IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

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In the Matter of the Mediation Between

**FREDRIC S. BREIDENBACH et al.,**

Plaintiffs,

vs.

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL NO. 82 JOINT PENSION FUND, et al.,**

Defendants.

Case No. 3:92-CV-00184

Judge Walter H. Rice

JS Case No. 3379

**SETTLEMENT AGREEMENT**

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**Before JOHN E. SANDS, Impartial Mediator.**

This Settlement Agreement is made by and among Fredric S. Breidenbach ("Breidenbach") and International Brotherhood of Electrical Workers Local No. 82 Joint Pension Fund, I.B.E.W. Local No. 82 Defined Contribution Plan, Dennis H. Wells, Rufus C. Walker, Charles Hartshorn, Thomas C. Gitzinger, Ronald D. Wagner, Robert E. Williams, William J. Fisher, Stephen M. Hagemeyer, Larry Smith, Roger B. Lewis, Martin E. Segal Co., Michael M. Kleinman, Joseph S. Moynihan, Thomas Tercek, Robert F. Drozd, Charles Mahoney, Jr., Thomas W. Hatcher, Thomas W. Russell, Shelby D. Rogers, Daniel E. Knoblauch, Thomas G. Anderson, Sr., Grady L. Mullins, Thomas E. Travis, Jr., and Kenneth E. Delaney, ("the settling Defendants").

**WHEREAS,** Breidenbach has filed an action against the settling Defendants in United States District Court styled Fredric S. Breidenbach, Plaintiff, v. International Brotherhood of Electrical Workers Local Union No. 82 Joint Pension Fund, et. al., Defendants, Case No. C-3-92-184; and

**WHEREAS,** Breidenbach has filed other actions, claims, charges and complaints against the settling Defendants and others; and

**WHEREAS**, the parties desire to compromise their differences and to effect a final settlement of all issues raised in this action and all other actions, claims charges and complaints filed by Breidenbach, against the settling Defendants and the I.B.E.W. Local Union No. 82.

**NOW, THEREFORE**, in consideration of the mutual promises herein, the parties agree and covenant as follows:

## I. TRANSFER OF CERTAIN 1989 DEFINED CONTRIBUTION PLAN PARTICIPANTS' DEFINED BENEFIT PLAN INTERESTS INTO THE DEFINED CONTRIBUTION PLAN.

A. One-time Election. Those participants who were 100% participants in the Defined Contribution Plan as of May 31, 1989 will be permitted to make a one-time election to transfer from the Defined Benefit Plan into the Defined Contribution Plan the present value of the participants' accrued benefit payable at normal retirement age as of the date of transfer as provided in the last sentence of this paragraph. The Trustees of the Defined Benefit Plan shall direct the Plan's Actuary to calculate the value of each eligible participant's transfer entitlement under the preceding sentence as of June 30, 2005 and shall direct the Administrator to provide the Actuary with all necessary data to perform that calculation. The Actuary shall complete and submit that calculation within thirty (30) days following receipt of all necessary data. Upon receipt of that calculation, the Administrator shall send each eligible participant by certified mail, return receipt requested a copy of that calculation of his or her transfer entitlement together with an election form. Within sixty (60) days following receipt of that information, each participant who desires to make that one-time election shall complete and submit that form to the Administrator by certified mail, return receipt requested. Failure to submit that form within that sixty (60) day period shall constitute a waiver of that participant's right to make the election. At the end of the Plan year (June 30) in which all requirements specified in this Agreement have been satisfied, the Defined Benefit Plan shall transfer to the Defined Contribution Plan for the account of each participant who has timely filed a completed election form electing to withdraw his/her interest in the Defined Benefit Plan the present value of his/her interest in the Defined Benefit Plan as of the date of transfer.

B. All contributions to the Defined Benefit Plan received by the Trustees (for those participants who were 100% participants in the Defined Contribution Plan as of May 31, 1989) after June 30, 2005 shall be kept by the Trustees in a separate, interest bearing escrow account pending the one-time election and the ultimate approval of this settlement by the Court.

(1) In event that any 100% participant in the Defined Contribution Plan as of May 31, 1989 elects not to withdraw his/her interest from the Defined Benefit Plan, an amount equal to the contributions plus

**WHEREAS**, the parties desire to compromise their differences and to effect a final settlement of all issues raised in this action and all other actions, claims charges and complaints filed by Breidenbach, against the settling Defendants and the I.B.E.W. Local Union No. 82.

**NOW, THEREFORE**, in consideration of the mutual promises herein, the parties agree and covenant as follows:

## I. TRANSFER OF CERTAIN 1989 DEFINED CONTRIBUTION PLAN PARTICIPANTS' DEFINED BENEFIT PLAN INTERESTS INTO THE DEFINED CONTRIBUTION PLAN.

A. One-time Election. Those participants who were 100% participants in the Defined Contribution Plan as of May 31, 1989 will be permitted to make a one-time election to transfer from the Defined Benefit Plan into the Defined Contribution Plan the present value of the participants' accrued benefit payable at normal retirement age as of the date of transfer as provided in the last sentence of this paragraph. The Trustees of the Defined Benefit Plan shall direct the Plan's Actuary to calculate the value of each eligible participant's transfer entitlement under the preceding sentence as of June 30, 2004 and shall direct the Administrator to provide the Actuary with all necessary data to perform that calculation. The Actuary shall complete and submit that calculation within thirty (30) days following receipt of all necessary data. Upon receipt of that calculation, the Administrator shall send each eligible participant by certified mail, return receipt requested a copy of that calculation of his or her transfer entitlement together with an election form. Within sixty (60) days following receipt of that information, each participant who desires to make that one-time election shall complete and submit that form to the Administrator by certified mail, return receipt requested. Failure to submit that form within that sixty (60) day period shall constitute a waiver of that participant's right to make the election. At the end of the Plan year (June 30) in which all requirements specified in this Agreement have been satisfied, the Defined Benefit Plan shall transfer to the Defined Contribution Plan for the account of each participant who has timely filed a completed election form electing to withdraw his/her interest in the Defined Benefit Plan the present value of his/her interest in the Defined Benefit Plan as of the date of transfer.

B. All contributions to the Defined Benefit Plan received by the Trustees (for those participants who were 100% participants in the Defined Contribution Plan as of May 31, 1989) after June 30, 2005 shall be kept by the Trustees in a separate, interest bearing escrow account pending the one-time election and the ultimate approval of this settlement by the Court.

(1) In event that any 100% participant in the Defined Contribution Plan as of May 31, 1989 elects not to withdraw his/her interest from the Defined Benefit Plan, an amount equal to the contributions plus

interest thereon retained in said escrow account on his/her behalf shall be paid to the Defined Benefit Plan.

(2) Upon final approval of this settlement by the Court, an amount equal to the contributions of the 100% participants in the Defined Contribution Plan as of May 31, 1989 who do elect to have his/her interest withdrawn from the Defined Benefit Plan, plus interest thereon retained in said escrow account on his/her behalf shall be paid to an account of each such participant in the Defined Contribution Plan.

(3) In the event that the Court should fail to approve this settlement, an amount equal to the contributions of the 100% participants in the Defined Contribution Plan as of May 31, 1989 who do elect to have his/her interest withdrawn from the Defined Benefit Plan, plus interest thereon retained in said escrow account on his/her behalf shall be paid to the Defined Benefit Plan.

C. Actuarial Valuation Report. Within thirty (30) days following the deadline for receipt of eligible participants' election forms, the Administrator shall send to the Defined Benefit Plan's Actuary a list of all participants who have so elected. Within thirty (30) days after receipt of all required information, the Actuary shall prepare and submit to the Administrator a valuation report of what the Defined Benefit Plan's resulting funding levels would be for all relevant purposes if the elections so made should become effective. The fees for these actuarial services shall be equally paid as expenses of the Defined Benefit Plan and the Defined Contribution Plan, and the Court shall issue an order approving such plan expenditures as reasonable, necessary and prudent under ERISA, 29 U.S.C. Section 1001 *et seq.*

D. Independent Fiduciaries' Judgments. The Trustees of each fund shall retain a separate qualified independent fiduciary and shall delegate to that person the Trustees' fiduciary judgment as to whether that Plan shall approve this Settlement Agreement. The fees and expenses of the independent fiduciaries shall be equally paid as expenses of the Defined Benefit Plan and the Defined Contribution Plan, and the Court shall issue an order approving such plan expenditures as reasonable, necessary and prudent under ERISA, 29 U.S.C. Section 1001 *et seq.* The Administrator shall provide each independent fiduciary with copies of the Actuary's valuation report and such other data and records as each independent fiduciary shall require (including, but not limited to, the Defined Benefit Plan's actuarial valuation report for the plan year ending June 30, 2005), and the independent fiduciaries shall conduct a hearing at which counsel for the parties may appear and make argument. Each Plan shall be bound by the independent fiduciary's approval or rejection of this Settlement Agreement. In reaching that determination, each independent fiduciary shall apply the standards of decision set forth in ERISA Section 404(a):

> . . . [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and–
>
> (A) for the exclusive purpose of:
>
> > (i) providing benefits to participants and their beneficiaries; and
> >
> > (ii) defraying reasonable expenses of administering the plan;
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims . . . .

This Settlement Agreement shall not become effective unless and until both independent fiduciaries shall have approved it. Following this Settlement Agreement's effective date, (a) contributions for new Defined Contribution Plan participants shall be made according to the collective bargaining agreement governing their employment; and (b) if such collective bargaining agreement should require contributions to be made to the Defined Benefit Plan for participants who have so elected, they shall be new participants in the Defined Benefit Plan. The Court shall be informed of all eligible participants who were notified of their right so to elect and of the names of all eligible participants who failed to return their election forms within the required sixty (60) day time limit.

E. <u>Necessary Parties: Power and Approval to Authorize Transfer of Contributions.</u>

Breidenbach and the settling Defendants acknowledge that the settling Defendants are not vested with the power or authority to re-direct contributions into the Defined Benefit Plan or the Defined Contribution Plan because the rate of contributions is determined by collective bargaining between the National Electrical Contractors' Association and the International Brotherhood of Electrical Workers Local Union 82 and ratified by the Union Membership.

The Defendants shall renegotiate whatever provisions of the collective bargaining agreement are necessary to effect the reallocation of fringe benefit contributions in accordance with this agreement.

F. Necessary Approval by Court. As a condition precedent to the effectiveness of this Settlement Agreement, the Court shall certify an appropriate class, hold an appropriate hearing if deemed necessary, and make a finding that the settlement is fair, just, equitable and prudent under the provisions of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. Section 1001 et seq., and in the best interests of all fund participants, retirees and beneficiaries, and order the Defendant Trustees to transfer the funds. If this condition precedent is not satisfied, then this Settlement Agreement shall be null and void.

G. Necessary Approval by Regulatory Agencies. As a condition precedent to the effectiveness of this Settlement Agreement, the proposed Settlement Agreement shall be submitted to the Internal Revenue Service, the Department of Labor and any other regulatory agency whose approval the settling Defendants may deem necessary. If any such regulatory agency fails to approve the terms of the proposed settlement, then this Settlement shall be null and void.

## III. MONETARY RELIEF.

In consideration for Breidenbach's execution of the release provided below and in settlement of all claims and differences between the parties, the settling Defendants shall each pay Breidenbach compensatory damages in the sums set forth below, totaling $232,000.00, which sum includes reimbursement of attorney fees in the total amount of $122,967.25 and expenses incurred for expert witnesses, copying /reproduction of documents, and mailing, etc., in the total amount of $ 4, 202.68.

| **Settling Defendants** | **Amount Due** |
|---|---|
| **[IBEW Local 82 former officers]** | $172,000.00 |
| **[IBEW Pension Fund former Trustees Joint Pension Fund and Defined Contribution Plan]** | $32,500.00 |
| **[Segal Co. and individuals]** | $27,500.00 |

Payment of these amounts fully satisfies all monetary claims including but not limited to attorney fees and all other fees, costs, expenses and alleged damages, providing that Breidenbach and his attorney provide proper documentation to substantiate any such claim for reimbursement of attorney fees.

Payment of the sums for monetary relief shall be made by the Defendants to an interest bearing escrow account to be held pursuant to the agreement of the parties by the Clerk of the U. S. District Court, Southern District of Ohio, which sum, plus any interest earned thereon shall be disbursed to the Plaintiff upon final order of the Court.

Said payments shall be made within 14 days of the approval of this Settlement Agreement by the members of Local 82 IBEW.

In the event that a final a settlement is not consummated pursuant to the terms of this Settlement Agreement or a modification thereof, said funds shall be returned by order of the Court to the parties so paying including the proportional share of the interest earned as it relates to the amount deposited to each party thereon.

## IV. NO ADMISSION OF LIABILITY

No party to this settlement executing this Settlement Agreement admits any liability or wrongdoing by entering into this Settlement Agreement and any such admission is hereby specifically denied.

## V. RECOMMENDATION.

It is understood and agreed that all present union officers will make a good faith effort to recommend acceptance of this Settlement Agreement by the Union membership.

EXHIBIT "A"

RELEASE OF ALL CLAIMS

This release of all claims is made this _____ day of ________, _____, by Fredric Breidenbach in favor of the International Brotherhood of Electrical Workers Local Union No. 82 Joint Pension Fund, I.B.E.W. Local No. 82 Defined Contribution Plan, Dennis H. Wells, Rufus C. Walker, Charles Hartshorn, Thomas C. Gitzinger, Ronald D. Wagner, Robert E. Williams, William J. Fisher, Stephen M. Hagemeyer, Larry Smith, Roger B. Lewis, Martin E. Segal Co., Michael M. Kleinman, Joseph S. Moynihan, Thomas Tercek, Robert F. Drozd, Charles Mahoney, Jr., Thomas W. Hatcher, Thomas W. Russell, Shelby D. Rogers, Daniel E. Knoblauch, Thomas G. Anderson, Sr., Grady L. Mullins, Thomas E. Travis, Jr., and Kenneth E. Delaney, ("the settling Defendants") and the International Brotherhood of Electrical Workers Local Union No. 92.

WHEREAS, Breidenbach has filed against the settling defendants an action styled as follows: Fredric S. Breidenbach, Plaintiff, v. International Brotherhood of Electrical Workers Local Union No. 82 Joint Pension Fund, et. al., Defendants, Case No. C-3-92-184; and Breidenbach has filed other actions, claims charges or complaints against the settling defendants and others with the National Labor Relations Board, the International Brotherhood of Electrical Workers International Union, International Brotherhood of Electrical Workers Local Union No. 82, Dayton Municipal Court, Office of Labor Pension Welfare Benefit Administration, Department of Labor Office of Labor Racketeering, Department of Labor Wage and Hour Division, Department of Justice and Federal Bureau of Investigation.

WHEREAS, the parties desire to avoid the time and expense associated with litigation and wish to effect a final settlement of any and all issues raised by the above-styled action and charges;

NOW THEREFORE, in consideration of the mutual promises contained in the Settlement Agreement attached hereto and for other good and valuable consideration, Breidenbach agrees and covenants as follows:

(1) Breidenbach agrees to and hereby does dismiss the above-styled action and charges and any other pending actions, claims, charges, or complaints and further agrees not to re-file the same actions, claims, charges or complaints or any other actions, claims, charges or complaints against the settling defendants, the International Brotherhood of Electrical Workers Local Union No. 82, trustees, and officers, employees, former employees, agents, members, fringe benefit funds, attorneys, insurers, heirs, successors, assigns, of said defendants, said Local Union No. 82; arising out of any conduct occurring prior to the date of this settlement.

(2) Breidenbach agrees to and hereby authorizes his attorney to execute a stipulated dismissal with prejudice of the above-styled action currently pending before the United States District Court for the Southern District of Ohio. Each party to bear its own court costs.

(3) Breidenbach agrees to and hereby fully and completely releases the settling defendants, the International Brotherhood of Electrical Workers Local Union No. 82 officers and trustees, all employees, agents, members, fringe benefit funds, attorneys, insurers, heirs, successors and assigns and of said defendants from any and all claims which have been or could have been asserted by them or on their behalf in the above-styled action or any of the above-referenced charges.

(4) Breidenbach, by signing this Release, understands that he has waived, released and dismissed with prejudice all actions, claims charges or complaints against the settling defendants, International Brotherhood of Electrical Workers Local Union No. 82 officers and trustees, agents, members fringe benefit funds, employees, former employees, attorneys, insurers, heirs, successors and assigns, and said Local No. 82 and including but not limited to all claims relating to his rights under the International Brotherhood of Electrical Workers Union No. 82 Joint Pension Fund and the I.B.E.W. Local Defined Contribution Plan, all claims arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), the Labor Management Relations Act, the National Labor Relations Act, the Racketeer Influenced and Corrupt Organizations Act, all claims arsing under any other federal, state or local statute or under common law, all claims for attorneys' fees, expert fees and expense and any other claims known or unknown against any of the aforementioned parties, persons or entities, based on any acts or omissions which occurred through the date of execution of this Agreement. Breidenbach further certifies that he has entered into this agreement explained to him by his attorney.

PLEASE READ THIS RELEASE CAREFULLY. THIS GENERAL RELEASE INCLUDES A RELEASE OF ALL CLAIMS KNOWN AND UNKNOWN.

DATE: ______________________ ____________________________

Fredric S. Breidenbach

STATE OF OHIO )

COUNTY OF MONTGOMERY: SS )

Sworn to and subscribed in my presence this ____ day ________, _____.

Konrad Kuczak,
Trial Attorney for Plaintiff Fredric S. Breidenbach

Jeffrey McQuiston
Trial Attorney for Defendants William J. Fisher,
Charles Mahoney, Jr., Thomas W. Hatcher,
Thomas W. Russell, Shelby D. Rogers,
Daniel E. Knoblaugh, Thomas G. Anderson, Sr.,
Thomas E. Travis, Grady L. Mullins, and
Kenneth E. Delaney,

Ralph Gary Winters,
Trial Attorney for Defendants Dennis H. Wells,
Rufus C. Walker, Charles Hartshorn,
Thomas C. Gitzinger, Ronald D. Wagner,
Robert E. Williams, Roger B. Lewis, Larry Smith,
IBEW Local No. 82 Joint Pension Fund and IBEW
Local No. 82 Defined Contribution Plan

Christopher Williams,
Trial Attorney for Martin Segal & Company,
Michael M. Kleinman, Joseph S. Moynihan,
Thomes Tercek, and Robert F. Drozd.

John R. Doll,
Attorney for Current Trustees of the IBEW Local
No. 82 Defined Contribution Plan and International
Brotherhood of Electrical Workers Local No. 82
Pension Fund