

File

912

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 17222

ARMANDO PEREZ, et al.,
Plaintiffs,

v.

BOSTON HOUSING AUTHORITY,
Defendant

FINAL ORDER and JUDGMENT

COPIES
ISSUED
no sent
9/21/90
L.S.
J.S.
A.L.J.
J.W.
C.L.

R.C.B.
C.B.L.S.
R.K.E.
G.S.I.E.B.
D.T.
T.R.
M.M.

C.H.S.
M.E.S.
D.D.S.

M.L.O., G.V.P.
J.J.M.

W.C.P.L.G.
J.M.R.
J.W.F.I.
A.M.C.

G.C.
G.L.S.
F.T.G.
R.P.A.
D.S.H.
M.W.

H.E.C.
M.L.C.G.P.

R.M.D.
R.S.
M.C.P.

P.M.C.
J.M.R.
J.W.T.

W.C.P.L.G.
J.O.I.N.

S.B.V.C.
F.S.M.
J.M.M.
S.T.

I. INTRODUCTION.

This Order terminates the Superior Court's active supervision of the Boston Housing Authority. It successfully ends fifteen years of litigation, and the effort supervised by this Court to bring decent, safe and sanitary housing conditions to Boston's public housing residents.

Entry of this order follows notice to class members, including individual notice to all current BHA tenants, and a hearing on the proposed order. Prior to and at the hearing, affected individuals were permitted to file objections to or comments upon the proposed order.

A Final Order in this case is made possible by the BHA's extensive achievements during the 1980's, first under a receivership directly supervised by the Court and then during a restorative period in which the Mayor of Boston assumed the powers of Receiver and appointed an Administrator, Doris Bunte, to exercise those powers. Just as fundamentally, the BHA's tenants have helped assure that the BHA adhered to proper priorities, effectively have participated in the political process on issues

PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 58(a) AND NOTICE OF ENTRY OF JUDGMENT PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 77(g) AS FOLLOWS:

KP

such as obtaining money for public housing renovations, and otherwise have played a vital role in assuring the success of the receivership effort. Essential funding support came from the federal and state governments, through the U.S. Department of Housing and Urban Development (HUD) and the state Executive Office of Communities and Development (EOCD).

The Court's orders regarding receivership and restorative governance of the BHA were superceded on May 23, 1989, when Governor Dukakis signed a Home Rule Petition restructuring the BHA's governance (Chapter 88 of the Acts of 1989). Today's order completes the Court's withdrawal from any ongoing supervisory role, which again will become fully the responsibility of the executive rather than the judiciary. The order also incorporates as directives some of the lessons learned during the past decade. This is done to increase the likelihood that the tragic decline of public housing which occurred prior to receivership never will be repeated under a future City administration, and that the BHA will carry out the actions needed to provide and maintain decent, safe and sanitary public housing.

The undersigned is the third Superior Court Justice assigned to this action. Justice Paul G. Garrity presided from the commencement of this action until his departure from the bench in 1985. At that time, the action was specially assigned to Associate Justice Harry J. Elam at Justice Elam's request. The undersigned took over responsibility for this action by special assignment in the fall of 1988 upon Associate Justice Elam's retirement. Given these transitions, I have relied heavily upon

the work of the prior justices in this action, as well as on the representations and proposals of counsel and my own observations, in crafting the present order.¹

II. HISTORY OF THE CASE.²

A. Pre-Receivership Phase

As early as 1967, a privately sponsored study of the BHA indicated severe management problems, with maintenance far below acceptable standards. Additional studies in 1972 and 1973 confirmed these problems. In the early 1970's, tenants brought suits in state and federal court in which they demonstrated deplorable public housing conditions. The courts, however, were not ready to impose remedies. The courts found that they could

¹ Mayor Raymond L. Flynn, BHA Administrator Doris Bunte, former Associate Justices Paul G. Garrity and Harry J. Elam, former Receiver Lewis H. Spence, present and past counsel for the parties, the BHA Monitoring Committee, the Boston legislative delegation, and countless tenant leaders, officials at state and federal funding agencies, and BHA senior staff and employees are to be commended for their contributions to reforming Boston's public housing.

² It is appropriate as part of this final order to recount briefly the history of the case. That history is extensively documented in a number of the Court's prior rulings, as well as in the rulings of the Supreme Judicial Court relating to this case (any such rulings will be referenced as Perez). See, in particular, Findings, Rulings, Opinion and Orders (Perez, March 28, 1975); Findings, Rulings, Opinion and Orders (Perez, July 25, 1979); Perez, et al. v. Boston Housing Authority (hereinafter, Perez, II"), 379 Mass. 703 (1980); Order of Appointment of Receiver (Perez, February 5, 1980); Findings, Rulings and Orders (Perez, as of October 18, 1984); Findings, Rulings and Orders (Perez, January 5, 1987); Findings, Rulings and Orders (Perez, December 30, 1987).

not order BHA's funding agencies to provide additional money or compel BHA to make management changes, or determined that tenants had not exhausted other potential means of relief such as additional tenant participation in BHA decisions or newly legislated or judicially developed remedies. See Perez, Findings, Rulings, Opinion, and Orders, July 25, 1979, pages 1 to 7; West Broadway Task Force, Inc., et al. v. Commissioner of the Department of Community Affairs, et al., 363 Mass 745 (1973); Boston Public Housing Tenants Policy Council, Inc. v. Lynn, 388 F. Supp. 493 (D. Mass 1974). Bromley-Heath Modernization Committee v. Boston Housing Authority, 459 F.2d 1067 (1st. Cir. 1972).

On February 7, 1975, Armando Perez and eight other named residents of several of the BHA's developments, on behalf of all BHA current and future tenants, filed the complaint in the Housing Court of the City of Boston which commenced this case. The Complaint sought to have remedied widespread violations of the State Sanitary Code in BHA apartments and common areas, and claimed that the alleged Sanitary Code violations "caused irreparable physical and/or emotional injury" to those residing in the developments.

After hearing, the Court confirmed these conditions and ordered the Department of Community Affairs (DCA), the predecessor of EOCD, to fund such efforts. The Supreme Judicial Court reversed this decision as to required DCA funding, see Perez, et al. v. Boston Housing Authority, 368 Mass. 333 (1975), but remanded to the Housing Court for further proceedings.

The Housing Court, in the meantime, had appointed a Master in the case (Perez, Order of Reference, May 22, 1975). The Court issued various orders directed toward improving the BHA's performance, but the BHA could not or would not carry out such orders. After issuance by the Master of a comprehensive report documenting the BHA's shortcomings, a detailed Consent Decree covering most areas of BHA operations was negotiated. The Consent Decree became effective on June 1, 1977. See Perez, Findings, Rulings, Opinion and Orders, July 25, 1979, pages 10-15; Perez, Order and/or Decree, May 10, 1977.

The BHA, the Master and the Court struggled within the framework of the Consent Decree for two years. During this time, conditions at the developments deteriorated dramatically. Finally, in its July 25, 1979 Findings, Rulings, Opinion and Orders (page 102), the Court determined, after 34 days of trial, that

"The history of this case and the repeated efforts by the (plaintiff class of) tenants over the years in seeking and following up every remedy short of receivership in order to obtain safe, sanitary and decent housing as mandated by law requires that they be permitted the only remedy which has not yet been attempted."

The Court decided, on the basis of overwhelming evidence including many visits to and observations of conditions in most BHA developments, that the Authority was unable to perform with any competence or consistency the basic functions of a public housing authority. The Court found that many of the common areas and most of the apartments situated in the BHA's developments were unsafe, unsanitary, indecent and in violation of basic standards of habitability.

The BHA's conditions have improved in the past decade to such an extent that it is easy to forget how intolerable conditions had become by 1979. For that reason, the Court includes as Appendix 1 Judge Garrity's memoranda of recorded observations at various developments from its site inspections during the Spring of 1979. Excerpts from the site visits to the Commonwealth and Mission Hill Extension developments provide the flavor:

"We are now entering apartment 392 with the tenant's permission. The walls in this apartment have flaking and chipping paint. I am now entering a vestibule just off the bathroom. The walls in the vestibule appear to be disintegrating as a result of leaks. I have just entered the bathroom which is literally disgusting. There is an entire section of the wall just in back of the toilet which is totally destroyed. There is a hole in the wall about one foot wide and three feet high, revealing pipes to the toilet. The pipes in the wall are leaking and appear to have been leaking for a substantial period of time. There appears to be substantial danger to the occupants from an electrical fixture over the bathroom cabinet. Over the window in the bathroom there appears to be tile which has fallen down. The floor appears to be substantially ravaged also as a result of leaks. Much of the floor tile is missing. The condition that I am observing appears to have been like this for a fairly long period of time. I am now entering the kitchen of this apartment. One of the interior walls of the kitchen abuts the interior wall of the bathroom. The tenant of this unit has just emptied out one fairly large, approximately one-half gallon in size, container full of water which container was under a drip from the ceiling above the kitchen cabinets. The ceiling is flaking and chipping and very damp and the wall appears to be substantially disintegrated. Most of the floor tiles are substantially damaged."

"We are now approaching some high-rise buildings. The first building that I see, that I am observing, appears to be totally vacant. It is mostly boarded up except at the ground level where approximately half of the openings are unsecured. There is a fair amount of debris on the walkways as I observe it. At a basement at 68 Annunciation Road there is approximately six feet deep of rubbish and debris in the stairwell to the

basement, including broken furniture. We are now approaching 64 Annunciation Road. There is evidence of a mattress to the left of the entranceway to this building which appears to have been burned. The building is occupied in part. The front door to this building is off the hinges. In fact, there are no hinges and there is no wood frame around it. To my left, as we are walking in there is a vacant apartment that is filled with debris. I am observing the mailboxes which appear to be half vandalized and half rusted out. I am now at 54 Annunciation Road. There is evidence of another fire to the front of the entranceway here. There are the remnants of a motorcycle which appears to at one time have been secured to the front steps.

We are now about to enter the portion or a wing of the high-rise which has been totally rehabilitated. As we approach it I observe dumpsters that are overflowing and an abandoned automobile. The grounds are littered with much broken glass. There is an unbelievable stench coming from another building's basement. The basement of 54 Annunciation Road appears to be an open sewer, sludge on the floor and the stench of excrement. The basement is open. There are small children running around the grounds. It appears to be most unsafe." Perez, Findings, Rulings, Opinion, and Orders, July 25, 1979, pages 125-126 (Perez, Findings, Rulings, Opinion and Orders, July 25, 1979, first paragraph -- Appendix 1, Commonwealth); 151-152 (remaining paragraphs -- Appendix 3, Mission Hill Extension).

As conditions worsened, more and more of the BHA's units became abandoned. Vacancies tripled between 1975 and 1979 at a number of developments that had already had high vacancy rates. The Court noted:

As in 1975, many of the BHA's vacancies in 1979 could be prevented by the BHA's rehabilitating and rerenting vacant apartments quickly to persons on its waiting list of apartments for housing. Instead of housing those people, the BHA's incompetence in quickly rehabilitating and rerenting vacated apartments permit many such apartments to fall prey to vandalism and become non-repairable except at enormous cost.

Id., p. 98.

The well-documented record of horrendous conditions and the BHA's incompetence was exacerbated by the inability and

unwillingness of its governing body, the Authority's Board of Commissioners, to provide even the barest minimum of housing services to its tenants. Not only had the political leadership of the City abandoned the BHA in terms of police protection and trash collection services, but it had actively contributed to the BHA's deterioration by its reliance on the BHA for patronage hiring. With few exceptions, the Mayor's appointments to the BHA's Board of Commissioners were both unable and unwilling to govern the BHA in compliance with not only legal, but also humane norms. Receivership clearly was the last opportunity to retain the possibility of decent, safe and sanitary low-income housing for the approximately 10% of Boston's residents most in need of it. See Perez, Findings, Rulings and Orders, as of October 18, 1984 (hereafter the October 1984 Order), pages 3-6.

B. Receivership

The Supreme Judicial Court affirmed Judge Garrity's decision to appoint a receiver on February 4, 1980. Perez, II. The next day, Judge Garrity issued an order which appointed a Receiver, Lewis H. Spence, and delineated his powers and mandate. Perez, Order of Appointment of Receiver, February 5, 1980. This Order of Appointment made clear that the Receiver's basic mandate was to take any and all actions needed to bring conditions in housing units owned by the BHA into substantial compliance with the State Sanitary Code and with all other laws regulating the conditions and habitability of housing.

Because the Receiver was to have charge of all of the BHA's operations, his responsibilities were even broader. The Order of

Appointment (page 3) enumerated the following responsibilities:

"...(t)he Receiver shall, among other things, use his best efforts (1) to preserve or to rehabilitate for occupancy by low-income persons or families the maximum number of housing units as are consistent with the provision and operation of decent, safe and sanitary housing for all residents therein; (2) to reduce the frequency and severity of crime, vandalism and disorder within the BHA's developments; (3) to improve the relationship of the BHA's developments to the neighborhoods in which they are located; (4) to ensure that all residents of and applicants for housing owned, leased or financed by the BHA are provided equal housing opportunity consistent with legal requirements; (5) to develop and to improve the BHA's management systems, personnel standards, employee relations and tenant relations; and (6) to ensure, to the extent possible, that the BHA will continue to maintain and operate its developments in substantial compliance with all applicable laws after the termination of the receivership."

To accomplish these objectives, the Court gave the Receiver all the powers which the housing authority Board of Commissioners or executive director otherwise could exercise. The Court left the running of the housing authority to the Receiver, but conferred with the Receiver on an ex-parte basis and met with him at least weekly. The Court also required specific court approval of a few specific types of BHA actions such as acquisition or disposition of property. It required court assent for lawsuits against the BHA. Finally, it appointed a Housing Advisory Committee to assist the Receiver. This form of governance, with written reports to the Court every six months and annual court hearings on the BHA's progress, continued until October 1984.

The accomplishments of the Receivership are described generally in the October 1984 Order, pages 7 to 13, and more specifically in the Findings on pages 13 to 23 of that document. The Court describes these accomplishments as "both numerous and significant" (page 7). The accomplishments included stemming the

tide of increasing unit vacancies; obtaining control of vacant apartments by securing them; garnering significant funding for rehabilitation and reoccupancy of vacant apartments; and implementing "from conception to near completion" major redevelopment efforts at the Commonwealth, Franklin Field and West Broadway developments, thus reversing their conditions from "shocking physical and social decay" to "now...or soon" some of the best housing in the City (page 7). The Court also noted significant improvements in fiscal management, legal and legislative advocacy efforts, and "significant albeit preliminary steps toward the goal of creating greater racial integration of the BHA's developments." (page 9). The Court made clear that these accomplishments, along with many others too numerous to mention, were possible largely as a result of cooperation between the BHA and its tenants, including the plaintiff class representatives, local development tenant organizations and an emerging city-wide organization. The Court noted a number of resident initiatives, such as in the area of resident employment, which created landmark programs (page 10).

The Court also emphasized that there remained essential elements of the remedy of decent housing which had not yet been achieved. The Court specifically noted continued system-wide problems primarily in the areas of maintenance and field management, continued high vacancy rates, and continued serious deficiencies in housing conditions particularly at developments not undergoing redevelopment. The Court concluded that the substantial progress made by the BHA in receivership toward

providing decent housing warranted termination of the form of receivership previously ordered, but that "the BHA should be required to achieve the remaining objectives of the receivership during a post receivership, or restorative phase of this action" (page 13).

C. Restorative Phase

The introduction to the October 1984 Order (page 1) heralded the early months of Mayor Flynn's administration as a new political environment of "competence, concern and care" for the BHA and its tenants. To effectuate the restorative phase, the October 1984 Order gave the Mayor of Boston all the powers and responsibility previously provided to the Receiver, including the authority to employ and direct an Administrator of the BHA (page 25). The Order provided for this form of governance for a two-year period, during which time it was expected that a new form of governance would be decided upon and legislated for the BHA. Any such legislation was to become effective without prior action of the Court.³

The Court also issued a number of injunctive orders to the BHA, regarding State Sanitary Code compliance, vacancy reoccupancy and other BHA objectives. The Court retained approval for BHA demolition or disposition of apartments.

³ The Court stated that it was understood that the Mayor would appoint a monitoring committee to assist in monitoring the performance of the BHA. The Court indicated that it would not be proper for it to take a position regarding the shape of governance legislation, but that a direct line of accountability between the Mayor and the BHA with no intervening board, and a small committee with substantial tenant representatives which functions solely in a monitoring capacity "may be the most appropriate form of governance" (page 26). Lewis Spence stepped down as Receiver as of August 1984 and John Stainton acted in this position until Doris Bunte was appointed Administrator.

In November, 1984, based upon the October 1984 Order, Mayor Flynn appointed Doris Bunte to be the Administrator of the Boston Housing Authority. Mrs. Bunte's unique background included former BHA residency, service while a tenant as a BHA Commissioner who became so independent from City Hall that Mayor White tried to have her removed in 1971, and distinguished service as a state representative. Mayor Flynn also established a Monitoring Committee for the BHA by executive order in April, 1986, consisting of five tenant and four non-tenant representatives.

During the period from 1984 through the first half of 1989, the Court held hearings every six months on the progress of the BHA. The Court generally found that the BHA continued to make progress, but that significant goals of the receivership had not yet been achieved. When governance legislation was not passed by the end of 1986, the Court extended the form of governance mandated by the October 1984 Order for an additional year. The Court granted subsequent extensions of one year and six months, respectively, at the end of 1987 and 1988.

The Court's January 1987 Order notes substantial accomplishments in BHA maintenance performance and code compliance under its new Administrator. These included completion of living unit inspections for the first time in many years; a survey of the extent of Sanitary Code compliance throughout BHA developments; planning of a comprehensive code compliance program; a \$5 million code compliance funding commitment obtained from the Legislature through the leadership of the Administrator; and initial progress in that program resulting in a significant improvement in unit

living conditions. The Court noted modest improvements in vacancy reduction and the rate of commitment of capital (modernization) funds, partial completion of redevelopment efforts previously in progress, and completion of complex and extensive tasks needed to bring Columbia Point to the construction stage. The Court also noted lags in redevelopment for Mission Extension, Bromley Park and Cathedral developments. The December 30, 1987, Findings, Rulings and Orders reflect substantial additional progress in code compliance, as well as substantial progress in the commitment of modernization funds. Perez, Findings, Rulings and Orders, January 7, 1987; December 30, 1987.

Since the Court's last detailed Findings, Rulings and Orders in 1987, the BHA with the critical partnership of its tenants has made substantial further progress toward improving housing conditions. This progress will be detailed more explicitly in the Findings included below. It includes: continued substantial compliance with the State Sanitary Code; successful commencement and completion of construction of the Mission Extension/Bromley Park redevelopment; successful construction and conversion of Columbia Point to the Harbor Point mixed-income development and rehousing of previous BHA tenants; substantial improvements in the BHA's capital commitment program and, in particular, its force account (in-house construction) efforts; commencement of redevelopment construction at Orient Heights, Heath Street, Mission Extension low-rises and the third phase of West Broadway, and apparently, virtual completion of preconstruction redevelopment activities for Cathedral; and negotiation and

implementation of various fair housing agreements. In partnership with the Mayor's office and its tenants, the BHA also achieved consensus on and passage of home rule legislation to permanently restructure its governance.

III. FINDINGS

1. State Sanitary Code compliance

State Sanitary Code compliance is the heart of this case. The injunctive orders presently in effect require a showing by the BHA of substantial compliance with the State Sanitary Code as a precondition for a final order.

As Judge Garrity's site visits described in Appendix 1 make abundantly clear, the deplorable conditions at many BHA sites when receivership commenced amounted to total noncompliance with the State Sanitary Code. Thus, discussion of degree of compliance in 1979 at many of the sites would have been fruitless. In any event, the BHA had made no organized assessment of conditions and could not have answered questions regarding degree of compliance.

Between 1980 and 1984, BHA took steps to halt the spreading cancer of wholesale vacancies. Through its redevelopment efforts, BHA showed that, with sufficient funding and skillful management, it could successfully rehabilitate vacant and dilapidated buildings.

Nonetheless, while these efforts showed tremendous promise, at the time of the October 1984 Order, conditions in the majority of BHA's buildings and apartments remained in violation of the

State Sanitary Code. The BHA had not yet inspected all of its apartments, and its data collection form system did not provide sufficient information to determine any inspected unit's compliance. Many very serious problems in housing conditions still existed. A large backlog of work orders plagued BHA's efforts to respond in a timely fashion to new work orders. October 1984 Order, pages 12, 14.

During the restorative period, the BHA planned and undertook a comprehensive unit code compliance program with \$4.9 million in state funding appropriated for this purpose. BHA first instituted an annual unit inspection program, so that it could know the extent of code compliance. Then BHA systematically scheduled work by building and unit, and eliminated all outstanding work orders. The program has been completed except at Bromley Park, where it is virtually completed.

The BHA defines compliance with the State Sanitary Code as no outstanding work orders in a unit.⁴ The percentage of occupied family units in compliance, defined in this manner, was reported by BHA as under 50% in 1984 (estimated to be as low as 20% in some BHA materials), 53% in September 1985, 70% in December 1986 and approximately 90% during the two past years. Thus, since 1984, at least 3,500 additional occupied family units have been brought into and remain in compliance with the Code.

⁴ BHA's definition of "compliance" with the State Sanitary Code, no reported outstanding work orders for a unit, has some limitations. An entire building may have an electrical system which needs to be upgraded, or pointing work which results in repeated leaks. The work orders may be closed out when interim repairs are made, but the problem is not really fixed until the underlying source of the problem can be addressed. Systemic work often has had to be deferred to match modernization funding awards (footnote cont'd)

There are no similar statistics available for family development common areas. They also have been improved, although maintenance demands are consistent and substantial.⁵ The percentage of code compliance for more than 3400 occupied units at the BHA's developments designed for the elderly is approximately 90%.

2. State Sanitary Code Maintenance

Substantial compliance with the Sanitary Code only can be maintained over time with a consistent response to new work orders. At the beginning of the receivership, maintenance generally was managed on a crisis basis, with even emergency work orders sometimes unattended for weeks or longer. As of October 1984, average response time remained an unacceptable seven days for emergency work orders and fifty-six days for routine work orders.

4(Continued)

and carry out contracting requirements. Much work remains to be done at the BHA; a major infusion of capital improvement funds from HUD and EOCD still is desperately needed, as is quite apparent from examining the BHA's projection of capital improvement needs. See Appendix 2 infra. In addition, the accuracy of the code compliance standard of no reported outstanding work orders for a unit depends upon accurate work order reporting, including tenant reporting, entry of work orders in the central computer, annual living unit inspections and reporting by BHA maintenance workers of completed work orders.

⁵ The comprehensive code compliance program was carried out in the common areas of many of BHA's family developments until EOCD withheld approximately the last \$700,000 of a \$4.9 million grant it previously had awarded. The BHA has sued EOCD for release of those funds. See BHA v. Anthony, Superior Court Civil Action 88-2927 (1988), established as an ancillary action to the present case.

In recent years the BHA also has placed new emphasis on the immediate elimination of graffiti from the exterior of its buildings, and the cleanliness of its grounds. Graffiti is now removed routinely from building exteriors within 24 hours of its appearance, and grounds generally are considerably cleaner than several years ago.

During the restoration period, this performance was greatly improved. Response to emergency work orders consistently has averaged one day in all developments for the past several years. Response time for completed work orders since the completion of the concentrated code compliance program has averaged around seven days for family developments and eighteen days for elderly developments.⁶ To assure quality, maintenance superintendents have inspected significantly more than BHA's goal of ten percent of all completed work orders.⁷

3. Vacancy Reduction

Vacancy reduction is part and parcel of long-term Sanitary Code compliance and, therefore, of the primary relief sought in this action. The BHA's prerreceivership inability to keep developments fully occupied left them open to additional deterioration, vandalism and use for illicit activities, and thus contributed heavily to an indecent, unsafe and unsanitary living environment. Full relief for the plaintiff class of present and future BHA tenants must include the restoration of BHA's

⁶ A relatively small number of work orders (approximately eight percent of the monthly volume of new work orders) are outstanding for more than thirty days, the guideline established by the State Sanitary Code for completion of all requests for repairs.

⁷ This goal has been exceeded greatly in the aggregate, but BHA occasionally has fallen short of it at various family developments.

developments to full occupancy.⁸

During the years prior to receivership, vacancies in family developments spiraled -- from 13% in January 1977 (1,662) to 32% in January 1979 (4,380). Perez, Findings, Rulings, Opinion and Orders, July 25, 1979, Appendix 4, adjusted to fully count Columbia Point. The Receiver's Second Semi-Annual Report to the Court (Perez, February 1981), states higher vacancy numbers, including 4377 vacancies in family units other than Bromley/Heath by 1980.

The receivership stemmed the tide of increasing vacancies, a substantial accomplishment, but did not dramatically reduce them.

⁸ Full occupancy, within the context of this action, means that: (a) the BHA has brought all of its units to the standard of habitability so that they can be occupied, and (b) the units are rented out upon turnover or completion of rehabilitation. At any given time, there will be a certain number of vacancies in BHA's developments as tenants move in and out. HUD has established a 97% occupancy rate, or a vacancy rate of 3% or less, as the criterion for full occupancy, not counting units in on-schedule modernization programs, and has threatened to reduce operating subsidy for housing authorities that do not achieve this goal on agreed-upon timetables. See 24 CFR §990.118. Under its HUD-mandated Comprehensive Occupancy Plan, BHA intends to achieve this goal for all of its federally-assisted developments by March 31, 1992. There is no similar EOCD requirement for BHA's state-assisted developments, but BHA has set the same vacancy reduction goal internally. Achievement of these goals is heavily dependent on the progress and funding of several redevelopment efforts now in early stages or proposed.

Management considerations aside, there is a compelling human need for these BHA efforts. As of July 4, 1990, the BHA's waiting list was 13,713 for family developments and 2,452 for elderly developments.

Appendix 3 illustrates the BHA's problems and progress in increasing occupancy and reducing vacancies over the years.

At the time of the October 1984 Order, there remained approximately 3,850 family unit vacancies including 1,100 in Columbia Point. October 1984 Order, page 12.

Largely through the completion of redevelopment and vacancy rehabilitation efforts, the number of vacancies was reduced substantially during the restoration period. There are 1,796 vacancies in family developments as of June 30, 1990. Of these, 478 are or soon will be available for occupancy, 1,169 are in buildings funded for rehabilitation or held for relocation and thus are not being filled purposely, and 149 need but do not have capital funding commitments.

While the reduction in vacancies demonstrates very substantial progress, the number of vacancies increased after July 1988. The BHA states that this resulted from federal regulatory changes and requirements. BHA's fair housing agreements allow applicants multiple offers, which ties up available units. The agreements no longer allow applicants to choose developments, which has increased the offer refusal rate. Changes in HUD regulations governing tenant selection priorities required a temporary cessation of offers and an overhaul of BHA's waiting list.

BHA temporarily has beefed up its staff involved in reoccupancy of its developments, and progress has resumed. The BHA must continue to assess staffing patterns and seek additional resources if necessary to assure that it is taking every reasonable action to reduce vacancies as rapidly as possible.

4. Redevelopment

The receivership was faced with staggering vacancies and total physical and social disintegration at a number of BHA sites. A number of Boston's public housing sites originally were constructed as overly dense high rises for families. At many sites apartment sizes were not even close to Sanitary Code or contemporary standards, and common areas were so unassociated with specific units or buildings that they had become useless at best and often were paved over. The Receiver recognized that fundamental redesign and redevelopment would be needed to maintain viability at these developments over the coming years.

During both the receivership and the restorative period, the BHA has had unparalleled success among housing authorities in marshalling the necessary resources for redevelopment of its sites and in carrying out redevelopment. These efforts were preceded early in the receivership by a "Stabilization Program" at six of the BHA's most distressed family developments, with goals of making basic repairs, consolidating occupancy by filling buildings in some areas of the site and boarding others, and improving security. The receivership also obtained funding for the redevelopment of the Commonwealth and Franklin Field developments and partial funding for West Broadway, Mission Extension, Bromley Park, Cathedral and Columbia Point. The BHA's innovative use of existing state and federal programs and state legislative initiatives made each of these efforts possible. During the receivership, construction commenced and progressed on Commonwealth, Franklin Field and West Broadway.

During the restoration period, the BHA obtained additional funding for Mission Extension, Bromley Park, Cathedral and Columbia Point. In addition, at the urging of the BHA Administrator and others, the State Legislature provided very substantial capital funding for federally assisted BHA developments and made Massachusetts the national leader in this respect. Construction was completed for the three redevelopment efforts commenced during the receivership. Construction also was commenced and virtually completed for redevelopment of the second phase of West Broadway, the high-rises at Mission Hill Extension, and two buildings at Bromley Park.

As a result of these efforts, the BHA now has completed the redevelopment or partial redevelopment of five public housing sites -- Commonwealth, Franklin Field, West Broadway, Mission Hill Extension and Bromley Park. 1502 redeveloped units have been completed at these sites. These redevelopment efforts have included demolition of some high-rise buildings; reconfiguration of remaining high-rise buildings, to provide for large-family duplex apartments with direct outdoor access on ground levels and small family units above the second floor to reduce elevator usage by children and teenagers; reconfiguration of low-rise buildings to eliminate dangerous common corridors and provide large-family rowhouses with direct outdoor access and sometimes individual yards; and rationalization of sites to improve security and assign space to particular tenant families. These changes greatly improve the likelihood that the sites in question will offer viable public housing for many years. In addition to these

redevelopment efforts, entire areas of the Mission Hill and Charlestown developments, boarded up during the receivership's Stabilization Program, were renovated by BHA construction crews and reopened during the restoration period. These buildings contain 391 units.

The BHA also undertook and completed its development responsibilities for one redevelopment effort where the public housing site was converted into a privately owned, mixed-income community -- Columbia Point. Columbia Point was New England's largest and most visibly distressed public housing development. With the approval of the tenant representatives and this Court, the BHA negotiated for the retention of four hundred low-income units geographically dispersed throughout the 1283-unit development, with equal amenities to all market-rate tenants. Most fundamentally, all prior Columbia Point tenants had the right to move into the new development as long as they adhered to their public housing leases. The BHA negotiated a ground lease which included these provisions and gave BHA a potential share in future developer profits. The BHA also conceived and negotiated a subsidy plan, involving a "swap" of various BHA subsidies, new state legislation, a number of bond financing actions and other steps, which provided the financial underpinning for the continuation of the low-income units on a long-term basis. Construction is largely complete, and virtually all Columbia Point tenants who retained their rights to units in the new community (approximately 335) have been rehoused there. The BHA is charged with continued enforcement of the ground lease, to assure delivery

of the contemplated benefits of redevelopment to past and current BHA tenants.

In addition to these efforts involving 2,293 completed low-income units, the BHA has garnered funds for redevelopment or substantial rehabilitation of approximately another 800 units. These include approximately sixty units for West Broadway, 180 for Orient Heights in East Boston, at least eighty-seven for Cathedral, 293 for Heath Street, and 168 for the low-rise buildings at Mission Hill Extension (recently renamed Alice Heyward Taylor Homes). All of these jobs have commenced construction except Cathedral. Partial funding also is available for redevelopment efforts at Charlestown, Mission Hill and the remaining portions of Cathedral.

Of the redevelopment jobs largely conceived and funded during the receivership, only Cathedral remains in the preconstruction stage. The BHA and the chosen developer completed all preconstruction activities by September 1989. HUD determined, however, that the relocation and reconfiguration of nine of the proposed units, required for economy and fire safety, constituted a "major deviation" from the original proposal, and required rebidding. HUD proposed a means of rebidding which the Authority now is pursuing.

Even with the BHA's enormous redevelopment success, recognized but unfunded redevelopment needs remain. These include, most notably, redevelopment funds for Orchard Park and the completion of efforts at Bromley Park, Charlestown, Mission Hill, Orient Heights and West Broadway.

5. Capital improvements and modernization

A number of the BHA's serious Sanitary Code violations, such as roof leaks and heating deficiencies, only can be corrected effectively by the expenditure of modernization (capital improvement) funds. The BHA was provided relatively modest levels of modernization funds prior to the receivership by HUD and EOCD, but could not spend even these funds in a timely fashion. By the beginning of receivership, there was a substantial backlog of unspent modernization funds, and the awarding agencies had threatened to recapture these funds.

This performance improved substantially during receivership. Basic improvements such as large window, roof and heating jobs were completed. In many cases this work provided a sound basis for later unit code compliance work within individual apartments. There remained significant inefficiency in the execution of BHA's force account construction efforts.

During the restorative period, the BHA substantially increased its rate of commitment of modernization funds. Its force account program expanded to a level of nearly 400 workers and contributed to total modernization commitment levels of up to \$30 million annually. All fund obligation deadlines imposed by the funding agencies were met. Development conditions of all kinds, including roofs, heating, elevators, site improvements, electrical systems and the like, were upgraded effectively as a result of this work. In total, BHA obligated well over \$130 million in capital funds other than redevelopment during the past five fiscal years.

Nonetheless, as of the date of this order, much capital improvement work remains to be done. Many of BHA's family developments require a complete electrical upgrade to meet modern usage requirements; work is in progress but is not slated for completion until the early 1990's. Appendix 2 sets forth estimates of costs of capital improvements that are needed by the BHA.

Appendix 2 illustrates the need for substantial continuing federal and state capital investments in BHA's public housing stock. BHA will continue to face a Herculean task in keeping pace with the need to replace or repair aging systems to maintain development viability. In addition, the work will have to be implemented on a schedule meeting all federal and state requirements, and properly planned and carried out so that BHA obtains the most possible benefit from scarce modernization dollars.

6. Security

Prior to receivership, BHA's tenants had significant problems obtaining security resources from the Boston police. Early in the receivership, the BHA began to contract for police services with its operating subsidy funds. The BHA also began to build its own investigative and police force, and to evict tenants for cause (drugs, violence, etc.) for the first time in many years.

During the restorative period, Mayor Flynn has made clear that he recognizes BHA tenants' right to an equitable share of Boston Police services. In addition, the volume of work and

effectiveness of the BHA's Boston Housing Police has grown, to the point that in the fiscal year 1989 the Housing Police made 1,076 arrests compared to 421 arrests four years earlier.

The BHA's efforts to evict tenants for cause who are dealing drugs, violent or otherwise substantially disrupting others also have been expanded, to a present level of over 125 successfully resolved cases annually. These results have been made possible, in part, by a successful BHA effort to amend state legislation so that housing authorities can move against drug dealers under the nuisance statute (c. 139, sec. 19). BHA also obtained the second HUD regulatory authorization nationally for waiver of administrative, pre-court grievance hearings to expedite serious cause evictions.

The BHA needs federal and state funding in addition to its usual allocations of operating funds to continue these security-related efforts effectively. The availability of such funding has been a year-to-year proposition.⁹ The BHA and its tenants have emphasized repeatedly to this Court, and the Court now emphasizes, that the continuation and improvement of such efforts is essential and that the necessary resources must be found.

7. City services

Police services are the most vital city service, but only one of several to which BHA tenants are entitled but were not

⁹ The program has been funded in part by \$2 million from HUD's Comprehensive Improvements Assistance Program (CIAP) in 1988. That magnitude of funds was not provided in the 1989 CIAP award, and no supplemental funds were made available by the State.

receiving prior to receivership. The BHA had to litigate against the City to have the City pay for trash collection from public housing, an expense now approaching one million dollars annually. See DEQE v. Boston Housing Authority/City of Boston, Superior Court Civil Action 95006 (1972; liability found against City of Boston for BHA trash collection and disposal expenses in 1982). Within six months of taking office, Mayor Flynn reversed past City practices, settled the lawsuit and began providing City funds for this service.¹⁰

In addition to the City's provision of basic services, the City under Mayor Flynn and the BHA have collaborated successfully on a number of issues and initiatives. The most notable of these are fair housing, formulation and passage of the BHA's governance statute, redevelopment of Columbia Point and the BHA's efforts to develop or purchase new public housing. These activities illustrate a substantial increase under the Flynn administration in City government support of Boston's low-income residents of all races.

8. Fiscal stability

Judge Garrity's 1979 Findings, Ruling, Opinion and Orders stated that the BHA had no effective fiscal controls. During the receivership, development and department-based budgeting were

¹⁰ As part of the same case, the BHA receivership closed approximately 584 trash incinerators which had been operating around the City in violation of the Clean Air Act. That effort resulted in a significant improvement in air quality for BHA residents and residents of neighborhoods surrounding the developments.

installed, as well as other fundamental fiscal controls. These controls were continued and some improvements made during the restorative period.

Various BHA initiatives during the 1980's will improve the long-term fiscal outlook. These most notably include the redevelopment efforts, which should dramatically reduce continuing maintenance demands at the developments involved. The shift of responsibility for trash collection to the City also will have a permanent and substantial positive impact.

In addition, the BHA successfully lobbied for a statutory change in the national public housing operating subsidy formula which should provide about one million dollars annually for funding of its "breakthrough" units (combinations of existing units to make larger ones). At the Administrator's initiative, HUD has issued a Notice implementing that provision several years earlier than had been contemplated. The early Notice alone should make substantial additional funds available to BHA, at a time they are particularly needed. More generally, the Receiver, the Administrator and BHA staff have taken leadership roles in the Council of Large Public Housing Authorities, which has lobbied Congress successfully for additional public housing funds.

With respect to utility expenses, electricity rates have been lowered through litigation by about \$700,000 annually. Additional utility rate litigation is pending; see Boston Housing Authority v. Boston Edison Company, Superior Court Civil Action 53715 (1982). The BHA also undertook significant energy conservation initiatives, some as a result of funding from the

utility companies ordered by the State Department of Public Utilities after the BHA brought administrative proceedings, and obtained a five-year, \$3.2 million dollar credit against its water bills. Federal and state public housing subsidy formulas do not provide much direct benefit to the BHA from these utility actions, but certainly the lower utility bills over time will be helpful to BHA stability.

The BHA's efforts to improve rent collection, in addition to their fiscal effect, are fundamental to management's control of the developments. During the early days of receivership, many tenants may have had legitimate claims to withhold rent under G.L. c. 239, §8A and the implied warranty of habitability because of BHA's failure to maintain their apartments. With improvements in maintenance and with upgrading through modernization, BHA should come to expect timely and full payment of rent, just as residents should come to expect timely and full compliance with the State Sanitary Code. BHA's rent collection performance, while short of its goals, improved significantly in the mid-1980's and again in 1988-1989.

To adjust to federal and state funding cutbacks and slowdowns, in 1989 the BHA implemented its first personnel layoffs since the beginning of receivership. These layoffs were accomplished without cuts in field maintenance personnel. Continuing state and federal fiscal difficulties, however, jeopardize seriously the BHA's progress and its hard-fought gains.

The BHA's extraordinary funding for security is desperately needed and has not been provided sufficiently since 1988. Settlement of the NAACP v. BHA lawsuit discussed below requires an extraordinary, although not continuing, commitment of resources. The BHA in recent years has been able to fund security, maintenance and other initiatives partly through reserves, but no longer is in a position to do this. BHA is making additional fiscal cutbacks now, including personnel.

The federal and state governments must support their investment in the BHA's improvements. The BHA must continue to be vigilant in its commitment of fiscal resources and make tough funding decisions as called upon, and remain aggressive in its pursuit of funding.

9. Labor/management issues

An effective and efficient maintenance work force is key to both the BHA's success in maintaining its developments and its fiscal stability. Throughout the 1980's, the BHA and its unions have been engaged in litigation. The BHA has alleged that, as a result of unreasonable wage-setting by the State's Department of Labor and Industries (DLI), BHA has been compelled to pay 150 to 200% of prevailing wages for maintenance services. BHA received a favorable Supreme Judicial Court decision in 1985, Receiver of Boston Housing Authority v. Commissioner of Labor & Industries, 484 NE2d. 86, 396 Mass. 50 (1985), but legislation in 1986 confused matters further. The litigation has been substantially resolved in part for past years with compromise wage rates, but the appropriateness of DLI's wage setting standards and practices

remains in dispute. See Boston Housing Authority v. Commissioner of Labor & Industries, Superior Court Civil Action 54246 (1982); Commonwealth of Massachusetts on Behalf of its Department of Labor & Industries v. Boston Housing Authority, Superior Court Civil Action 66750 (1984).

Apart from the litigation, the BHA has made substantial progress in achieving more efficient deployment of its workers. This has been accomplished through negotiated contractual provisions easing work rules and providing additional flexibility in the deployment of tradespersons. The BHA also instituted an employee safety program which appears to have prevented injuries and reduced BHA's workers' compensation exposure significantly.

10. Tenant selection and continuing occupancy

At the Court's specific directive the BHA in receivership reorganized its tenant selection functions, to provide for effective screening of applicants and to increase the efficiency of its operations. These initiatives have proved effective and have continued throughout the restorative period.

During the restorative period, BHA also adopted and implemented several policies designed to ensure that BHA's limited housing resources are allocated to low-income persons as fully and efficiently as possible. In the spring of 1989, following several months of negotiation with tenant task forces, BHA implemented a transfer policy requiring residents who were overhoused or underhoused to transfer to appropriately sized units at their developments. BHA implemented a policy requiring households with incomes of \$50,000 or more (\$60,000 or more for households of more

than five members) to relocate out of public housing after a six-month period to find alternative housing. BHA also eliminated "maximum rents" for state-aided developments, as EOCD had insisted. BHA's maximum rent policy originally was designed to encourage the retention of relatively higher income families, but also allowed those families to pay the lowest percentages of their incomes for rent. (Federal statutory charges eliminated maximum rents in federal developments.)

11. Fair housing

All of BHA's tenant selection programs are affected by the implementation of fair housing requirements. Although not raised in the the plaintiffs' initial complaint, the Court has included fair housing as an element in this action since 1975. The October 1984 Order described this matter as "of the most concern to this Court after maintenance."

The BHA made significant progress in fair housing during both the receivership and the restorative period. In the October 1984 Order the Court indicated that BHA integration efforts, "most notably at Fairmount and Orient Heights, although limited in scope, have been successful and have demonstrated careful planning and execution by the Authority with much recent City support and assistance"; the BHA had "worked hard to maintain an appropriate racial mix at its integrated developments"; and recent occupancy by several minority families at Charlestown had been well coordinated with City police and other departments and BHA tenants willing to assist. The Order also noted that many developments remained not integrated racially (page 17). During the

restorative period the BHA continued the "fair housing subplans" it had developed to maintain racial mix and promote integration at developments already somewhat integrated, and undertook chronological placement of minority applicants in its South Boston family developments.

The BHA did not, however, implement a provision of its tenant selection plan agreed to in 1978 which required that minority applicants to the Charlestown and South Boston developments be given preference over all other applicants except emergencies (the Preference).¹¹ Receiver Spence made clear to the Court, HUD, EOCD and others that he felt the BHA could not implement the Preference with the security resources which appeared to be available.

In October 1987, HUD issued an "Investigative Report" regarding fair housing and "Preliminary Findings of Non-compliance with Title VI of the Civil Rights Act of 1964." HUD's basic allegations were that the BHA had not been implementing the Preference for Charlestown and South Boston developments or, by and large, placing minorities there, and that the BHA had not placed emergency applicants in developments where their race was substantially in the minority. HUD also demanded an end to those aspects of the BHA's tenant selection system for families which

¹¹ "Minority Preference" applied to applicants of any race who chose to be assigned to a racially imbalanced development where their race did not predominate. This provision of the BHA's tenant selection plan was upheld as constitutional and consistent with fair housing laws in Schmidt v. Boston Housing Authority, 505 F. Supp. 988 (D. Mass. 1981).

allowed applicants to choose specific developments and which provided for integration subplans, although HUD made no general findings that these provisions had been violated or were illegal.

After almost eight months of negotiations, HUD and the BHA entered into a Voluntary Compliance Agreement (the Agreement). The Agreement provides priority housing offers to applicants as of October 1983 or thereafter who may have been affected by the past BHA practices, requires the BHA to administer a waiting list system in which applicants are assigned to the first available apartment or apartments on a citywide basis and allows BHA to propose to HUD a future tenant selection system with a degree of development choice.¹² In June 1988, this Court repealed its prior orders requiring BHA to implement fair housing subplans and to make efforts to increase the racial mix in all developments, so that the Agreement could be implemented.

In May 1988, the NAACP, Boston Chapter, sued the BHA, HUD and EOCD. See NAACP, Boston Chapter, et. al. v. Boston Housing Authority, et. al., Civil Action No. 88-1155 T (D. Mass.). The

¹²More specifically, the Agreement provides that BHA applicants as of October 1983 or thereafter to Charlestown and South Boston who would have been housed if they had received the Preference are to receive remedial housing offers ahead of all applicants other than emergencies, and emergency applicants placed where their race predominated between October 1983 and the Agreement's effective date (irrespective of whether they were placed in the first available unit) are to be provided offers to transfer to developments where their race does not predominate. The Agreement specifically allows BHA to propose to HUD a future tenant selection system under which every other unit not to be provided to emergency applicants would be allocated on an alternating basis, to applicants either from a citywide list or a development-specific list. Under that system, called "alternate feed", BHA applicants not in priority categories could choose either the citywide list or one development list.

lawsuit was based on the HUD Investigative Report and allegations that BHA discouraged minorities from choosing predominantly white developments. (The HUD Investigative Report found no evidence of steering.)

After substantial negotiations, on September 30, 1988, the NAACP and the BHA agreed upon a Stipulation which expanded those eligible to receive remedial housing offers to include applicants who applied since 1978 but whose applications were withdrawn prior to October 1983. The Stipulation also allowed those who claimed to have been steered to come forward and be heard by a pro bono arbitrator appointed by the American Arbitration Association (AAA).

The NAACP reserved the right to pursue litigation regarding damages. After approximately one year of negotiations, the parties signed a Settlement Agreement in October 1989. The Settlement Agreement provides for modest payments over a three-year period to those BHA applicants who have been offered remedial housing under the Agreement and Stipulation.¹³ The Federal District Court approved the Settlement Agreement, after hearing, on March 12, 1990.

¹³ The Settlement Agreement, generally, provides for payment during the first year of \$120,000 total to the NAACP and two other named plaintiffs, and payments over a three-year period of \$2500 (total) to minority households who could have been housed in Charlestown or South Boston if they had received the Preference; \$2,500 to minority households who win their hearing regarding steering at AAA; \$1,000 to minority households housed as emergencies in predominantly minority developments; and \$250,000 to \$500,000 to a Community Benefit Fund for furthering fair housing in Boston.

Since the BHA entered into these agreements, BHA successfully has undertaken the extensive efforts necessary both to publicize applicants' rights under the agreements and to house those eligible to receive remedial assistance. With substantial security and tenant and community participation efforts, the number of minority households in the Charlestown and South Boston developments increased by 181% (201 households) in the two years after the signing of the Voluntary Compliance Agreement.

While this is significant progress, the Charlestown and South Boston developments, and a number of developments particularly in Roxbury and North Dorchester, remain racially imbalanced. BHA is in the process of compiling the documentation on which HUD will decide whether to accept BHA's proposed future tenant selection system.

12. Community services and resident employment

At the commencement of receivership the BHA had a several-person tenant services staff which attempted to do individual tenant casework, but was overwhelmed. The Receiver abolished that division. He sought and obtained state legislation providing for several million dollars annually in funding for community services, including outreach and referral, community organization and direct services such as job training and education. The BHA commenced hiring of outside contractors for these services.

During the restoration period, a Community Services Department was established to handle the very substantial program of contracting out such services. Additional funding was

regularly and successfully obtained, and the programs were expanded.

BHA's tenants have received substantial benefits from these initiatives. Between July 1, 1989 and May 30, 1990, 1352 BHA tenants were provided with career counselling, 384 were placed into education or training programs, 334 were placed directly into unsubsidized employment, and 94 were enrolled in BHA-funded training or educational programs. Additional services were provided for child care and Headstart (292 residents enrolled as of March 1990) and elderly outreach and referral, alcoholism counseling and social service counseling (approximately 2500 residents involved from July 1989 through May 1990).

The BHA has emphasized the employment of its residents, both by BHA contractors and by the BHA itself. Initially spurred on by residents at Commonwealth, Franklin Field and West Broadway, the BHA incorporated resident employment requirements in its large-scale redevelopment contracts for those three developments, Columbia Point and Mission Extension/Bromley Park. Thus far these programs have resulted in employment of 152 residents as apprentices and 71 residents as laborers, a substantial portion of whom received very significant work experience (2,000 hours or more). Several now have completed apprenticeship programs.

The BHA's internal record of resident employment also has improved dramatically. As of July 1990, 20% of the BHA work force (272 persons) were BHA residents.

The BHA has been increasing its efforts to counsel its youth in view of the drug scourge, and to offer alternative recreational

and other activities. Since 1989, each family development has had at least one youth worker assigned. The BHA's Public Safety Department holds a number of sports and other initiatives involving BHA youths from across the city.

13. Leased housing

The BHA's leased housing efforts encompass a number of programs where the BHA does not own the apartments, but instead provides subsidies so that low-income households can afford to rent from private landlords. The leased housing programs at the BHA have expanded dramatically and now include 8796 units. Although leased housing was not the subject of the plaintiffs' original Complaint and has not been a major focus of this litigation, leased housing was included in the receivership orders and the Court has reviewed leased housing as part of its monitoring of BHA's performance.

During the 1980's the BHA revamped the Leased Housing Department entirely. The Department emerged from chaos, exemplified by a reputation for very late landlord payments and substantial underutilization of committed subsidies. The BHA has achieved 100% occupancy of Section 8 leased housing units, no leasing backlog and an operation generally recognized as efficient.

14. Development of additional public housing

During the receivership, with the Court's strong and vocal support, the BHA ended efforts to develop new public housing units so that it could concentrate resources on improving its present housing conditions. The BHA recommenced development efforts

several years ago, and has added to the public housing stock 147 units through acquisition and renovation of groups of South End rowhouse properties previously owned by HUD. BHA also has purchased 122 condominium units across the City with state funds, and has completed or has under construction twelve units for persons with mental disabilities. Efforts to acquire sites for new construction of family housing thus far have not been brought to fruition. The BHA must continue to undertake development programs only when sufficient resources clearly have been made available, and assure that the necessary assistance is provided from appropriate city agencies so that BHA resources are not unduly diverted.

15. Tenant participation.

The October 1984 Order noted that the receivership's accomplishments "have been possible largely as a result of the unique identity of interest that receivership has fostered between the BHA and its tenants." Perez, Findings, Rulings, Opinion and Orders, page 10. BHA's chances for further success will improve greatly if tenants continue to play a strong and effective advocacy role.

A city-wide tenant organization was incorporated in the late 1960's as the Boston Tenants Policy Council (TPC). In September, 1975, TPC intervened as a party plaintiff in this action. In 1983, the Court determined tht TPC was ineffective as an organization, and directed that it be defunded. See Perez, Ruling, Order and Memorandum of Decision Continuing the Receivership for One Year, February 24, 1983. Subsequently, TPC was dismissed from this case.

Following defunding of the Tenants Policy Council, Receiver Spence expanded funding to local tenant organizations. He also gave an exploratory grant to a cluster of task forces that wished to form a city-wide tenants organization, Tenants United for Public Housing Progress (TUPHP). This group incorporated in 1984 and at one time included representatives from seventeen of BHA's family developments, as well as elderly/handicapped representatives through the Massachusetts Senior Action Council's BHA Elderly Housing Committee. In 1985, it negotiated an agreement with BHA concerning tenant involvement in the implementation of the concentrated code compliance program. TUPHP also actively participated in drafting governance legislation in 1984, in selecting BHA Monitoring Committee representatives in 1985-1986 and in lobbying for a bill to prevent sale of state-aided public housing in 1986.

In the meantime, BHA expanded its program of support for local tenant task-forces, and made funds available for the hiring of community organizers and outreach and recruitment workers at every family development. Given the complexity of redevelopment decisions, additional funding was made available for residents at developments undergoing redevelopment. In 1988, after protracted negotiations with residents and EOCD approval, BHA adopted and implemented a local tenant participation policy. This extensive and carefully drawn policy should help assure that BHA administrators give full consideration to views of tenant task forces elected at the developments.

Unfortunately, there is no similar arrangement on a city-wide level. While BHA has continued to provide funding to TUPHP to support organizing efforts at a number of family developments, TUPHP has not achieved full citywide tenant support and no other citywide group has been formed.

BHA's local task forces have worked successfully together on a number of citywide issues during the past few years, including governance legislation, the overhoused/underhoused transfer policy, and funding initiatives. Recently they have met to discuss negotiations with the BHA to revise the lease and grievance procedure, expected to be a substantial task during the coming year, and negotiations have commenced. These cooperative efforts between task forces may be the seeds of a new citywide tenant organization. The inclusion of five tenants on the BHA Monitoring Committee (see below) may also foster citywide tenant participation. BHA and its tenants must continue to strive for an effective citywide tenant organization.

16. Governance.

The recently enacted governance legislation is a truly collaborative effort among the BHA, BHA tenant representatives, the Mayor's office and the Boston City Council. Its structure includes several aspects which bode well for the future of the BHA. First, as in the receivership and restorative period it concentrates authority to run the BHA in one person, the Administrator, rather than dispersing this authority among a board of commissioners. Moreover, the responsibility for the housing authority's performance clearly will rest with the Mayor who can

hire and fire the Administrator at will. No future Mayor can blame any shortcomings in the Authority's performance on a Board of Commissioners. The new law also institutionalizes a Monitoring Committee to be composed of a majority of tenants, to provide for an independent voice regarding the performance of the BHA. It provides the Committee initial authority to approve or disapprove BHA budgets, but with a potential override by the Mayor. Thus, the Committee has a vehicle to bring any serious concerns as to the BHA's performance to the Mayor directly, but the Mayor remains finally accountable for BHA decisions. Finally, it institutionalizes the BHA's public reporting of its performance, by requiring the continuation and filing with City Council of the BHA's management reports as well as annual reports to the Mayor by the Monitoring Committee.

The new legislation's full implementation now awaits appointment or reappointment of Monitoring Committee representatives. BHA tenants recently submitted proposed tenant members. The Mayor must choose five tenant members and nominate the remaining four members.

IV. RULINGS

Based upon the extensive record in this action, previous Findings, Rulings and Orders which reflect numerous hearings and reports to this Court by the parties and views by the Court of many of the BHA's developments, and recent hearings and submissions of the parties since the undersigned was assigned this

case, I rule that the BHA has demonstrated substantial compliance with the State Sanitary Code. Given the progress made under Receiver Spence, Administrator Bunte and Mayor Flynn, it is no longer necessary to continue this Court's active supervision of the BHA.

Further modernization is necessary in many of BHA's developments to bring them to a condition where they will meet the State Sanitary Code on a continuing and longstanding basis. In addition, full reoccupancy must be achieved both for overall habitability and so that relief is provided for the largest potential number of future tenants. BHA's current operational program makes it likely that such work will be carried out in as expeditious a fashion as possible within fiscal constraints.

The very basic injunctive orders which follow all are orders which the current BHA has demonstrated the willingness and ability to follow. Future BHA administrations must continue to follow them, to promote the continuation of substantial compliance with law. The Court hopes and expects that these orders never will have to be enforced through further judicial action.

V. ORDERS

On the basis of the Findings and Rulings set forth above, the Court hereby directs that a final Judgment be entered and that the following final orders be entered in this case.

1. Management Reports

The BHA shall continue to produce its quarterly management reports, and monthly reports to the extent otherwise required by law, and shall include in its quarterly management reports a listing of its numerical or percentage performance goals and its record of achievement against these goals.

2. State Sanitary Code Compliance

The BHA shall repair and maintain its units in compliance with the State Sanitary Code and all other laws and regulations that apply to the health or safety of residential housing (including any waivers applicable to BHA). BHA shall continue to inspect all apartments at regular intervals sufficiently often to make reasonable determinations whether the apartments are in compliance with code requirements. BHA shall retain its goal of completing emergency work orders within one day and non-emergency work orders within thirty days.

3. Vacancy Reoccupancy

The BHA shall restore its developments to substantial full occupancy as expeditiously as practicable, make every reasonable effort to accomplish this goal by March 1992, and shall set high priority on continued full occupancy once this goal has been achieved. The BHA shall make every reasonable effort to reduce vacant unit turnaround time to no more than forty-five days or to any applicable standard for turnaround time set by HUD.

4. Construction Management

BHA shall continue to seek available modernization funds aggressively, in its sound judgment, for any and all developments as needed to comply with these orders on a long-term basis. BHA shall continue to set annual goals for the commitment of such funds, which assure at a minimum that no such funds shall be recaptured by state or federal funding agencies. BHA also shall insure that adequate quality control is established and maintained so that the capital improvement work undertaken is of high quality and durability.

5. Redevelopment

The BHA aggressively shall pursue the completion of redevelopment at West Broadway, Orient Heights, Cathedral, Alice Heyward Taylor Homes, Bromley Park, Heath Street, Mission Hill Main, Charlestown, Orchard Park and any other BHA developments where, in its sound judgment, redevelopment is required to maintain the long-term viability of the development. These efforts shall include BHA pursuit by all available means including any litigation which proves necessary the redevelopment program designed for the Cathedral development.

6. Resident Employment

The BHA shall continue to promote resident employment aggressively in its permanent and contract work forces.

7. Resident Participation

The BHA shall continue to encourage substantial resident participation, including participation regarding maintenance, modernization, redevelopment, security and alteration of BHA policies.

8. Labor/Management Issues

The BHA shall take all practicable measures to assure that its maintenance wage rates paid do not exceed those prevailing for comparable public and private sector work, including City of Boston positions, and to achieve maximum contractual capacity to hire generic workers or otherwise have its workers perform generic maintenance tasks, as well as exploring private contract management and contract maintenance opportunities for achieving more efficient delivery of management and maintenance services.

9. Evictions

The BHA shall maintain and improve its efforts to evict tenants for cause where such action is warranted.

10. Tenant Selection

The BHA shall adhere strictly to the requirements of its Tenant Selection, Assignment and Transfer Plan and any modifications thereof approved by applicable funding agencies or otherwise authorized by applicable law or regulations. Without limitation, the BHA may implement the Agreement for Voluntary Compliance with Title VI of the Civil Rights Act of 1964 between the U.S. Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity, and the Boston Housing Authority, Boston, Massachusetts, dated June 14, 1988, and any modifications thereto or tenant selection plans or provisions approved pursuant to the terms thereof. The BHA shall continue its efforts to screen out applicants whose past records indicate unjustifiable risk that their housing would interfere with the health, safety, security, welfare or peaceful enjoyment of other tenants or adversely effect the physical environment of the resident community.

11. City of Boston Relations and Services

The BHA shall take all necessary steps to continue to secure essential City services such as police protection and trash collection reimbursement.

12. Personnel Practices

The BHA shall make hiring, firing, transfer and promotion decisions regarding its employees at all levels, and contract awards and developer designations, based on objective standards in the BHA's interest and in accordance with law.

This Court will issue no further orders, and take no further action, in this case unless one of the above orders is shown to be clearly violated. The Recertification of the Plaintiff Class (Section "B" of the Orders entered on July 25, 1979), including the limitations thereto in paragraphs 2 and 4 thereof attached as Appendix 4, shall remain in effect solely for the purpose of enforcing these Orders; provided that such recertification shall be amended by striking 'owned, operate, and/or leased' and inserting "owned and/or operated". Before seeking such relief from this Court, plaintiffs shall first pursue every reasonable effort through working with the BHA administration, the Mayor, and/or the BHA Monitoring Committee, as may be applicable to accomplish the goals of these Orders without the necessity for court involvement. Neither the named plaintiffs nor plaintiff class counsel shall have any ongoing active responsibility for monitoring these orders or any other aspect of BHA performance. Plaintiff class counsel shall not have any claim which otherwise may be argued to be available for attorneys' fees in connection with any monitoring which does occur after the date of entry of this final order; this provision shall not be read, however, to limit any right of plaintiff class counsel to seek to recover attorney's fees if plaintiffs prevail in any litigation necessary to enforce these Orders.

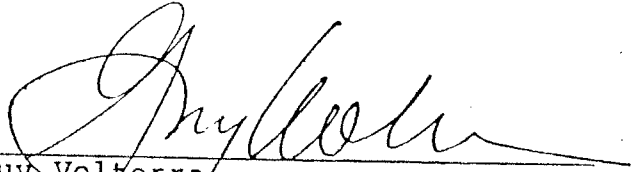
Plaintiff counsel's position as attorney for such class prior to the date of this order, in itself, shall not bar it from

providing representation to individuals residing in or applying for BHA housing, and plaintiff counsel shall have no obligation solely on account of such prior class representation to disqualify itself from representing individuals who allegedly have disturbed or may disturb the quiet enjoyment of other BHA tenants.

Plaintiff counsel may have the obligation, in certain cases involving individual tenants, to disqualify itself from providing representation in those cases because zealous advocacy in the interests of those individuals would irreconcilably conflict with positions taken on behalf of the class regarding ongoing BHA practices. In other cases, individual representation may be provided by plaintiff counsel in accordance with Disciplinary Rule 5-105(C) (Rules of the Supreme Judicial Court, Rule 3.07, DR5-105(C)).

The Court retains jurisdiction solely for any necessary enforcement of the Final Orders as described herein. This Order does not affect the existing so-called ancillary cases involving BHA or any such ancillary cases which may be brought in the future, which may be conducted as separate litigation. The ancillary cases currently outstanding which have had activity during the past three years include the following: Commonwealth of Massachusetts v. Boston Housing Authority/Boston Housing Authority v. Commissioner of Labor and Industries, cited supra; Boston Housing Authority v. Boston Edison Company, cited supra; Boston Housing Authority v. Anthony cited supra; and Perez v. Boston Housing Authority/Boston Housing Authority v. Associated Subcontractors of Massachusetts, Superior Court Civil Action 87-5049 (1987).

Except for the recertification of the plaintiff class solely for the purposes and as described above, all previous Orders entered in this case are hereby dissolved and superceded by this Order. The BHA, therefore, may undertake any activity otherwise legally authorized and consistent with this Final Order.


Guy Volterra
Justice of the Superior Court

Date Entered: 9-7-90