Current Employees Class and the Retirees Class is appropriate because prosecuting separate actions by individual Members of these Classes would create a risk of inconsistent and varying adjudications with respect to individual Members of the Classes that would establish incompatible standards of conduct for the Defendants;

j. Certification of the Current Employees Class and the Retirees Class is appropriate because adjudications with respect to individual Members of the Classes, as a practical matter, would be dispositive of the interests of the other Members not parties thereto and would substantially impair or impede their ability to protect their interests; and

k. Certification of the Current Employees Class and the Retirees Class is appropriate because the Defendants have acted or refused to act on grounds that apply generally to the Classes, so that final injunctive relief or corresponding declaratory relief as agreed to by the Parties is appropriate respecting the Classes as a whole.

6. Pursuant to Fed. R. Civ. P. 23 and for purposes of Settlement, the Court appoints the Named Plaintiffs as Class Representatives and conditionally certifies the following Classes:

Current Employees Class: All individuals (and/or their Dependents or Surviving Beneficiaries) who participated in the Cincinnati Retirement System with at least five years of creditable service and who were actively employed or otherwise qualified for benefits on July 1, 2011, and who are Members of “Group C,” “Group D,” “Group E,” or “Group F” as these terms are defined by Cincinnati Municipal Code § 203-1-MI (b), (c), (d), and (e).¹

Retirees Class: All individuals (and/or their Dependents or Surviving Beneficiaries) formerly employed by the City of Cincinnati, the University of Cincinnati, the University Hospital f/k/a General Hospital and Hamilton County, who retired on or before July 1, 2011 and have received retirement benefits from the City of Cincinnati and their Dependents and/or their Surviving Beneficiaries who are entitled to those benefits.

7. Pursuant to Fed. R. Civ. P. 23(g) the Court appoints Marc D. Mezibov, Robert D. Klausner, Jeffrey S. Goldenberg, and Christian A. Jenkins as Class Counsel for the Current Employees Class and Robert A. Pitcairn, Jr., James F. McCarthy, III, Peter O’Shea, and the law firm of Katz, Teller, Brant & Hild as Class Counsel for the Retirees Class. Class Counsel shall

¹ The Current Employees Class also includes City of Cincinnati employees who had at least five years of creditable service prior to July 1, 2011 and who retired after July 1, 2011, as well as veterans who purchase service credit sufficient to satisfy the five years of service requirement prior to July 1, 2011.

submit their applications for attorney fees and expenses no later than twenty-one (21) days prior to the date for Class Members to submit objections.

8. The City is authorized to retain Class Action Administration, Inc. as the Settlement Administrator to perform all functions and duties assigned to the Settlement Administrator in the Agreement, the cost of which shall be reimbursed by Defendant City of Cincinnati.

9. The Court directs the parties and Class Action Administration, Inc. to implement the Notice Program and to disseminate and/or publish the Notice referenced in Section 38 of the Agreement in accordance with this Order and the Agreement.

10. Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Agreement, or to the request for attorneys' fees and expense reimbursement, must file with the Clerk of the Court and serve on designated Counsel, within 60 days of the Notice Date, a written statement of the objection as well as the specific reason(s), if any, for the objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of the objection. Class Members may so object either on their own or through an attorney hired at their own expense.

Any attorney hired by a Class Member at that Class Member's expense for the purpose of objecting to the fairness, reasonableness, or adequacy of the Agreement, to any terms of the proposed Settlement, or to proposed attorneys' fees and expenses shall file with the Court and deliver to designated Counsel a Notice of Appearance no later than 60 days from the Notice Date.

Additionally, Class Members and/or their attorneys intending to make an appearance at the Fairness Hearing must by no later than 14 days prior to the Fairness Hearing:

a. File a notice of intention to appear, with the Clerk of the Court, that contains the Class Member's and/or their attorney's name, address, and telephone number, as well as a description of all evidence the Class Member and/or Class Member's attorney will seek to introduce at the Fairness Hearing, including all documents to be introduced and witnesses to be called; and

b. Serve a copy of such notice of intention to appear on counsel for the Parties as described in the Notice.

Any Class Member who files and serves a written objection in accordance with the procedure set forth above and in the Section 39 of the Settlement Agreement may appear at the Fairness Hearing to object to any aspect of the fairness, reasonableness, or adequacy of the Settlement. Class Members and/or their attorneys who do not timely comply with the procedures set forth above shall not be heard at the Fairness Hearing and waive any objection to the Settlement Agreement.

11. The Fairness Hearing shall commence on September 24, 2015 at 10:00 a.m. in Courtroom 109, 100 East Fifth Street, Cincinnati, Ohio 45202. At the Fairness Hearing the Parties will request that the Court, among other things, (a) approve the Agreement as final, fair, reasonable, adequate, and binding on all Class Members; (b) direct the Parties and their Counsel to implement and consummate the Agreement according to its terms and to direct the Parties to comply with the Consent Decree for the full term of its 30-year duration; (c) certify the Current Employees Class and Retirees Class pursuant to Federal Rules of Civil Procedure 23(b)(1) and (b)(2); (d) finally approve the Current Employees Plaintiffs and Retirees Plaintiffs as representatives of their respective Class; (e) finally approve and appoint Current Employees Class Counsel and Retirees Class Counsel to represent their respective Class; (f) determine and

approve the payment of reasonable attorneys' fees and expense reimbursements for Class Counsel; (g) order the Settlement Administrator to process all payments due to Class Members under the Agreement; and (h) order that the claims at issue in this litigation are fully and finally resolved as of the date of Finality, as defined in the Agreement, and that Current Employees Plaintiffs, the Current Employees Class, the Retirees Plaintiffs, and the Retirees Class are forever barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as Class Members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction based on the claims at issue in this litigation, except as set forth in the Re-Opener provisions in the Agreement and Consent Decree.

IT IS SO ORDERED.

Dated: May 12, 2015

/s/Michael R. Barrett
The Honorable Michael Barrett
United States District Judge

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