

SETTLEMENT AGREEMENT

THIS AGREEMENT, made this day of , 1984
among

THE BOARD OF EDUCATION OF THE TOWN OF BELLEVILLE, BOARD OF EDUCATION OF THE TOWN OF BLOOMFIELD, BOARD OF EDUCATION OF CALDWELL-WEST CALDWELL, BOARD OF EDUCATION OF THE CITY OF EAST ORANGE, BOARD OF EDUCATION OF THE TOWNSHIP OF ESSEX FELLS, BOARD OF EDUCATION OF THE BOROUGH OF GLEN RIDGE, BOARD OF EDUCATION OF THE TOWN OF IRVINGTON, BOARD OF EDUCATION OF THE TOWNSHIP OF LIVINGSTON, BOARD OF EDUCATION OF THE TOWNSHIP OF MILLBURN, BOARD OF EDUCATION OF THE TOWN OF MONTCLAIR, BOARD OF EDUCATION OF THE CITY OF NEWARK, BOARD OF EDUCATION OF THE TOWNSHIP OF NORTH CALDWELL, BOARD OF EDUCATION OF THE TOWN OF NUTLEY, BOARD OF EDUCATION OF THE CITY OF ORANGE, BOARD OF EDUCATION OF THE BOROUGH OF ROSELAND, BOARD OF EDUCATION OF SOUTH ORANGE-MAPLEWOOD, BOARD OF EDUCATION OF THE BOROUGH OF VERONA, BOARD OF EDUCATION OF WEST ESSEX, and BOARD OF EDUCATION OF THE TOWNSHIP OF WEST ORANGE.

(collectively referred to hereinafter as "the Boards of Education"), and

THE BOARD OF EDUCATION EMPLOYEES' PENSION FUND OF ESSEX COUNTY (the "Essex Fund"), and

THE BOARD OF TRUSTEES OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF NEW JERSEY ("PERS") as follows:

WHEREAS, the ESSEX FUND is a public employee pension trust fund created and administered in accordance with N.J.S.A. 18A:66-94, et. seq.; and

WHEREAS, in accordance with N.J.S.A. 43:22-12, a referendum was held on January 30, 1981 where the number of active ESSEX FUND members voting in favor of social security coverage exceeded the minimum percentage (25%) required by N.J.S.A. 43:22-12(c); and

WHEREAS, pursuant to said referendum, the ESSEX FUND was closed to new members and more than half of the active participating members transferred to PERS; and

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WHEREAS, the ESSEX FUND as a result of being a closed fund (all newly hired non-instructional employees of the Boards of Education will be enrolled in PERS) altered its methods of calculating and billing the Boards of Education for cost-of-living adjustments ("COLA") to basic pension payments, commencing with the fiscal year from February 1, 1982 to January 31, 1983 COLA increase payable on July 1, 1983, and for the costs associated with administering same; and

WHEREAS, the ESSEX FUND devised an annual billing method which was intended to bill, as currently due, the present value of the total cost of providing each annual COLA increase for the remaining average lifetime of each retirant: the first such billing made July 1, 1983 was for the COLA payment attributable to fiscal year 1982-1983; and

WHEREAS, in 1982, the ESSEX FUND also began direct billing of each Boards of Education for its pro-rata share of administrative costs attributable to its retirants; and

WHEREAS, certain of the Boards of Education objected to the new annual billing method utilized by the ESSEX FUND; and

WHEREAS, certain of the Boards of Education, alleging they were unable to certify said bills as accurate and sound, objected to paying same; and

WHEREAS, the ESSEX FUND has continued to pay pension benefits, including COLA, to retired non-instructional retirants of certain of the Boards of Education who are beneficiaries of the ESSEX FUND, and continues to fund pension benefits for non-instructional employees of the Boards of Education which employees are currently members of the ESSEX FUND; and

WHEREAS, the Boards of Education having filed a Complaint in the Superior Court of New Jersey, Chancery Division, Essex County, against the ESSEX FUND and PERS entitled Board of Education of the Town of Belleville, et als. v. Board of Education Employees' Pension Fund of Essex County, et al., Docket No. C-3105-83, and defendant

ESSEX FUND having filed certain Counterclaims against the Boards of Education; and the ESSEX FUND and PERS having filed Cross-claims against each other; and

WHEREAS, the Court, on January 20, 1984, granted partial summary judgment on said Counterclaims in the ESSEX FUND's favor and ordered certain of the plaintiff Boards of Education to make COLA and administrative cost payments as billed and assessed for fiscal year 1982-83, and the Court, on February 3, 1984, having entered an Order, attached hereto and made a part hereof, reflecting said judgment; and

WHEREAS, the remaining claims in the above action are still pending; and

WHEREAS, the parties are desirous of resolving their differences respecting all issues and claims which were asserted or which could have been asserted in said action upon the conditions set forth below:

NOW THEREFORE, in consideration of the promises and covenants set forth below, the Boards of Education, the ESSEX FUND and PERS agree as follows:

1. Each of the plaintiff Boards of Education shall pay to the ESSEX FUND the full cost of providing for the remaining life expectancy of each retirant formerly employed by such Boards of Education, the COLA payment for fiscal year 1982-1983 as calculated and billed by the ESSEX FUND and as ordered by the Court on February 3, 1984, to the extent such payment has not previously been made.

2. Each of the plaintiff Boards of Education shall pay to the ESSEX FUND administrative fees as calculated and billed for fiscal year 1982-1983 by the ESSEX FUND, and as ordered by the Court on February 3, 1984, to the extent such payment has not previously been made.

3. The ESSEX FUND agrees that the amount of a retirant's benefit due to cost of living adjustments effective February 1, 1983, and thereafter shall be billed on an annual pay as you go basis. The method of billing would be as follows:

(a) The fiscal year for determining the annual COLAs required to be made by each Boards of Education shall be from February 1st to January 31st. The first fiscal year of the "pay as you go basis" billing shall be from February 1, 1983 to January 31, 1984.

(b) The base year for the purpose of calculating COLAs shall be the 1982-1983 fiscal year or a retiree's retirement year, whichever is later.

(c) The amount of COLA received by each retiree in each fiscal year subsequent to January 31, 1983 shall be calculated by the ESSEX FUND in accordance with N.J.S.A. 18A:66 - 126.1, et. seq.

(d) Each COLA payment made by a Board of Education to the ESSEX FUND shall be the sum of the COLA payments made by the ESSEX FUND to the retirees of such Board of Education for the year in question. For the first fiscal year, the payment of each Board shall be the sum of COLA payments made by the ESSEX FUND to the retirees of such Board during the period from February 1, 1983 to January 31, 1984.

(e) The COLA payment by each Board to the ESSEX FUND for the first fiscal year shall be payable on July 1, 1984. For subsequent fiscal years, each Board's COLA payment shall be payable on the July 1 next following the last day of the fiscal year in question.

(f) The ESSEX FUND, when billing each Board of Education for annual COLAs, shall furnish a listing of retirees showing the required COLA for each retiree determined in the manner set forth above.

4. The ESSEX FUND agrees that the cost of servicing the retirees shall also be billed to each Board of Education at the same time that the Cost of Living Adjustment bill is submitted. The method of billing would be as follows:

(a) The Fund Administrator will calculate the total audited administrative expenses associated with service for all the retirees of the ESSEX FUND for the year in question. This calculation will be computed as follows:

(1) Total audited administrative cost divided by the total number of active members and retirees.

(2) Each Board of Education will then be billed an amount equal to the per capita retiree expense [determined in (1)] multiplied by the number of that Board's retirees.

5. The ESSEX FUND agrees to the dismissal with prejudice of the remainder of its Counterclaim bearing Docket No. C-3105-83; the Boards of Education agree to the dismissal with prejudice of the Complaint bearing Docket No. C-3105-83; the ESSEX FUND and PERS further agree to the dismissal with prejudice of their Cross-claims against each other. The ESSEX FUND and PERS further agree that the obligations of the Boards of Education, described in paragraphs 1 and 2, when fulfilled, shall be

deemed to satisfy fully the judgment entered on the Counterclaim in the above referenced action. Any claims for interest, costs of suit and counsel fees are hereby waived by all parties.

6. The Boards of Education, ESSEX FUND and PERS, by their execution of this Agreement, hereby do discharge and forever release the others from any further debts, claims or obligations arising out of, or in connection with, the issues and claims which were asserted or which could have been asserted in the above referenced action, excepting such obligations as are described herein.

7. This Agreement shall be construed in accordance with the laws of the State of New Jersey.

8. This document contains the entire agreement between the parties and can be modified only by a written agreement, signed by the affected party or parties.

9. This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same Agreement.

10. Wherever in this Agreement any party shall be designated or referred to by name or general reference, such designation or reference is intended to and shall have the same effect as if the words "heirs, executors, administrators, personal or legal representatives, corporate or other successors and assigns" have been inserted after each and every designation or reference, and all the terms and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto and their heirs, executors, administrators, personal or legal representatives, corporate or other successors and assigns.

IN WITNESS WHEREOF, each Board of Education, the ESSEX FUND and PERS have set their hands or caused these presents to be executed by their duly authorized officers.

7/23/84

BOARD OF EDUCATION EMPLOYEES'
PENSION FUND OF ESSEX COUNTY

Attest:

BY: _____

Dated:

BY: _____

BOARD OF TRUSTEES OF THE PUBLIC
EMPLOYEES' RETIREMENT SYSTEM
OF NEW JERSEY

Attest:

BY: _____

Dated:

BY: _____

BOARD OF EDUCATION OF TOWN
OF

Attest:

BY: _____

Dated:

BY: _____

BOARD OF EDUCATION OF
TOWN OF

Attest:

BY: _____

Dated:

BY: _____