

**United States District Court  
Southern District of Ohio  
Western Division**

<b>FRANK G. MAYBORG, et al.,</b>	:	<b>Case No. 1:04-CV-00249</b>
	:	
<b>Plaintiffs,</b>	:	<b>(Sr. Judge S. Arthur Spiegel)</b>
<b>v.</b>	:	<b>(Magistrate Judge Timothy Black)</b>
<b>CITY OF ST. BERNARD, et al.,</b>	:	
	:	
<b>Defendants.</b>	:	

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING**

**Please Read This Notice Carefully And In Its Entirety. A Settlement Has Been Proposed In A Pending Class Action Litigation That May Affect Your Rights. If You Are A Member Of The Class Described Below, You May Be Entitled to Shares In The Proceeds Of The Settlement Described In This Notice.**

**I. PURPOSE OF NOTICE**

This Notice is to advise you of a proposed settlement in this pending lawsuit and of your potential rights as a member of the class (defined below, and, hereafter, the "Class") covered by the proposed settlement of the damages including, among other things, (1) if you are eligible to receive benefits in the proposed settlement if approved by the Court, (2) or to object to the proposed settlement. This Notice is to inform you of a hearing to be held on Thursday, October 11, 2007 at 3:30 p.m. in Room 838 before Judge S. Arthur Spiegel at the Federal Courthouse at Fifth & Main Streets, Cincinnati, Ohio 45202 to determine whether the proposed settlement of the damages should be approved by the Court as fair, reasonable, and adequate, and to consider such other matters as may properly come before the Court (the "Settlement Fairness Hearing").

**II. WHAT THE LAWSUIT IS ABOUT**

Since 1961, Defendant City of St. Bernard (the "City") has offered its employees certain benefits upon their retirement from City employment, including at various times, hospital and medical insurance coverage, reimbursement of deductible health care costs not paid by the health insurance plan provided by the Ohio Public Employees Retirement System ("PERS") or the Ohio Police and Fireman's Disability and Pension Fund ("Police and Fire Retirement Fund"), and participation in a voluntary employee benefit association established under Internal Revenue Code §501(c)(9) (the "C-9 Trust Fund"). Plaintiffs and Class members Frank G. Mayborg ("Mayborg"), Kenneth Davis ("Davis"), Forrest L. Hudson ("Hudson") and Ronald Miller ("Miller"), all retirees of the City,

brought this action on their own behalf and on behalf of all those similarly situated retirees of the City, challenging the City's revocation and/or impairment of their vested rights to certain retirement benefits, including but not limited to those under the C-9 Trust Fund, which the City had recognized and had been paying and which Mayborg, Davis, Hudson, Miller and all other similarly situated retirees had been receiving and had been expecting to receive from the City in exchange for their years of service to the City. Mayborg, Davis, Hudson, Miller and all other similarly situated retirees of the City had retired from the City with the vested right in certain retirement benefits which the City has suspended and has refused to honor in violation of their constitutional rights and their rights under the laws of the United States and the laws of the State of Ohio. Mayborg, Davis, Hudson and Miller sought relief on a collective basis for the damage to themselves and the other similarly situated retirees, including reinstatement of their retirement benefits, payment of all past benefits that have been wrongfully suspended, damages, attorneys' fees and costs. Further, Mayborg, Davis, Hudson, Miller and the other similarly situated retirees also sought to enjoin the City from suspending, modifying, altering, adjusting or revoking their vested retirement benefits. On October 4, 2006, and continued until October 24, 2006, the liability in the case was tried to the Court. On November 22, 2006, the Court entered Findings of Fact, Conclusions of Law and an Order. The Court entered judgment in favor of Plaintiffs and ordered the City to restore, in conformity with the Court's opinion, the benefits it had withheld. The Court continued the matter for a hearing on the relief to be accorded, including damages, costs and related matters. Following a hearing on damages, costs and related matters, the Court ordered the parties to enter into a mediation before Magistrate Judge Black to explore the possibility of settlement. Following the mediation on July 16, 2007, the parties agreed to settle the litigation. Now, Judge Spiegel's decision whether to approve the proposed settlement of the damages will take place after the Settlement Fairness Hearing at which Class members will be permitted to speak on the proposed settlement.

### III. SUMMARY OF THE PROPOSED SETTLEMENT

#### A. Background Of The Settlement

The proposed settlement, if approved, will avoid the uncertainty, risks, and difficulties related to trial and reduce the delay of benefits to the Class. Furthermore, the proposed settlement will avoid the substantial expense both in time and in money of prosecuting future appeals. As such, both plaintiffs' class counsel and defense counsel have concluded that this litigation should be settled as proposed, and believe that the terms and conditions of the settlement are fair, reasonable, adequate, beneficial and in the best interest of the Class. The Class in this action is approximately 145 retired employees and is defined as:

All individuals formerly employed by the City of St. Bernard and who retired from the City of St. Bernard and have received certain retirement benefits from the City of St. Bernard and/or their surviving beneficiaries entitled to those retirement benefits, inclusive of the named Plaintiffs Frank G. Mayborg, Kenneth Davis, Forrest L. Hudson and Ronald Miller.

The principle terms of the proposed settlement are summarized herein.

**B. Class Recovery**

- Defendant City of St. Bernard will restore the C-9 Trust Fund benefit and premium reimbursement benefit to Class members and any other individuals who subsequently become eligible; and agrees it will not cancel or otherwise interfere with that benefit in the future.
- Widows of retirees will be recognized as beneficiaries for the C-9 Trust Fund benefit. In addition, widows of pre-July 1, 1992 police and fire retirees will be recognized as beneficiaries for the premium reimbursement benefit.
- Class member Carl Draginoff will be recognized as a beneficiary of the premium reimbursement benefit.
- The City will restore the C-9 Trust Fund benefit, however, its administration will be consistent with the terms of the plan. The terms of the plan provide that the City will, for each trust year, contribute to the C-9 Trust Fund such amounts as are necessary to fund the benefits provided by the plan. The annual contribution shall be those indicated by an actuary or shall be within the Safe Harbor limitation established for such contributions by the Internal Revenue Service Code
- There may be put in place a third party administrator to administer the C-9 benefit, the cost of which will be borne by the City consistent with the terms of the plan.
- Premium reimbursement costs will be capped at 2007 levels.
- The City will pay \$560,000.00 (the "Settlement Proceeds") as past damages and attorneys' fees. Police and fire pre-1992 retirees will submit their 2007 premium reimbursement costs for the period January 1, 2007 to present to the Auditor for reimbursement upon approval of the settlement agreement by the Court.

**A. Attorneys' Fees**

Under the terms of the proposed settlement, attorneys' fees totaling \$139,400.27 will be paid out of the Settlement Proceeds referenced under the section on Class Recovery. The amount and fairness of the attorneys' fees under the proposed settlement will be brought before Judge Spiegel at the Settlement Fairness Hearing.

**B. How To Participate In The Settlement**

As a member of the Class, you are automatically represented by Class counsel. All fees and expenses of Class counsel approved by the Court will be paid out of

the Settlement Proceeds, as described above. **You will not have to pay Class counsel any additional amounts, and in no event will you be obligated to pay any judgment, court costs, or attorney's fees for participating in this class action and settlement.**

### C. Releases

If the Court approves the proposed settlement and you are a Class member, you will release (give up) all claims against all of the defendants, their successors, predecessors, subsidiaries, affiliates, and agents that have been or could have been asserted in this lawsuit. Upon its approval of the proposed settlement, the Court will issue a Consent Decree. The Consent Decree will both memorialize the Court's approval of the proposed settlement and bind the parties to the approved terms of the proposed settlement. **All Class members who have not already excluded themselves will be bound by the Consent Decree entered by the Court.**

### XI. OBJECTIONS TO THE PROPOSED SETTLEMENT

You have a right as a Class member to object to the proposed settlement. You may appear, in person or through your counsel, at your own expense, and object to the fairness, adequacy or reasonableness of the settlement, or the payment of attorneys' fees. You must be a member of the Class in order to object to any aspect of the proposed settlement. Any objection(s) must be in writing from a Class member and must set forth: (1) the Class member's name; (2) a statement as to whether the Class member intends to appear in person at the Settlement Fairness Hearing; (3) a statement of the specific basis for the objection, including identification of all papers the Class member intends to rely on at the hearing; (4) the names of all witnesses, if any, the Class member intends to call at the Settlement Fairness Hearing; (5) the Class member's current address and telephone number; and (6) the Class member's signature or that of his or her authorized representative. You do not need to appear at the Settlement Fairness Hearing for your objection(s) to be considered by the Court.

**In order to have the guaranteed opportunity to object to this settlement in open court, you must file written objection(s), which meet the above requirements, with the Clerk of the Court**, Room 103, U.S. District Court, Southern District of Ohio – Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Streets, Cincinnati, Ohio 45202 **on or before October 4, 2007**. Only for good cause shown, an individual who has not filed written objections may be permitted to voice objections in open court.

If you object to the proposed settlement, you may still receive benefits if the Court approves the proposed settlement and you are otherwise eligible for a distribution.

**XII. SETTLEMENT FAIRNESS HEARING**

The Court has scheduled the Settlement Fairness Hearing for October 11, 2007 at 3:30 p.m. in Room 838, U.S. District Court, Southern District of Ohio – Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Streets, Cincinnati, Ohio 45202, before the Honorable S. Arthur Spiegel. At the Settlement Fairness Hearing, the Court will consider, among other things, whether the settlement is fair, reasonable, adequate, and is in the best interests of the Class. **Although you may attend this hearing, you are not required to do so in order to participate in the settlement.** The Settlement Fairness Hearing may be continued or adjourned by the Court, without further notice to Class members.

**XIII. APPEARANCE AT SETTLEMENT FAIRNESS HEARING**

All persons who intend to speak at the Settlement Fairness Hearing, either for or against, must file a Notice of Intention to Appear with the Clerk of Court and serve that notice on Class Counsel and Defense Counsel at the addresses listed below. The Court and the parties' counsel must receive your Notice of Intention to Appear no later than October 4, 2007. **You do not need to file a Notice if you wish to attend the Settlement Fairness Hearing merely to observe, but you will not be able to participate.**

**XIV. SCOPE OF THIS NOTICE AND ADDITIONAL INFORMATION**

This Notice is only a summary of the litigation and the proposed settlement. For more details about the litigation and the proposed settlement, you may consult the pleadings, records and other papers on file in this litigation, which may be inspected during regular business hours in the Office of the Clerk of Court, Room 103, U.S. District Court, Southern District of Ohio – Western Division, Potter Stewart U.S. Courthouse, Fifth & Main Streets, Cincinnati, Ohio 45202, or may be viewed on the Court's website at [www.ohsd.uscourts.gov](http://www.ohsd.uscourts.gov).

Sr. Judge S. Arthur Spiegel  
United States District Court

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