

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

DATE: November 14, 2018

TO: Theodore Lipscomb, Sr., Chairman, County Board of Supervisors

FROM: Alan M. Levy, Esq., Lindner & Marsack, S.C.

SUBJECT: *Susan L. Baldwin, et al. v. Milwaukee County et al.*  
Wisconsin Appeal Case No. 2016AP002380  
Milwaukee County Circuit Court Case No. 2015-CV-009354

As outside counsel for Defendant Milwaukee County, I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to join with the Employees' Retirement System of the County of Milwaukee ("ERS") to settle the claims of Susan L. and Leverett F. Baldwin by obtaining dismissal of the above-captioned case, waiver of the Baldwins' claims for certain prior benefits, and payment of the correct pension benefit due Susan L. Baldwin ("Baldwin") effective upon court approval of this settlement. By the terms of the proposed settlement, each party will bear its own attorney fees and litigation costs.

Susan L. Baldwin ("Baldwin") was a County Supervisor and the County Director of Parks from 1984 until 2003. In 1969 she had a six week summer job with the County. In 2000 Robert Ott, as County Corporation Counsel, and Jac Amerell, as ERS Manager, accepted Baldwin's payment of \$683.37 to purchase ERS service credits for that work. This credit for work in 1969 made Baldwin eligible for increased retirement benefits based on being a pre-1982 ERS member/participant. As a result, Baldwin received a monthly pension of \$4,198.13 when she retired in 2003, which was \$413.03 per month greater than her monthly pension assuming a 1984 hiring date. With cost of living and other increases applicable to similarly-situated ERS participants, plus interest, the increased benefit payable to Baldwin because of her purchase of 1969 service credit totaled approximately \$223,209.00 as of 2015.

In 2007, ERS discovered that Baldwin might not have been eligible to participate in ERS for her 1969 summer job and warned her of a possible resulting overpayment. In 2014 ERS began to correct the overpayments to Baldwin and offered to withhold half her corrected benefit amount to do so. Baldwin appealed and lost this issue before the Pension Board, and then sued ERS and the County in circuit court. The trial judge sustained the Pension Board's decision, but this was reversed by the Court of Appeals. The matter is now before the Wisconsin Supreme Court.

It is undisputed that Baldwin's 1969 work did not qualify for ERS credits. However, the Court of Appeals held that ERS Rule 1001, which states that all actions of the Pension Board are final after one year, should have barred correction of the overpayments because the errors occurred in 2000 and 2003 (when the 1969 credits were granted and then used to calculate Baldwin's benefits); this was more than one year before the 2007 notice of a possible error or the 2014 - 2015 corrections and benefit withholdings.

Both ERS and the County's counsel contend that the Court of Appeals misinterpreted Rule 1001 and incorrectly applied its interpretation to grant benefits contrary to pension plan language and the Voluntary Compliance Program agreement between ERS, the County, and the Internal Revenue Service. This misapplication of the one-year rule risks continuation of overpayments to others who did or will benefit from administrative errors in such calculations. It may also adversely affect the ability of ERS to increase benefits if such errors cause benefit underpayments in other cases.

The settlement proposed here would cause dismissal of the lawsuit and would substantively reduce the possibility of similar claims in the future. In addition, ERS and the County would file a motion to vacate the Court of Appeals decision without objection from the Baldwins. The settlement would also continue reduction of Baldwin's benefit to the correct amount going forward but would not permit her to recoup any past reductions of her benefit. In addition, neither the County nor ERS would pay Baldwin's attorney fees or litigation costs in this action.

This settlement is recommended because it:

1. confirms cessation of overpayments to Baldwin which had reached \$1,316.00 per month (with COLA and other general increases);
2. does not require return of the \$1,852.00 per month withholding ordered in 2015;
3. ends the possibility of a Supreme Court decision which jeopardizes the Pension Board's interpretation of its Rule 1001 (the one-year finality rule);
4. causes each party to bear its own attorney fees and litigation costs;
5. does not take effect until the Supreme Court dismisses the pending litigation and appeal; and

6. requires the Baldwins to join in the dismissal motion and withhold any objection to vacating the Court of Appeals decision and withdrawal of that decision from publication, actions which would greatly limit the decision's impact on future administration of ERS.



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cc: Kelly Bablitch  
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