



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

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AGENCY: Ohio School Facilities Commission

BASIS FOR INVESTIGATION: IG Initiative

ALLEGATIONS: Abuse of Authority or Office
Threatening Behavior or Intimidation

INITIATED: February 25, 2010

DATE OF REPORT: August 5, 2010

EXECUTIVE SUMMARY

File ID No. 2010082

On February 25, 2010, acting on our own initiative, the Office of the Inspector General (öOIGö) opened an investigation of the Ohio School Facilities Commission (öOSFCö or öthe Commissionö). Several southern Ohio local school district superintendents had complained publicly and in letters to Governor Ted Strickland about newly appointed OSFC Executive Director Richard C. Murray promoting union labor for OSFC-funded projects. The OSFC was created in 1997 to partner with local school districts on school renovation and construction projects, and spends on average \$2.8 million a day.

For its first 10 years, the OSFC did not allow local school districts to require contractors to pay workers union-scale öprevailing wageö rates, or to mandate the hiring of local union labor through a Project Labor Agreement (öPLAö). In 2007, under the new Democratic administration, the OSFC adopted rules that permitted wage and labor provisions to be included in OSFC projects, but gave local school districts the authority to decide. By implication and by Murray's own admission, the OSFC was supposed to remain neutral.

Our investigation found that the administration removed its previous OSFC director and appointed Murray in September 2009, in part, to improve relations with unions and ensure that unions were regarded as öconstituentsö or östakeholdersö at the OSFC. Murray had been a longtime union leader when he was appointed OSFC director. Rather than put unions on equal footing, we found that Murray provided them with undue access and accommodations. In ways large and small, Murray repeatedly failed in his responsibility to remain neutral on union matters.

Murray appropriately took ownership and billing responsibility for his union-issued cell phone, but continued to primarily use it rather than his state cell phone to conduct OSFC business. For personal matters, he also used the e-mail address lecet@aol.com, a reference to his prior employment with the union affiliate known as LECET, or the Laborers-Employers Cooperation

and Education Trust. While arguably minor lapses of judgment, they reflect Murray's general failure to separate his past loyalties and duties from those of the OSFC director.

From his first days in the office, Murray kept busy with meetings and social engagements with union organizations. In addition to hosting meetings at the OSFC and meeting locally for lunch appointments, Murray traveled to meet with union groups around the state 14 times from September 14, 2009 to March 14, 2010, according to his calendar. During interviews with this office, Murray acknowledged that he introduced himself at meetings with unions as a member of Local 423 and asked union groups to be his "eyes and ears" on project sites and report problems directly to him. He never similarly reached out to non-union organizations. Encouraging union workers, regardless of whether they worked on a job site, to snoop on non-union contractors was an abuse of Murray's authority on several levels. Not only was Murray inappropriately making plain his preference for union construction, he literally mobilized union labor against non-union contractors. These two factions compete for OSFC work and sometimes work side-by-side on projects. Promoting discord and taking sides demonstrated exceedingly poor judgment on Murray's part.

On numerous occasions Murray also accompanied union officials when they attempted to persuade local school officials to adopt a PLA. During one such meeting, the union representative berated school officials with profanities and racial slurs for 15 minutes while Murray sat silently by his side. Murray, in interviews with this office, said he made himself available at these meetings to answer questions and did not take sides. Regardless of whether Murray always remained neutral at the meetings or the evidence suggests he did not or Murray's mere presence at union arm-twisting sessions spoke volumes. It is disingenuous to argue that Murray was "neutral" at a meeting he attended with a union representative, who then proceeded to shout profanities at school officials about the use of PLAs and prevailing wages on school construction projects.

Although most OSFC contractors are non-union or so-called "merit" shops, Murray never traveled to any comparable meetings with them or with organizations opposed to the use of

prevailing wages or PLAs. Murray told us it was because he never was invited. But the one-sidedness of Murray's involvement was not lost on Murray's subordinates. We found an instance of an OSFC construction manager tracking the union status of contractors in spreadsheets, and on at least two occasions an OSFC employee discussed union bidding victories in celebratory e-mails.

Murray also made significant personnel and building-design decisions, based solely on complaints from union or trade representatives, without making any effort to substantiate the complaints. Murray immediately fired the OSFC chief legal counsel, who was unpopular with organized labor, and boasted about it at union meetings. When a union official complained about personality clashes with an OSFC project administrator in southern Ohio, Murray pulled her off several projects without verifying the complaint or even reviewing her work history or personnel file.

Similarly, the Ohio Masonry Association, which represents union and non-union masons, complained about some school districts opting for OSFC-approved poured concrete walls, which eliminate the need for masons and bricklayers. Murray promptly suspended their use. Murray made the decision without checking the association's claims about poured walls being inferior or soliciting opposing viewpoints.

On January 8, 2010, Murray sought an Ohio Ethics Commission advisory opinion about whether he could work as a paid consultant for LECET. Murray withdrew the request before the Ohio Ethics Commission could issue a determination, but for Murray to even consider such an arrangement was an astonishing indication of his divided loyalties.

On April 22, 2010, Murray announced to the Commission that he would engage in a PLA for a \$37 million project at the combined Columbus campuses of the Ohio School for the Deaf, and the Ohio State School for the Blind. In the absence of a local school district partner, the General Assembly granted the OSFC sole management authority. For Murray, adopting a PLA was more than a controversial policy decision; it posed what we believe to be an appearance of

impropriety. Typical of PLAs, the agreement dictates a certain amount of each union employee's hourly wages will be deducted for the local union hall, as well as for regional and state union umbrella groups. However, in this case, Murray belongs to Local 423, one of the unions engaged in the PLA. Local 423 will receive union dues from employees on the project; and, under the terms of the PLA Murray signed, Murray's former employer, LECET, also will be paid for each hour of employee work. Separately, LECET's partner organization, the Ohio Laborers' District Council, also will receive a portion of each union employee's wages. While the precise value of the PLA for these three union groups will not be known until the project is completed, we conservatively estimate the payouts could total \$145,000. Given his ties to these groups, Murray should not have been involved in negotiating this PLA, nor should he have signed it.

In the course of our investigation, we determined that the OSFC, which spends more than \$1 billion a year, relies on a system prone to oversights and inconsistencies in the bidding process. The system, while predating Murray's tenure, enabled Murray to impose his pro-union biases where there should have been better-defined policies and procedures. In particular, the OSFC lacks a uniform process for evaluating bids and disqualifying bidders that performed poorly on past OSFC projects. These shortcomings made the OSFC and Murray vulnerable to allegations of wrongful acts and omissions, and left them poorly positioned to defend themselves. As part of this report, we are making several recommendations, including standardization of the OSFC's bid evaluation process, the documentation of contractors' past performance, and clarification of the process for disqualifying "non-responsible" bidders. We also are recommending that the Commission take action to ensure the executive director demonstrates neutrality regarding school districts' selection of contractors, regardless of prevailing wage or PLA matters.

In a separate but related matter, we found wrongdoing by Gary Coleman, the union official who shouted profanities at local school officials about PLAs during a meeting with Murray. Coleman also serves as a trustee of Shawnee State University. We found that Coleman inappropriately tried to intimidate local school officials and a contractor, and attempted to influence a county commissioner candidate, in three separate incidents.

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I. BASIS FOR INVESTIGATION

In February 2010, three school superintendents from Scioto County separately wrote letters to Governor Ted Strickland, complaining about the Ohio School Facilities Commission (OSFC or the Commission). On February 23, 2010, state Senator Tom Niehaus asked the Inspector General to review complaints about the OSFC he had received from school superintendents in his southern Ohio district. On February 25, 2010, we attended the Commission's monthly public meeting, and, based on testimony to the Commission from the three superintendents and their legal representative, we found sufficient cause to open an investigation.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

We interviewed the current and former directors of the OSFC, as well as other OSFC employees ranging from the executive staff to project administrators who operate on the front lines of OSFC projects. We also reviewed phone records and e-mails, appointment calendars, school construction project files, state campaign contribution reports, and other pertinent documents.

In addition, we gathered information from construction management firms, which the OSFC retains to manage school construction and renovation projects; local school district officials; and contractors. We also interviewed the governor's chief of staff.

Regrettably, we were unable to interview two people who figure prominently in this report: Don Hadsell, owner of J&H Reinforcing & Structural Erectors (J&H), a Portsmouth-based union contractor; and Ralph Cole, Murray's former boss in the union hierarchy who was selected by the Strickland administration to lead an OSFC transition team.¹ Hadsell did not respond to our request for an interview, and Cole canceled two scheduled interviews.

¹ After winning election, administrations typically assemble a transition team to prepare for taking office, and appoint team members to specific agencies and areas of interest to review existing operations and make recommendations for improvement, as applicable.

III. DISCUSSION

History of OSFC

The General Assembly created the OSFC in 1997, with the mission of partnering with local school districts to build and renovate schools. The OSFC was an outgrowth of the landmark *DeRolph v. State of Ohio* lawsuit. The lawsuit led to a 1997 Ohio Supreme Court ruling that public school funding in Ohio was inequitable and unconstitutional.

To date, the OSFC has spent \$8.3 billion on school construction and renovation, and is working with or has completed work in more than half of the state's 613 school districts. During fiscal year 2010, the OSFC spent more than \$1 billion or about \$2.8 million per day on construction and renovation. The OSFC uses a need-based formula to determine the order in which districts will be funded. The formula also establishes the percentage of the costs the OSFC and the local districts each will pay for a project. While the OSFC pays for as much as 99 percent of the costs for the neediest districts, local school districts are required to contribute financially and are considered full partners in the projects.

The OSFC operates with 70 employees and an annual operating budget of about \$9 million. A Commission oversees the OSFC, with three voting members from the governor's administration: the Office of Budget and Management director; the Department of Administrative Services director; and the superintendent of public instruction at the Ohio Department of Education. The Commission also includes two non-voting members from each chamber of the General Assembly.

Prevailing wage and Project Labor Agreements

In creating the OSFC, the General Assembly exempted it from prevailing wage requirements. Prevailing wage provisions are typically required for government-funded public improvement

projects, dictating that contractors ó whether union or non-union ó pay workers union-scale wages.²

Taking the concept a step further, government leaders can satisfy prevailing wage requirements by opting for a Project Labor Agreement (öPLAö). PLAs require contractors to employ workers from local union halls and/or enroll their own employees as dues-paying union members for the duration of a project. The terms of PLAs vary, but by definition they mandate the use of union workers, not just union-scale wages. As such, local unions engaged in a PLA assign workers to the job, and the local unions receive a portion of each worker's wages in union dues. PLAs also sometimes dictate additional employee payroll deductions for regional or state union groups.

The 1997 legislation did not explicitly prohibit prevailing wage provisions for OSFC projects, but it amounted to a virtual ban. For 10 years, no OSFC project included prevailing wage or PLA provisions, even when local school districts occasionally requested them.

The prevailing wage debate is generally a partisan one. Republican administrations exempted the OSFC for a decade, in an effort to encourage lower construction costs. After Democratic Governor Ted Strickland took office in 2007, the OSFC for the first time gave local school districts the option of adopting prevailing wage or PLA provisions for OSFC-funded projects, in an effort to encourage the hiring of local laborers at more worker-friendly wages and benefits (Exhibit 1).

Both sides cite numerous studies and anecdotes to support their positions. A 76-page Legislative Service Commission (öLSCö) study in 2002 concluded that the OSFC had saved an estimated \$487.9 million, or 10.7 percent, in construction costs over five years by not requesting prevailing wage requirements. Quality, as measured by school district satisfaction surveys, was not any different for work completed by union or non-union contractors. But the LSC cost estimates were based on surveys of mostly non-union contractors, and the LSC acknowledged the

² The federal prevailing wage law, known as the Davis-Bacon Act, and Ohio's prevailing wage law both were passed in 1931. They require workers on government-sponsored construction projects to be paid öprevailing wages,ö which in Ohio are based on collective bargaining agreements. Prevailing wage laws also subject contractors to specific work rules.

limitations of its findings. Meanwhile, a master's thesis published in May 2009, which examined OSFC projects from 2000 through 2007, concluded that "there was no significant difference between the bid amount per square foot of union and non-union contractors."³ However, the thesis examined a period when OSFC projects did not include prevailing wage or PLA provisions.

Labor advocates in general argue that wage agreements promote the hiring of better-trained tradesmen and higher quality construction, which they believe can be more cost-effective in the long run, even if pricier at the outset. Whatever the case, the OSFC itself has not studied the impact of prevailing wage or PLA provisions on the cost of its projects, or on the quality of construction.

Transitioning to prevailing wages and PLAs

Since the adding of prevailing wage and PLA options for OSFC-funded projects in 2007, Murray reports that about a dozen local school districts have adopted PLAs and about twice that many have incorporated prevailing wage provisions. These agreements amount to a fraction of OSFC projects. But the transition from prohibiting wage agreements to welcoming them has sparked a series of public controversies.

In July 2009, Governor Strickland abruptly asked OSFC Executive Director Michael Shoemaker to step down, about 2-1/2 years after appointing the former state legislator and school funding advocate. Publicly, the administration provided little explanation for the change. Shoemaker told us that nobody explained to him why he was being fired, but he suspected it was related to complaints from union officials. A month later, Governor Strickland appointed Richard C. Murray, a union official who years earlier had challenged the OSFC's exclusion of PLAs. Murray, in an interview with this office, said that the governor's office had asked him to smooth over rocky relations with unions and make sure union representatives were regarded as "constituents" at the OSFC. In an interview with this office, John Haseley, the governor's chief

³ "Comparison of Union and Non-union Bids on Ohio School Facilities Commission Construction Projects," by Matthew J. Welsh, of Bowling Green State University's college of Industrial Technology.

of staff at the time, recalled characterizing the unions as “stakeholders.” Haseley added that the administration’s pro-PLA stance was certainly clear to Murray, but that union concerns were among many topics discussed with Murray and not particularly emphasized. In any case, Murray agreed in interviews with this office that adopting a PLA is ultimately a decision for local school district officials, and that as OSFC director he is obligated to remain neutral on PLAs.

In February 2010, superintendents of three school districts in Scioto County separately wrote letters to Governor Strickland (Exhibit 2). They complained about changes at the OSFC under Murray’s leadership, bluntly criticizing Murray for what they perceived as a pro-union and pro-PLA agenda. One superintendent recounted Murray visiting the district with a local union official who shouted profanities at school leaders and openly tried to bully them into adopting a PLA. The superintendents said the governor’s office did not respond to their letters.⁴ However, the Commission members discussed the concerns with the superintendents at the next Commission meeting. Still frustrated, the superintendents shared their concerns with the news media. Other people, particularly contractors and suppliers that employ non-union laborers, also came forward with allegations of a sudden pro-union bias at the OSFC.

The PLA debate has since extended to the ongoing \$37 million project at the joint 273-acre Columbus campuses of the state-run Ohio School for the Deaf, and Ohio State School for the Blind. According to the OSFC’s bidding criteria, whether to include prevailing wage or PLA provisions is a decision for local school districts. Because there was not a local school district partner in this instance, lawmakers granted OSFC sole management authority. In April 2010, Murray announced to the Commission that he would authorize a PLA.

Allegation 1: OSFC Director Richard C. Murray failed to remain neutral on PLAs and other union-related matters in his dealings with local school officials and contractors.

We identified and examined the following examples of Murray’s conduct on union-related matters:

⁴ John Haseley, the chief of staff for Governor Strickland, told us that the administration chose not to respond to avoid interfering with our investigation.

Carryover from Murray's union past

Prior to being appointed OSFC director, Murray served for more than 12 years as the Ohio director of the Laborers-Employers Cooperation and Education Trust (LECET). A national organization, LECET is a partnership promoting the mutual interests of the Laborers' International Union of North America (LIUNA) and the contractors that hire union workers.

Our investigation found that Murray personally reimbursed LECET for his LECET-issued BlackBerry cell phone and transferred monthly billing to his home upon becoming OSFC director. But Murray continued to primarily use that cell phone, rather than his state-issued cell phone. From the time Murray started as director on September 14, 2009 through March 23, 2010, the phone records for the BlackBerry show there were 28 calls between Murray and Ralph Cole, the board chairman for LECET who was also Murray's former boss in the union hierarchy and who had led the OSFC transition team when Governor Strickland was elected; and 26 calls between Murray and Gary Coleman, who was Cole's son-in-law, a business manager for the Laborers' Local 83 of LIUNA, and a board of trustee member for Shawnee State University. In interviews with this office, Murray said he was still using his LECET-issued phone and number as a matter of convenience.

We also found that Murray continued to use the personal e-mail address lecet@aol.com. While a nod to his past LECET affiliation, Murray noted that it is not an official LECET account. LECET's website shows LECET uses e-mail addresses ending with @lecet.org. Murray, for OSFC business, typically uses his state e-mail account, but he sometimes forwards notes from his personal account to his state account.

On January 8, 2010, Murray sought an Ohio Ethics Commission advisory opinion about whether he could work as a paid consultant for LECET (Exhibit 3). Before the Ohio Ethics Commission could issue a determination, Murray withdrew the request.

Murray accompanied union officials to meetings with local school districts

When a local school district embarks on an OSFC-funded school construction project, union representatives often meet with local school district officials to encourage them to adopt a PLA, or at least require prevailing wages. The union representatives typically extol the virtues of union labor and offer to campaign for the local school tax levy if the district signs a PLA.

But on October 16, 2009, Clay Local School District (öClayö) officials in Scioto County said they felt ambushed when a meeting scheduled with Murray, the recently appointed OSFC director, ended up including a union official who aggressively confronted them about adopting a PLA. It was the first of several instances when Murray accompanied union officials as they lobbied school districts to adopt prevailing wage or PLA provisions.

The meeting in Clay Superintendent Tony Mantell's office occurred a few months prior to soliciting bids for the construction of a new Clay school for grades pre-kindergarten through high school. Also in attendance were Clay board President Kevin Craft and High School Principal Todd Warnock.

To the surprise of Clay local school officials, Murray arrived at the meeting with Gary Coleman. Coleman was known to Clay officials because of hostilities that occurred about two weeks prior. On or about October 8, 2009, Coleman had arrived with another union official at the school project site, during the construction of a retaining wall, and berated the owner of the non-union company and his employees. By all accounts, and by Coleman's own admission during an interview with this office, Coleman shouted profanities, mocked the owner's religious beliefs, and questioned the immigration status of the workers. The contractor said the encounter prompted him to hire a security guard for the site and apply a special anti-graffiti paint to the retaining wall. Murray told this office he had been unaware of that confrontation when he and Coleman met at the local union hall about two weeks later and drove together to the meeting with the Clay officials.

When Coleman arrived with Murray at the Clay meeting, local school officials were taken aback. The meeting quickly grew tense. Coleman told Clay officials that adopting a PLA would provide a dome of protection during the construction of the new school, according to the three local officials, who regarded the comments as threats of sabotage or vandalism if the project were to proceed with non-union labor. As the conversation turned to the non-union contractor doing site preparations, Coleman erupted. For about 15 minutes, Coleman hurled a barrage of profanities at Clay officials, while Murray sat silently by his side and students walked the hallway just outside the superintendent's office. Clay officials said the outburst included racial slurs, and they were stunned by Coleman's conduct and even more so by what they viewed as Murray's tacit approval. Ultimately, Clay signed a PLA with Tri-State Building and Construction Trades Council, AFL-CIO, before advertising for bids in January 2010.

Murray, in an interview with this office, described the meeting as one of his most embarrassing professional moments. But, notably, Murray not only failed to intervene at the time, but never conveyed his disapproval to Coleman, apologized to Clay officials, or disassociated himself from Coleman (in fact, Murray and Coleman attended a union function together two months later in Ashland, Kentucky). Moreover, Murray continued to involve himself in meetings around the state between union representatives and local school officials, undeterred by the Clay debacle and a growing number of complaints about him favoring unions.

On the same day as the meeting in the Clay superintendent's office, Murray and Coleman also discussed a PLA with officials in the nearby New Boston Local Schools ("New Boston"). According to New Boston officials, the meeting ended without incident.

A month after the Clay and New Boston visits, on November 19, 2009, Murray attended a public meeting of the New Boston school board. At this meeting, with New Boston officials expecting to soon advertise for bids for a new K-12 school, Murray questioned the adequacy of the building site and soon thereafter began searching for a new one. The resulting delays angered New Boston officials. While Murray attended the meeting to discuss his concerns about the site, the school board also was scheduled to discuss PLAs and the room was crowded with union

representatives. Murray participated in the PLA discussion, as well, and told New Boston officials that “if you sign a PLA, we will make it work.” The New Boston superintendent said the implication was clear: if New Boston signed a PLA, Murray would drop his opposition to the building site. Later, Murray explained that local officials had misunderstood him, and that he had merely vowed to make a PLA work – not the site – if the district officials opted for a PLA. Murray said he never intended to connect site selection with the PLA decision. Even viewed in the context Murray now says he intended, the OSFC director’s remarks made little sense. A PLA is a contractual arrangement between local school officials and local unions; the OSFC should be scrupulously uninvolved, not acting as an intermediary.

On January 26, 2010, after Murray and union representatives were unable to coordinate a joint visit with Fremont City Schools officials to talk about PLAs, Murray participated via conference call. Fremont was in the final stages of preparing to advertise for bids. The superintendent and board president were surprised by the last-minute meeting, months after local officials had discussed PLAs and other issues at length. Fremont’s superintendent said she had warned the union representatives in advance to be respectful and they were. The superintendent and the board president said Murray was not outspoken or pushy. But after the meeting, Fremont added a prevailing wage provision and advertised for bids.

On April 12, 2010, Murray attended a meeting at a local restaurant with Mansfield-area union representatives, who had invited the superintendents of nearby Madison Local School District and Shelby City School District to talk about PLAs. Also at the meeting was nonvoting OSFC board member state Representative Matt Patten, who works as a labor management field coordinator. The next day, Lee Kaple, superintendent of Madison, recapped the meeting in a letter to his school board members. Kaple’s letter reads, in part: “Please note that prior to 2007 the OSFC would not allow Project Labor Agreements. According to Rich Murray that changed due partly to [the] number of construction problems that had to be addressed after projects were completed” (Exhibit 4). Kaple also notes that Madison has an upcoming levy, and that the unions were seeking a PLA commitment and “in return would offer their support for passage of the projects.” At the meeting, the superintendents received copies of a November 2, 2009, letter

from Ironton city schools and a November 17, 2009 letter from South Point schools to Tri-State Building and Construction Trades Council, praising Tri-State's work under PLAs (Exhibit 5). The fax headers show the letters had previously been sent to Murray's OSFC fax in January 2010. Murray did not recall details about how he had come to be a go-between in the presentation of pro-PLA letters from two local school districts to two other local districts. As of the writing of this report, Madison and Shelby schools had yet to decide on whether to adopt a prevailing wage or PLA provision.

Murray said he had attended these meetings because he was invited by union officials, and that he answered questions about PLAs in a neutral manner. Most OSFC construction, he acknowledged, is performed by non-union companies. As for why he never attended a comparable meeting with a non-union contractor or interest group, arguing against adopting a PLA, Murray replied that he had never been invited. The Kaple summary of Murray's remarks notwithstanding, Murray acknowledged to this office that in fact the OSFC has conducted no studies to back up the assertion that union labor and/or PLAs result in higher-quality construction. Questioned further on the matter, Murray agreed that there are good and bad contractors, whether union or non-union.

Murray attended union gatherings

In addition to accompanying union officials when they promote PLAs to local school officials, Murray also attended numerous union meetings and social functions. According to his calendar, Murray traveled to meet with labor union organizations 14 times between September 14, 2009 and March 14, 2010. He also met with union representatives in his Columbus office and at Columbus-area establishments. Murray said he generally discussed the OSFC, including PLAs. During visits, Murray introduced himself to the groups as the OSFC director and described himself as a union member. Murray also encouraged union workers to be his "eyes and ears" on non-union job sites, and report problems to him directly. Murray confirmed in interviews with this office that he never attended a comparable meeting of non-union companies or interest groups, or solicited non-union workers to be his "eyes and ears." Murray also never met with

contractors as a group to share his expectations of “quality construction.” Once, however, Murray met in his office with a representative of the non-union Associated Builders and Contractors (Exhibit 6). According to Murray, organized labor, by its nature, lends itself to gathering and talking with groups of workers in a way that is not feasible with non-union workers.

When speaking to groups of union workers, Murray also bragged about firing former OSFC Chief Legal Counsel Jerry Kasai on his second day as director — expressing regret that he was unable to fire Kasai on his first day because Kasai had been out of the office. Previously, while Murray was a union representative, he had clashed with Kasai about PLAs. Although Murray told this office he had removed Kasai in a courteous manner, he admitted “chest beating” about it at union halls.

Calendar entries show Murray also attended union social functions and holiday gatherings, without any similar visits to events held by non-union or anti-PLA interest groups. Murray said he made an effort to honor invitations but had not received any from non-union groups.

Ohio School for the Deaf, and the Ohio State School for the Blind project

In June 2008, the legislature appropriated \$37 million for construction and renovation of facilities at the combined Columbus campuses of the state-run Ohio School for the Deaf, and the Ohio State School for the Blind.

The schools are operated by the Ohio Department of Education. Typically, the Ohio Department of Administrative Services by law would oversee the construction of a state building. But the legislature, in appropriating the money, granted the OSFC sole management authority for the project. The legislation cited a related Memorandum of Understanding between the schools and the OSFC (Exhibit 7).

According to the OSFC's bidding criteria, local school districts decide whether to include prevailing wage or PLA provisions. Lacking a local school district partner for the Deaf and Blind schools project, Murray assumed responsibility for making the PLA decision. Murray cited the OSFC's legislatively granted management authority for this project.

On April 22, 2010, Murray announced to the Commission that he would engage in a PLA. "Director Murray commented that he believes that the PLA would prevent costly delays and disruptions. In addition, the PLA will promote active dialogue among contractors and workers on site and it will provide for safety promotion and safety encouragement," according to the Commission meeting minutes (Exhibit 8). According to the minutes, no one during the meeting questioned Murray's decision or his authority to make the decision.

However, the specifics of the PLA that Murray ultimately signed pose potential conflicts that go beyond the usual policy debates surrounding a PLA decision. Typical of PLAs, a certain portion of each employee's hourly wages from this project will go to the union; but in this case, the union to which Murray belongs, Local 423, is one of the parties engaged in the PLA (Exhibit 9).

Murray was in a unique position, signing a PLA as OSFC director. Murray made this unusual arrangement more complicated by including Local 423, of which he is a member, in the PLA. In addition to the union dues deducted from employee paychecks (3 percent of gross wages) for the local union hall, the PLA will set aside money for Murray's former employer, LECET (5 cents for each employee hour worked); and will deduct another 35 cents an hour from employee paychecks for the affiliated Ohio Laborers' District Council. While the precise value of the PLA for these three union groups will not be known until the project is completed, we conservatively estimate the payouts will total about \$145,000 (Exhibit 10).

Findings

In ways both large and small, Murray has consistently failed to separate his loyalties and responsibilities as OSFC director from his prior employment as a union leader. He appropriately

took ownership of his LECET-issued cell phone and began paying the bill before assuming office. But continuing to use the phone and number as a regular means of conducting OSFC business unnecessarily blurred the lines. Using a personal e-mail address of lecet@aol.com also sent the wrong message for a person who is responsible for remaining neutral on PLAs, especially given the sensitivity of the issue.

Murray's continued use of his cell phone and e-mail address might be of marginal significance, if not for his other union-related interactions as the OSFC director. Particularly telling was Murray's request on January 8, 2010 for an Ohio Ethics Commission advisory opinion about whether he could work as a paid consultant for LECET. Murray withdrew the request before the Ohio Ethics Commission could issue a determination, but for Murray to even consider such an arrangement was an astonishing indication of his divided loyalties.

Murray also frequently met with union leaders, while failing to provide similar access to non-union interest groups, compromising his neutrality. Accompanying union leaders when they sought support for PLAs from local school officials was particularly troublesome. Again, Murray made no such special accommodations for non-union opponents of PLAs. Regardless of whether Murray remained neutral at the meetings and the Madison school superintendent's letter suggests he sometimes did not and Murray's mere attendance spoke volumes. The incident at Clay is a particularly egregious example. It is disingenuous to argue that Murray was "neutral" at a meeting he had attended with a union representative, who then proceeded to shout profanities at school officials about PLAs.

The message certainly seemed clear to Murray's subordinates. We found one instance of an OSFC construction manager tracking the union status of contractors in a spreadsheet, and an OSFC employee twice openly celebrating union bidding victories in e-mails to OSFC managers and staff members (Exhibit 11). On one project in November 2009, the OSFC employee noted in an e-mail: "Friday, October 30th was a great day for bid results! . It was a prevailing wage project that attracted a majority of union contractors! ." On a separate project, the same employee said in a January 2010 e-mail: "It was a great day as [we're] significantly under the

master plan budget. The District required prevailing wage and the major majority of contractors were union.

So when Murray announced in April 2010 that he was signing a PLA for the Deaf and Blind schools project, including with the union to which he belonged, he appeared to be confirming the suspicions of critics rather than just making a carefully considered judgment call. What was a delicate situation by its very nature became a political controversy because of the pro-union reputation Murray had cultivated up to that point. Moreover, Murray's justifications for signing a PLA were surprisingly weak, given the inevitable public scrutiny that would follow. OSFC policies (and common sense) already dictated that contractors would cooperate with the OSFC (Exhibit 12). And Murray acknowledged in interviews with this office that imposing additional criminal background checks on laborers did not require a PLA.

Ultimately, the potential conflict tainting the PLA decision was about more than just appearances. The PLA Murray signed will direct an estimated \$145,000 to three union groups with which he has close ties: the Local 423; LECET; and the affiliated Ohio Laborers' District Council. Murray should have recused himself from negotiating this PLA, and designated someone else to sign it. His involvement created an appearance of impropriety.

Upon his hiring, Murray was instructed by the governor's office to treat labor unions as "constituents" or "stakeholders" at the OSFC, but in so doing Murray failed to remain neutral. Rather than put unions on equal footing after years of the OSFC excluding prevailing wage and PLA provisions, he provided undue access and accommodations. As a result, Murray unnecessarily opened himself up to criticisms of favoring PLAs. He also violated the clear intent of the model bidder criteria adopted by the OSFC, which wisely excluded the OSFC from involvement in deciding whether a local school district adopts prevailing wages or a PLA.

Accordingly, we find reasonable cause to believe wrongful acts or omissions occurred in this instance.

We also find an appearance of impropriety.

Allegation 2: OSFC Director Richard C. Murray's repeated interventions in OSFC projects gave the appearance of favoring unions, trades and union contractors.

We identified and examined the following examples of when Murray allegedly intervened in OSFC projects:

OSFC personnel matters

As previously mentioned, upon being named director, Murray fired OSFC Chief Legal Counsel Jerry Kasai. As a union official, Murray had clashed with Kasai during the era when OSFC was not allowing local school districts to engage in PLAs. Also, one of Kasai's responsibilities at OSFC was to help review bidders selected by the OSFC's construction management firm and local school district. As chief legal counsel, Kasai was the face of the OSFC during disputes with contractors. After terminating Kasai, Murray reassigned the bid review process to a newly created "Quality Review Committee" supervised by the OSFC's chief of quality construction.

Murray claimed his termination of Kasai was handled courteously and professionally, even keeping Kasai on staff while he looked for another state job. However, Murray admitted to publicly boasting about firing Kasai "ó chest beating," he called it "ó at gatherings of local unions.

In another personnel move, Murray reassigned project administrator Stacey Thomas because of complaints about her from J&H owner Don Hadsell, a general trades union contractor. As an OSFC project administrator, Thomas served as the designated representative of the Commission and consulted with architects, construction managers and local school boards. According to OSFC staff that we interviewed, over the years Thomas had challenged J&H on everything from change orders to construction performance. Murray became director just as the OSFC was preparing to bid projects in several Scioto County school districts, with J&H being a likely bidder.

Thomas was reassigned in November 2009 to projects in other parts of the state. OSFC staff we interviewed said it was highly unusual to remove a project administrator in the middle of

projects, particularly at such a key juncture as preparing to advertise for bids. Steve Berezansky, the OSFC projects chief, notified Thomas of her reassignment without offering an explanation. Berezansky told this office that he was carrying out an order from Murray, which he had been putting off in hopes that Murray might change his mind.

Murray confirmed that he had ordered Thomas's reassignment. As Murray prepared to start as the OSFC director, he said he heard complaints about Thomas from Ralph Cole. Cole told Murray about J&H owner Hadsell's problems with Thomas. Later, Murray heard from others that Thomas had dressed up in a gorilla suit with a Don Hadsell facial likeness with cigar for an OSFC Halloween costume party to raise money for charity in 2006. Murray told us he considered this highly inappropriate, and it helped seal his decision to reassign Thomas in November 2009, less than two months after he became OSFC director.

Murray told us that Thomas was competent but had a strong personality, and clashed with Hadsell who also had a strong personality. Given those dynamics, and the commencement of bidding in the southern Ohio projects, Murray said he preferred a fresh start by removing Thomas as a source of unnecessary conflict.

Asked about how Thomas responded when confronted with the complaints, Murray and Berezansky said they never discussed them with Thomas. When Murray was asked by this office about who had told him of the three-year-old costume party allegation, Murray could not recall but suggested it was perhaps Mike Mendenhall (who did not work at OSFC at the time of the party) or Berezansky (who says he did not attend the party). Murray said the incident was widely known among OSFC employees and that there were photographs from the party to corroborate it, although Murray said he never saw them. During her first interview with this office, Thomas said she did not know the reason for her reassignment. After we learned of the costume incident, we re-interviewed her. She denied dressing as Hadsell. Rather, she said she had dressed at a state-sanctioned office charity event as a scruffy construction worker, wearing a stuffed flannel shirt, a rubber mask with a beard and cigar, and a construction hard hat. Later in the day, she said, somebody joked that she looked like Hadsell and applied a hand-written

J&H sticker to her hard hat, and took her picture. In the course of our investigation, we obtained two time-stamped photographs, one showing her in the generic costume and the other later in the day with the J&H sticker added (Exhibit 13). Thomas said nobody ever said anything to her at the time about the costume being inappropriate, or in the following three years.

As for accusations about Thomas' overall job performance and general demeanor, Murray had no idea if those concerns were reflected in her personnel file; Murray acknowledged never looking at her personnel file before reassigning her. In fact, Murray said he never spoke directly with Hadsell, either, knowing about Hadsell's complaints only from what he had heard from Cole, his former union boss. Nor did Murray consult with the OSFC's local school district partners involved in the projects, who told us they held Thomas in high regard for thoroughness and for demanding accountability from contractors. The superintendents told us they were angry when Murray reassigned her. Ultimately, Murray said he did not view the reassignment as punishment. So rather than confront Thomas and rehash the complaints, Murray reassigned her without discussing his concerns with her alleged behavior. Unsatisfied, Hadsell later asked Murray to fire Thomas, but Murray took no further action.

Although Murray, as director, has the authority to reassign staff, the manner and timing of Thomas' reassignment were troubling. J&H maneuvered to have her reassigned before bids were released for the three Scioto County projects and thus before J&H had won any of the contracts and giving the appearance of an outcome that was preordained. Indeed, J&H ended up as the low bidder in two of the three school districts and Washington-Nile and Clay but J&H ultimately was not awarded the Washington-Nile contract when the project had to be rebid due to bids exceeding cost estimates.

Wheelersburg 72-hour notices

Wheelersburg Local School District (öWheelersburgö) received OSFC funding to build a new \$16.3 million school for grades kindergarten-12, and opened bids on August 17, 2006. J&H was the only bidder for the general trades package. The school was on track to be completed by July 15, 2008, following a change order (Exhibit 14). When work remained incomplete at the start of the 2008 school year, Wheelersburg opened the doors of the new building, anyway, expecting J&H to complete a punch list of unfinished work. J&H failed to complete the work and continues to deny responsibility, which led the OSFC to hire another contractor to finish the tasks.

As the dispute between the OSFC and J&H escalated, then-OSFC Director Michael Shoemaker was fired July 27, 2009 ó in part, Shoemaker believes, because of complaints from Cole and Hadsell of J&H, who are friends. On September 14, 2009, Murray, a former underling to Cole in the union hierarchy, became the new OSFC director. During the interim, J&H had filed a \$2.4 million claim against Wheelersburg, blaming the OSFC and school officials for delays. By November 2009, in response to complaints from J&H, Murray reassigned the OSFC project administrator, Stacey Thomas.

On February 11, 2010, the OSFC's construction manager, Bovis Lend Lease Ohio (öBovisö), responded to J&H's claim after a mediation session. J&H was blaming Bovis and others for the delays and problems in Wheelersburg. Jim Swartzmiller Jr., a Bovis vice president, summarized in an e-mail why he believed J&H was responsible. But Murray, who did not attend the mediation, responded with a blistering letter to Bovis expressing his öprofound displeasureö at Bovis for criticizing J&H during the mediation process (Exhibit 15). öYou shall consider this a formal reprimand from the OSFCí ,ö Murray wrote.

On March 18, 2010, the OSFC's construction manager and Wheelersburg school officials agreed to issue a notice demanding that J&H address unfinished work within 72 hours. A 72-hour notice is a last-ditch option that OSFC construction managers reserve for contractors they deem

particularly unresponsive, threatening them with action that could potentially result in the loss of eligibility to bid on future OSFC projects. But Murray halted the construction manager's 72-hour notice before it went out. We heard several accounts of this — including two different explanations from Murray himself — but in any case the action spared J&H. Murray's intervention once again on J&H's behalf was unusual in any context, but particularly in light of the contractor's troubled track record with the OSFC. J&H had repeatedly faced similar complaints on OSFC projects, and often responded with counterclaims for additional payments. In fact, this would have been the second 72-hour notice J&H had received on the Wheelersburg project alone.

On March 29, 2010, several days after we interviewed an OSFC administrator and questioned the failure to issue the 72-hour notice, the OSFC's construction manager sent J&H the notice. Nonetheless, J&H never completed all of the tasks to the satisfaction of the OSFC and the Wheelersburg local school district. The OSFC and Wheelersburg hired another contractor in April 2010 to finish the work, and a consultant to assess responsibility for the various tasks, which added to the total cost of the project.

The OSFC, the Wheelersburg local school district, and J&H have failed to resolve their differences on the Wheelersburg project through mediation, and J&H filed a lawsuit May 28, 2010.

OSFC design manual

On OSFC projects, local school districts hire an architect to design the school. The architects work from a detailed design manual. The design manual, which encompasses three large binders, presents a variety of design elements from which architects can choose, including floor tiles and roof shingles and everything in between. The goal is to give local districts the flexibility to design a school that meets local needs, within parameters laid out by the OSFC. The manual is updated periodically. To deviate from the design manual, school districts must obtain approval from the OSFC and/or pay for the additional costs related to the changes.

In April 2010, Murray suspended the use of poured concrete walls known as Insulated Concrete Forms (ICFs). ICFs were added to the options in the design manual in 2009, but Murray halted their use to give the OSFC a chance to monitor and evaluate them on the dozen or so projects already under way. ICFs are generally costlier than masonry walls, boasting superior insulation qualities and other benefits.

Murray publicly shared his concerns about ICFs during the January 21, 2010 Commission meeting. According to meeting minutes, Murray said he wanted to ensure "we get what we paid for because we are paying enough for this product and we expect the [insulation] R value and the quality" (Exhibit 16). Murray also said the practice of requiring the manufacturer's certification and five years of experience "meant that competition would be limited" when bidding ICF work. The ICF issues, Murray told the Commission, "came to our attention about two weeks ago" during discussions with a school architect.

In fact, e-mails show the discussion dated back to October 2009, when the Ohio Masonry Association complained to Murray about ICFs (Exhibit 17). In interviews with this office, Murray explained that ICFs replace work traditionally performed by masons. The masonry association had questioned the purported benefits of ICFs, and demonstrated for Murray how the walls are poured and the alleged shortcomings of ICFs. Convinced the product and process needed to be re-evaluated, Murray announced at the Commission meeting his intentions to slow down the use of ICFs, and thereafter suspended the use of ICFs for future projects.

When questioned by this office, Murray said that he came to his decision without asking ICF manufacturers, or contractors that pour ICFs, to respond to the claims of the masons; without researching how or why ICFs had been added to the OSFC design manual; and without being aware of any specific ICF-related problems on OSFC projects. Indeed, Murray admitted that he made no effort to vet the Ohio Masonry Association's claims before suspending the use of ICFs.

New Boston site selection dispute

Voters in the New Boston Local School District (õNew Bostonö) passed a tax levy in November 2008. The school district began site preparations for a new K-12 school building after settling on the location in consultation with the OSFC. But many months later, during a period when New Boston school officials adopted a PLA and then later reconsidered, Murray as the newly appointed director questioned whether the site was appropriate.

The OSFC and New Boston officials have remained at an impasse ever since, with the OSFC putting the project on hold and preventing New Boston from seeking bids. Twice, Murray has hired consultants for independent analyses at a combined cost of about \$37,000, under circumstances that have since been called into question.

Under the former director, the OSFC deemed the location acceptable but less than ideal because of its proximity to a floodway. New Boston and the OSFC finally settled on the imperfect site, in part, because of a lack of workable alternatives in the hilly, 3-1/2 square mile district. The site remained unchallenged through several phases of pre-construction planning, beginning with the Program of Requirements and continuing through the increasingly detailed steps of Schematic Design and Design Development.

The local district is responsible for selecting a site, according to OSFC guidelines, but the OSFC has the authority to õreject an improper siteö that would õrequire a great deal of remediationö (Exhibit 18).

New Boston initially favored incorporating a PLA into the project. On October 16, 2009, a month before a critical school board meeting, Murray and Gary Coleman of the Local 83 met with local officials in New Boston to talk about a PLA.

At the November 19, 2009 school board meeting, New Boston officials sparred for an hour with Murray and the OSFC about the appropriateness of the site selection, and then for three more

hours with local union members about whether to bid the project as a PLA. As previously stated, during the meeting Murray offered to “make it work” if New Boston signed a PLA. The New Boston superintendent said the implication was clear: Murray wanted a PLA incorporated in the bid request before he would approve the site and allow the project to proceed. For his part, Murray says local officials misunderstood and that he merely vowed to make a PLA work “not the site” if the district officials signed a PLA. The board voted 4-1 in favor of a PLA with Tri-State Building and Construction Trades Council. Two months later, New Boston reversed that decision, after a pro-PLA board member left the school board; after bids for a PLA-project in the nearby Washington-Nile school district came in far over estimate; and after Tri-State requested that the PLA be cancelled.

Meanwhile, Murray hired a consultant, Burgess & Niple, to provide an independent analysis of the site, in an effort to settle the disagreement. But records show that on December 24, 2009, the OSFC received word that the pending site analysis was not going to support Murray’s concerns related to the retaining wall at the site favored by New Boston. “Basically, Vince [of Burgess & Niple] stated that the retaining wall system as proposed appears to be a good design for the project, good news I would suppose,” OSFC projects chief Steve Berezansky e-mailed Murray December 24, 2009 (Exhibit 19). In an interview with our office, Berezansky acknowledged that he added “good news *I would suppose*” [emphasis added] because he believed it was not what Murray would want to hear.

Within days, at Murray’s request, Burgess & Niple added negative comments about the feasibility of the site. Murray approved the revisions, which raised concerns about whether there would be adequate distance between the school and the retaining wall. “Thanks; it gives me what we need to insist on greater space for the inevitable repair,” Murray e-mailed Burgess & Niple on December 28, 2009 (Exhibit 20). New Boston officials were not included in the revision process. Berezansky, the OSFC projects chief, said he was surprised when the tone of the \$19,000 report suddenly turned negative but was unaware that Murray had personally steered the conclusions.

Murray continued challenging the site. When New Boston reversed itself and tabled the PLA on January 14, 2010, Murray personally followed up not with New Boston school officials, but with the former school board president who had been supportive of a PLA. Together, Murray and the former board president, Joe McGraw, met with New Boston Village Mayor James Warren to discuss building the school on another site owned by the village. Schools superintendent Staggs learned that the OSFC was scouting a new location during a meeting at the OSFC on January 27, 2010, which also was attended by the village mayor and the former school board member.

Frustrated, the New Boston superintendent, along with two other superintendents in Scioto County, wrote letters to the governor in February 2010, complaining about a pattern of behavior by Murray that amounted to promoting union labor. The governor's did not respond to the letters. As previously noted, John Haseley, the governor's chief of staff, told this office that the administration decided not to respond to avoid interfering with our investigation.

In April, the village council voted against donating the alternate site proposed by Murray. Nevertheless, Murray continued to hold up the project while another consultant, Stantec, conducted a new hydrology study of the two sites, at a cost of about \$18,000.

Next, New Boston school officials took their concerns directly to the OSFC at its April 22, 2010 meeting. Jack Rosati, an attorney representing New Boston, told the Commission during the public comment period that needless delays by OSFC were threatening to postpone completion of the school and significantly increase the costs. Murray pushed back, noting that he was awaiting the Stantec report, and the Commission agreed to wait for the results. Rosati said it was pointless to wait because the alternate site favored by Murray had already been rejected by the village, which owned the property.

About two weeks later, the Stantec report was completed. Like the original site selection and a subsequent Burgess & Niple reassessment, the Stantec study found nothing significant to prevent building on the original site.

In June 2010, the OSFC dropped the site debate. But in a letter to New Boston, the OSFC expressed various other concerns and notified the district that updated cost estimates show the project would end up “substantially over budget” (Exhibit 21). School officials were stunned and angered, and questioned why the OSFC suddenly re-estimated the project costs. The OSFC told New Boston that the district would have to make design changes to cut costs. In particular, the OSFC questioned the selection of the ICF poured concrete walls.

So the impasse continues, more than a year and a half after New Boston voters passed a school levy to help fund the project. Superintendent Staggs said he thinks Murray is reluctant to advertise for bids because if they come in significantly lower than in nearby Clay and Washington-Nile, it would expose what he believes to be the PLA-inflated bids in those other districts.

Murray disputed that. He noted in interviews with this office that he questioned the site from the outset of his tenure at the OSFC, before New Boston had backed away from the PLA. New Boston’s wavering commitment to the PLA, he said, had nothing to do with his concerns about the site. Although the project had advanced through several planning and design stages before his arrival as director, Murray added, none of the plans had been formally signed off by the OSFC. Given that the site presented numerous drawbacks – in particular, the need for expensive excavation and a retaining wall – Murray said he had a responsibility to ask questions. Ultimately, the upward adjustment in the cost estimate in June 2010, he said, reflected what had been his contention all along – that the site will be exceedingly expensive to make buildable, and that every dollar spent on site preparation is one less dollar available for the school itself.

Allowing OSFC construction management companies to bid as contractors

After signing a PLA, the OSFC received few inquiries from contractors interested in bidding on the \$37 million project for the Ohio School for the Deaf, and the Ohio State School for the Blind in Columbus.

In an effort to encourage more bidders, Pasquale Manzi of the Ohio Building & Construction Trades Council called contractors. But the OSFC still received few bids by the June 29, 2010 deadline, so Murray extended the bidding period to July 22, 2010.

Additionally, Murray waived an OSFC policy that prohibits construction management companies under contract with the OSFC from also bidding on projects as a construction contractor. Some construction management companies, which oversee and manage projects for the OSFC, also have their own construction divisions. To avoid conflicts of interest, the OSFC traditionally barred these companies from bidding on OSFC jobs as both a construction manager and contractor.

The goal of opening up bidding to construction management companies was to increase bidder competition. But this action was highly unusual, if not unprecedented, in the history of the OSFC. We were unable to find any other instances when the OSFC had opened bidding to its construction management companies. The impact of this exception to policy and procedure remains to be seen.

Given the prolonged economic downturn, the dearth of construction jobs and the money at stake, the lack of interest from contractors was remarkable. Rural school districts sometimes suffer from a lack of competition, but not generally projects centrally located in Franklin County or other urban areas. Murray acknowledged to this office that contractors are sometimes reluctant to commit to using local union labor, and, as a result, PLAs may limit bidding competition.

Findings

As director, Murray wields broad authority and considerable discretion to manage the OSFC as he sees fit. With his authority comes a responsibility to perform his duties in good faith. The instances described above demonstrate a pattern of Murray intervening in OSFC projects in a manner that gave the appearance of favoring unions, trades and union contractors.

A new OSFC director replacing the chief legal counsel would ordinarily be routine and perhaps expected, especially given Murray's personal history with him. But boasting at union meetings about firing him was another matter.

When Murray personally ordered the reassignment of a project administrator based on a complaint from Ralph Cole, his former union boss, Murray delved even further into matters one would not expect from a director. Murray justified his involvement by describing the employee as someone with a strong personality; and because J&H owner Hadsell complained that "Stacey's this and Stacey's that." But when asked about why he never confronted her with his concerns, Murray said the reassignment was not punitive. These explanations are contradictory. Remarkably, Murray admitted to reassigning her "midway through several projects" based solely on Hadsell's complaints (secondhand, via Ralph Cole), without investigating the merits of the complaints and without consulting the affected local school districts. Even a cursory review would have revealed J&H's long history of confrontations on OSFC projects, involving multiple construction managers; and the project administrator as an OSFC employee with a positive employment history of more than 10 years.

Later, Murray intervened on behalf of the same contractor when he chastised an OSFC construction manager for criticizing J&H during mediation. Murray intervened yet again on behalf of the contractor when he halted the issuance of a 72-hour notice for the Wheelersburg project. Coming to the union-affiliated contractor's defense was particularly striking because of the company's ties to Murray's former superior in the union hierarchy. There was no evidence of improper political influence or quid pro quos, but Murray exercised poor judgment in

repeatedly and personally coming to the defense of the contractor. At minimum, Murray provided ammunition to a growing number of critics accusing him of carrying out a pro-union agenda, thereby damaging the OSFC's credibility with local school districts, non-union contractors and the general public.

Further feeding the perception that Murray was personally advancing union or specific trade interests, Murray hastily suspended the use of ICFs. Murray, during interviews with this office, said he suspended the use of ICFs based on complaints from the Ohio Masonry Association, which represents union and non-union masons, without making any effort to independently verify their claims. Murray also said he was concerned about ICF bidding language that limited eligible bidders.

In New Boston, Murray intervened late in the process to second-guess the site selection for a new K-12 school. Local school officials suspected a pro-union agenda at work, although evidence of this is circumstantial. Whatever the merits and motivations of Murray's questions, he nonetheless betrayed the trust of local school officials by hiring a consultant to help settle the contentious debate – and then secretly steering the consultant's conclusions to bolster his own position. Postponing bidding further so another consultant could conduct yet another study – after Murray's alternative site no longer was available anyway – was a pointless and costly exercise. In the end, after months of debate and thousands of dollars in consulting fees, Murray remained a lone voice speaking out against New Boston's preferred site, with little objective evidence to support his position. Murray also usurped the local school district's authority to select a site when – without involving local school officials – he enlisted the village mayor and a formal school board member to help him scout for alternate locations. Murray eventually capitulated, but the OSFC revised the project cost estimates upward. Now, more than a year and a half after New Boston voters approved a levy for the project, the district is mired in a cost-cutting process before it can advertise for bids, with the prime construction season slipping away.

For the \$37 million project for the Ohio School for the Deaf, and the Ohio State School for the Blind, Murray's intervention in the bidding process appears to be an effort to increase

competition. Trying to ensure the success of the project is a laudable goal. But attempting to artificially prop up a PLA is not the same as trying to ensure a successful project, and in fact may undermine a project. Clearly, Murray has a professional stake in this beyond a typical OSFC project, and he sidestepped policies and procedures when he permitted OSFC construction management companies to compete as construction contractors. More troubling, as a result of Murray's action, money was directly funneled to the union to which he belongs, creating an appearance of impropriety; Murray should have recused himself or disclosed the extenuating circumstances and sought Commission guidance or approval.

Accordingly, we find reasonable cause to believe wrongful acts or omissions occurred in this instance.

We also find an appearance of impropriety.

Allegation 3: The OSFC lacks appropriate checks and balances for consistently evaluating bids and managing projects.

We identified the following steps in the process where conflicts or problems arose, and examined whether shortcomings in OSFC policies and procedures contributed to the wrongful acts and omissions described in this report:

Evaluating bidders

The OSFC hires construction management companies (öCMsö) to run school construction projects. The OSFC relies heavily on the CMs at every stage of the process, including in the selection of winning bidders. Typically, OSFC-funded projects are broken down by type of work, such as general trades, plumbing, electrical, and heating and air conditioning. The OSFC entertains bids for each of the separate categories. The CM and local school district pick the lowest responsive and responsible bidder for each. Combined, the winning bids must not exceed the total estimated project cost by more than 10 percent, or the OSFC will rebid the project.

Our investigation found that CMs and local school districts lack a standard checklist or other instrument to help determine the lowest responsive and responsible bidder with appropriate consistency. Although some CMs have developed their own evaluation forms, there are more than 50 CMs currently working for the OSFC on projects in dozens of local school districts. The OSFC could improve the bid evaluation process by creating a standard checklist or form that would be used by all CMs on all projects.

Tallying bids

The Washington-Nile Local School District, which signed a PLA, opened bids on January 13, 2010. To this day, there is disagreement among the OSFC and its construction manager about whether the bids exceeded the OSFC's cost estimates by more than 10 percent. What should be a straightforward mathematical calculation has been an ongoing source of confusion.

Ultimately, J&H was the low bidder for general trades when the bids were opened January 13, 2010, but was 22 percent over the OSFC cost estimate. Most of the other components of the winning bid package — plumbing, fire protection, electrical, heating and air conditioning — were within 10 percent of the estimate, as required by the OSFC. But J&H came in so high that it pushed the entire bid package 11 percent over budget.

This reverberated through the OSFC and other local districts preparing to bid. Immediately in response, the advertisement for bids in the Clay school district was pulled and the cost estimate was increased by the OSFC. New Boston backed away from plans to sign a PLA. Meanwhile, the Washington-Nile district was forced to re-advertise for bids because the low bids apparently exceeded the OSFC cost estimate by more than 10 percent.

In April 2010, the OSFC opened the second round of bids. This time, after the OSFC increased the cost estimates by about \$700,000, the bids came in at 5 percent over estimate (\$12 million in bids versus an \$11.5 million estimate). J&H, which was the low bid for general trades in January, lost this time to Geiger Brothers.

J&H later complained that its winning bid for general trades in January (\$7.49 million) was actually lower than the Geiger Brothers' bid (\$7.6 million) that won in the rebidding. In May 2010, Don Hadsell of J&H wrote a letter, saying it had been an "improper decision" to reject all the bids in January and offered to honor J&H's original winning bid from January. OSFC officials said they made some inquiries about whether this would be possible, but were told it would be illegal and/or improper.

In an interview with this office, Murray said he now believes that the original round of bids in January fell within 10 percent of the cost estimate, meaning the rebidding was unnecessary after all. The OSFC's construction manager, dck north america LLC., disagrees.

Regardless of who is correct in this instance, these competing arguments reflect a bidding process in need of tighter procedures. Comparing the total bid amounts to the total cost estimate should be a matter of a simple mathematical calculation. The fact that it is not could lead to costly legal disputes in this and other projects.

Tracking contractor performance

To effectively evaluate bids and promote quality construction, the OSFC, its CMs and local school districts must have the ability to review a contractor's past performance on OSFC projects. CMs and local school districts evaluate contractors. Historically, the OSFC has posted evaluations on its web site, providing an important resource. But the web site lacks basic features that would dramatically improve its usefulness. For example, evaluations prior to September 1, 2009 are not searchable by contractor name. The OSFC site also lacks other potentially helpful information. Gathering together documentation of performance issues, such as 72-hour notices issued to uncooperative contractors and claims filed by contractors, would provide a central repository of key performance indicators, and add a greater level of transparency to the process.

Disqualifying bidders

In May 2010, Jeffrey Carr Construction (öCarrö) was the low bidder for an OSFC project but was prompted to withdraw because of allegations that it was not a responsible bidder and therefore did not qualify for an OSFC contract. Yet that same month, Carr was awarded a contract for another OSFC project. The OSFC's handling of the two projects demonstrates a lack of policies and procedures for disqualifying bidders, which can result in inconsistencies and unequal treatment.

On March 9, 2010, Carr submitted a \$4.8 million bid for the general trade portion of the Liberty Union-Thurston Local School (öLibertyö) construction project in Licking County. Smoot Elford McDaniel's (öSmootö) was the OSFC's construction manager assigned to the Liberty project.

On April 29, 2010, Carr submitted a \$5 million bid for the general trade portion of the Tuslaw Local School District (öTuslawö) construction project in Stark County. Scaparotti Construction Group (öSCGö) was the OSFC's construction manager assigned to the Tuslaw project.

Following the opening of the bids, each firm's construction manager began the evaluation process to determine the lowest responsible bidder. On May 4, 2010, Smoot issued a önotice to proceedö letter to Carr, notifying the company that it won the contract for the Liberty project. On May 27, 2010, based in part on the recommendation of SCG, the Tuslaw Board of Education adopted a resolution to reject Carr's low bid because Carr was non-responsible. Carr representatives disagreed with the decision by SCG and the Board, especially in light of Carr being awarded the Liberty project that same month.

On April 30, 2010, an OSFC staffer discussed in an e-mail that Carr was suspected of bid collusion on the Tuslaw project. Massillon Construction and Supply, which was owned by Theresa Carr, had been the low bidder but abruptly withdrew on April 29, 2010 (Exhibit 22). As a result, Carr (owned by Jeffrey Carr, the husband of Theresa Carr) was the low bidder. In the same e-mail, the OSFC staffer says Jeffrey Carr's öreputation precedes him and we have too

many GOOD general trade contractors who have bid on this project that do not deserve this kind of deception if it proves that the Carrs [sic] are related in some manner.

In e-mails, OSFC officials discussed consulting with internal legal counsel and suggesting involvement by the Ohio Attorney General's office about whether Carr should be deemed non-responsible. But the inquiry ended when Carr negotiated to withdraw its bid to avoid being designated "non-responsible" by the OSFC. On June 11, 2010 the local school board adopted a resolution to accept Carr's request to withdraw its bid.

The OSFC, the construction manager and Tuslaw local school officials never proved collusion. The mere occurrence of two bidders being related, and one withdrawing, certainly is not tantamount to collusion. Contractors withdraw bids for various reasons such as pricing error, labor availability based on unforeseen workload, *et cetera*.

But whatever the merits of the collusion allegation, it makes no sense for the OSFC to participate in the removal of Carr from the Tuslaw project for being non-responsible, and in the same month award Carr a contract for the Liberty project.

Notice to proceed

On February 28, 2010, the Hardin-Houston Local School District in Shelby County awarded contracts to prime contractors selected by the district, the OSFC and its construction management company. Shortly thereafter, the OSFC issued the winning bidders a "notice to proceed" with work on the school for grades kindergarten through high school (Exhibit 23).

On May 25, 2010, the full Commission voted against awarding a contract to one of the winning bidders, Ferguson Construction. The Commission cited concerns about Ferguson's failure to

meet the state's goal of hiring minority-owned or disadvantaged contractors (as designated by the state's EDGE program⁵) for at least 5 percent of the work on construction jobs (Exhibit 24).

Ferguson fully disclosed the shortfall from the outset. EDGE participation is a goal, not a requirement. Additionally, the OSFC staff's "EDGE waiver committee" had formally granted Ferguson a waiver on April 29, 2010, saying Ferguson made a good faith effort but was unable to hire enough EDGE subcontractors (Exhibit 25).

But two months after the OSFC staff had issued a "notice to proceed" with work, and despite the EDGE waiver, the Commission rejected Ferguson's contract for falling short on the EDGE goal. Hardin-Houston officials protested the Commission's rejection, afraid of delays and inflated costs. Fortunately for Hardin-Houston and the OSFC, Ferguson continued working while trying to resolve the EDGE concerns. On June 24, 2010, after a month of negotiations, the Commission agreed to approve Ferguson's contract. The Commission attached an agreement with additional reassurances that Ferguson would continue efforts to boost EDGE participation (Exhibit 26).

Findings

In several respects, the OSFC relies on a system prone to oversights and inconsistencies that can undermine school construction projects and increase costs. In particular, the OSFC 1) lacks a standardized bid evaluation process; 2) fails to compile and make readily available documentation of a contractor's past performance that indicates whether a contractor should be deemed a responsible bidder; 3) lacks a standardized and consistent process for disqualifying "non-responsible" bidders; and 4) issues contractors notices to proceed with work before the contracts are finalized. A lack of appropriate policies and procedures made the OSFC and Murray vulnerable to allegations of wrongful acts and omissions, and left them poorly positioned to defend themselves.

⁵ EDGE (Encouraging Diversity, Growth and Equity) is a state program that sets goals for contracting with companies that are certified by the state as economically and socially underutilized. In general, prime contractors for OSFC projects are expected to exceed 5 percent participation by EDGE-certified companies or demonstrate a good faith effort to meet the goal.

Accordingly, we find reasonable cause to believe wrongful acts or omissions occurred in this instance.

Allegation 4: Gary Coleman, a union official and Shawnee State University board of trustee member, attempted to bully local school district administrators, contractors and elected officials in an effort to promote union labor for government construction projects.

Confronting a non-union contractor

On or about October 8, 2009, Gary Coleman, a business manager for Laborers Union Local 83 in Scioto County, showed up at the Clay school building site and confronted the owner of Solid Rock Construction Services. The Portsmouth merit shop was doing site preparation work that included building a permanent retaining wall. Coleman accused Solid Rock of subcontracting out the work to a company that used illegal immigrants. At the job site, Coleman shouted profanities at the owner within earshot of several people. According to accounts from Solid Rock owner Bill Whitaker and two employees, Coleman declared "war" on Solid Rock and referred to the workers as "Mexican n-----rs." Coleman also mocked Whitaker's devout Christianity by shouting "f---k your Jesus."

Coleman, in an interview with this office, confirmed the profane and blasphemous tirade but adamantly denied using the racial slur. In any case, the allegation that Solid Rock subcontracted the job to a company that used illegal workers was not borne out by the certified payroll records maintained by OSFC. The OSFC later provided those records to the union officials in response to their public records request. According to the payroll records and our interviews with Whitaker, Solid Rock did not subcontract the job, but rather hired the workers on his payroll.

Coleman also alleged a conspiracy whereby Clay officials awarded Solid Rock the contract as a political favor to local state Representative Todd Book. As evidence, Coleman noted that Book's father was one of the employees Solid Rock hired for the job. Coleman offered no other credible evidence to support the allegation. It also is worth noting that in winning the contract as

the lowest responsible bidder, Solid Rock beat out a company owned by Boone Coleman, Gary Coleman's uncle.

Confronting local school officials

As previously mentioned, on October 16, 2009, Coleman accompanied OSFC Director Murray to a meeting with Clay school officials in the Clay superintendent's office. At the time, Clay was preparing to bid the project and had debated whether to adopt a PLA. The meeting included Superintendent Tony Mantell, Board President Kevin Craft and Clay High School Principal Todd Warnock.

By all accounts, the discussion quickly degenerated into a hostile barrage of profanities by Coleman, while Murray sat silently by his side. Clay officials said they were stunned by Coleman's remarks, and even more so by what they viewed as Murray's tacit approval. Coleman's tirade continued for about 15 minutes, while students walked the hallway just outside the door as they headed to classes. Coleman complained specifically about Clay hiring a non-union company for site-preparation work. Like the Solid Rock employees, the school officials later remarked about Coleman's use of the slur "Mexican n---rs."

Coleman again acknowledges his hostile and profane confrontation, but denies using the racial epithet. With this being the second such incident, and there now being six witnesses saying they have heard Coleman hurl the term "Mexican n---rs," Coleman's denials are not convincing.

Murray, for his part, also acknowledged Coleman's confrontation and coarse language with Clay officials, but said he was so embarrassed he "intentionally withdrew" into a shell and could not recall whether Coleman used the racial slur. "It was not my proudest professional moment," Murray said. Murray said he didn't intervene at the time because:

"Gary had a head of steam up and I'm not sure how, I'm not sure how he would have --- how he would have reacted to, you know, my attempting to control, you know, his --- you know, his expressions. And, you know, everybody was adult in that room and, you know,

he was --- he was letting them know something about, you know, the local area, you know, in ways that could have been far more professionally --- the message could have been far more professionally delivered than it did. I look back at it as if he used, you know, if he used me to get in the door to express what he might not have otherwise had, you know, that was unfortunate.”

Confronting a local elected official

On May 4, 2010, Carl Pertuset won the Republican primary for the Scioto County Commissioner race. That night at the courthouse, Gary Coleman introduced himself to the victorious Pertuset and, according to Pertuset, told him he would find \$20,000 in his lap if he would support the union. Pertuset replied that he supported all workers, and Coleman withdrew the offer and walked away. The Scioto County sheriff heard and verified the conversation. Coleman, in an interview with this office, acknowledged making the offer, although he said it may have been for \$15,000. Coleman said he was not offering cash, but merely offering to raise campaign contributions for Pertuset.

Findings

Coleman's behavior in all three incidents was outrageous and inexcusable, and not befitting a board member of Shawnee State University. Advocating on behalf of union laborers is his job as the business manager of Local 83, but his tactics were unethical and an affront to common decency. Coleman's denial about using a rather specific racial slur is unconvincing (he insists the six witnesses to the two separate incidents were all lying) and is almost beside the point. Regardless of the racial slur, Coleman's behavior — even as described by Coleman — was an inappropriate effort to intimidate local school officials. Equally troubling, Murray ignored Coleman's tirade at Clay and continued to associate with the hot-tempered son-in-law of his former union boss. Coleman repeatedly demeaned his position as a public official.

Accordingly, we find reasonable cause to believe wrongful acts or omissions occurred in this instance.

IV. OTHER MATTERS

On March 26, 2010, this office sent the OSFC a list of employees we wanted to interview. That same day, OSFC Chief Legal Counsel John Eufinger pulled aside employees to talk with them. At least one employee felt it was an attempt to coach and/or intimidate the employee before speaking with this office. So a few days later, our Chief Legal Counsel Lora Manon called Eufinger to our office to explain to him that he needed to be careful to avoid interfering with our investigation.

Yet two other witnesses later raised similar concerns. Although they were understandably reluctant to discuss what had happened, when questioned by our office they described what they considered coaching or intimidation by Eufinger just prior to their interviews. One of the employees told us that Eufinger reminded him that his testimony would be a public record, and that Murray would be reading it and could fire him.

None of the employees claimed they were specifically or explicitly threatened, and in any case there is no way for us to independently verify the nature of the one-on-one conversations with Eufinger. But it is troubling and noteworthy that three employees separately complained about incidents ó two of them even after our office had cautioned Eufinger.

V. CONCLUSION

As director, Murray has repeatedly allowed his union ties to undermine the credibility of his position and that of the OSFC. Murray was instructed upon his appointment to treat unions as "constituents" or "stakeholders." Instead, Murray conferred upon unions a favored status, at the expense of non-union competitors, local school districts, and the OSFC's own guidelines. In 2007, for the first time, the OSFC introduced prevailing wage and PLA provisions as options for OSFC-funded projects, but left the decision up to local school districts. Murray, who oversees \$2.8 million a day in construction spending, abused his authority by repeatedly acting as a go-

between for union representatives and participating in PLA arm-twisting sessions with local school districts.

The one-sidedness of Murray's involvement resonated throughout the OSFC, and among its partners and contractors, sending a clear and powerful message about Murray's union preferences. Murray made significant building-design and personnel changes based solely on unsubstantiated complaints from union contractors and trade groups. Murray unabashedly did the bidding of union bully Gary Coleman, a Shawnee State University trustee who shouted profanities and tried to intimidate local officials and non-union contractors on PLA matters. It appeared to some local school districts that the OSFC under Murray began to associate "quality construction" with "union labor," without any evidence from OSFC to support the position. In this new era of prevailing wages and PLAs, Murray inappropriately chose sides, rather than professionally navigate the OSFC through politically sensitive territory, and failed to defer to local school districts on prevailing wage and PLA matters, as decreed by the Commission.

On May 10, 2010, Murray created a potential conflict by signing a PLA for the \$37 million project for the Ohio School for the Deaf, and the Ohio State School for the Blind project in Columbus. The PLA will result in payments to the union Local 423 to which Murray belongs, as well as to his former union employer, LECET, and another affiliated union group. The money will come primarily from hourly employee payroll deductions, so the total value will not be known until the project is completed. But we conservatively estimated the payments could total \$145,000. The arrangement is not unusual for a PLA, but, given Murray's ties to these union groups, he should not have negotiated or signed the contract. His involvement created an appearance of impropriety.

VI. RECOMMENDATIONS

Based on the results of our investigation, we are making the following recommendations and request that the OSFC respond to this office within sixty days with a plan on how these recommendations will be implemented:

1. The Commission should take action to ensure the executive director demonstrates neutrality regarding school districts' selection of contractors, regardless of union affiliation and prevailing wage or PLA matters.
2. The OSFC should standardize its evaluation of bids, and its oversight of contractor performance. In particular, the OSFC would be well served to: 1) develop a standard checklist or form for selecting a lowest responsive and responsible bidder, focusing on objective criteria; 2) compile and make readily available documentation of a contractor's past performance, such as 72-hour notices, claims filed against the contractor, claims filed by the contractor against the OSFC, *et cetera*; 3) ensure a consistent evaluation process for active projects by including input from the construction manager, the project administrator, the architect, and a local school district representative; 4) develop a method for systematically tracking and analyzing a contractor's past performance, including evaluations, which should be considered in awarding future contracts; and 5) clarify and standardize the process for disqualifying "non-responsible" bidders.
3. To evaluate further the prime contractor's quality of work, OSFC should develop an evaluation form to document problems that occurred after occupancy. The form should be completed by the corresponding local school district and used by OSFC during the evaluation process as additional documentation when determining the responsibility of the contractor. OSFC should determine the corresponding intervals for the completion and submission of the form.

VII. REFERRALS

We are forwarding a copy of our report to the Portsmouth City Solicitor's Office for its review.