

July 27, 2017

Dear Code Members:

Yesterday's announcement of the proposed MSD settlement raises a lot of questions, especially for our members at MSD. The CODE Board would like to take this opportunity to provide some background about how the settlement came to be, about CODE's role in the settlement, about how the settlement process will likely play out, and what it will mean for CODE members if it is ultimately enacted.

The City and the County have been negotiating for more than a year about the future of MSD. Those negotiations were conducted in secret. CODE was not a party to those negotiations.

One basic premise of the negotiations was established by the federal court – the County owns MSD. As a result, if no agreement was reached, MSD would revert to County control in April 2018. This would leave MSD CODE members vulnerable since the County could refuse to recognize CODE as a collective bargaining representative and would be under no obligation to honor CODE's contract with the City. Of particular concern is the fact that CODE's unit includes supervisors. Under Ohio law, a public employer is permitted to recognize a unit including supervisors if it chooses to do so – and many such units exist across the state -- but public employers generally cannot be compelled to recognize such units.

Approximately three weeks ago, attorneys for the City and County contacted CODE and asked CODE to review and comment on a draft of the commitment letter that has now been made public. The basic structure of the agreement was not up for discussion, but CODE

engaged aggressively and obtained several significant commitments from both the City and the County to try to protect its members to the extent possible.

The original draft language included a vague commitment to recognize the CODE bargaining unit and “reach” a new agreement “consistent with” CODE’s contract with the City. As a result of CODE’s negotiations, this language was significantly revised to provide that “CODE will be recognized by the BOCC as the exclusive bargaining representative of [its] existing bargaining unit” and that the BOCC “will consent to and support certification [by SERB] of CODE” as the exclusive representative of its unit. Also, the commitment letter now provides that the BOCC will enter into a collective bargaining agreement “on the same material terms” as the existing agreement with the City. These are significant commitments from the County that ensure continuation of the current pay scales and other significant elements of the contract and continued representation of all CODE members if the agreement is ultimately consummated and employees transition to the County. When the current contract expires in 2019, the County will be obligated to negotiate in good faith for a successor agreement and the mechanisms of collective bargaining provided for in Ohio law, such as the fact finding process, will apply. Having recognized CODE and entered into a contract with CODE as the representative of its employees, the County will be bound to continue to recognize CODE as representative of the unit.

The commitment letter also includes a list of job functions that are defined by reference to position descriptions and classification specifications that cannot be contracted out or fulfilled by other County departments without a supermajority of the five person board. A significant portion of the negotiations focused on the County’s request that some of CODE’s

covered classifications be excluded from this list, but at the end of the process all of CODE's covered classifications and parentheticals were included.

The CODE board shares employee concerns about differences in County practices. Some County offices have not kept pace with employee pay and treatment, while others have recently taken a more progressive approach and come to the realization that an employer can attract and retain better employees and deliver better service when it adopts more favorable policies and pay scales (i.e., the Clerk of Courts). The current board of County Commissioners appears committed to operating a successful utility. As a practical matter, they will not be able to do this without the highly educated and qualified employees represented by CODE. The CODE Board intends to engage with the County administration in a positive and supportive manner to show that CODE can be a valuable partner in this process, and in this way be in the best position possible to protect its members and their rights.

The proposed settlement announced yesterday is an early step in what is likely to be a long process. Given the circumstances, however, it is the CODE Board's judgment that this agreement represents the best possibility for protecting CODE members' rights. Many details will need to be worked out as the transition agreement is negotiated. CODE will press to ensure that its members' concerns are addressed through this process and that important benefit programs are continued. We welcome your questions and input through this process.

The above statement comes from the CODE Board of Directors and is not endorsed by the city of Cincinnati.