



OFFICE OF CORPORATION COUNSEL

MARGARET C. DAUN
Acting Corporation Counsel

COLLEEN A. FOLEY
PAUL D. KUGLITSCH
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
MOLLY J. ZILLIG
ALAN M. POLAN
DEWEY B. MARTIN
JAMES M. CARROLL
KATHRYN M. WEST
JULIE P. WILSON
CHRISTINE L. HANSEN
CARRIE THEIS
Assistant Corporation Counsel

MEMORANDUM

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

FROM: Margaret C. Daun, Acting Corporation Counsel
James M. Carroll, Assistant Corporation Counsel

RE: Update Regarding Pension-Related Litigation

DATE: February 21, 2017

The following summarizes current and recently concluded litigation related to the Milwaukee County Employees' Retirement System ("ERS") and/or the Milwaukee County Pension Board.

I. Current Litigation

a. *Baldwin v. ERS*

This action relates to the plaintiff's purchase of service credit, otherwise known as the "buy in" program. In 2000 Mrs. Baldwin was permitted to buy service credit from a prior period in which she allegedly worked for Milwaukee County in the summer of 1969. Ms. Baldwin then retired in 2003. In 2015, Retirement Plan Services ("RPS") informed Mrs. Baldwin that she had not been eligible to purchase the service credit from 1969 and thus that her ongoing benefit would be reduced because she had been substantially overpaid (approximately \$223,000 including interest). In March 2015 the Pension Board affirmed that decision. Mrs. Baldwin pursued a certiorari action in Milwaukee County Circuit Court. In October 2016, Judge Dugan ruled in favor of the Pension Board. Mrs. Baldwin has now appealed to the Wisconsin Court of Appeals. Mrs. Baldwin's brief is currently due March 25.

b. *Griffin v. County of Milwaukee, et al.*

Mr. Griffin is pursuing a certiorari action in Milwaukee County Circuit Court regarding the Pension Board's decision on the start date for his accidental disability pension ("ADR") and a related overpayment of benefits. The matter is currently being briefed before Judge Moroney.

c. *Milwaukee District Council 48 v. Milwaukee County*

On June 1, 2016, a Milwaukee County circuit court judge ruled in favor of AFSCME DC 48, which successfully argued that when Milwaukee County implemented ordinance

amendments in 2011 intended to preserve the “status quo” pre-Wisconsin Act 10, those DC 48 employees who became Employees’ Retirement System members between January 1, 1994 and December 31, 2005 gained the Rule of 75 benefit that they would not have received under their collective bargaining agreement. Milwaukee County disagrees with that decision and therefore appealed it, arguing (among other things) that it was never the intent of the status quo ordinances to provide the DC 48 members in question, or any other County employees, with a benefit superior/additional to that provided by their contract. The matter has been fully briefed at the Wisconsin Court of Appeals and a decision is pending. In the interim, the trial court has stayed the effect of its June 2016 ruling.

d. *James Tietjen v. ERS, et al.*

Mr. Tietjen was terminated from County employment in June 2012. Because Mr. Tietjen was terminated from County employment before he retired, RPS determined he thus was not entitled to a backDROP retirement benefit. In October 2012 the Pension Board denied Mr. Tietjen’s appeal regarding his backDROP eligibility. Mr. Tietjen subsequently pursued certiorari review of the Pension Board’s decision in Milwaukee County Circuit Court. The County is also named as a defendant. After reviewing the briefs submitted by the parties, Judge Hansher issued an order remanding the case to the Pension Board for a determination of whether Mr. Tietjen's termination from the County was proper and effective. Because all the parties agree that such a determination falls outside the Pension Board's jurisdiction, Judge Hansher stayed the case while Mr. Tietjen, by his estate, pursues review of his termination by the County.

e. *Debra Tietjen v. ERS, et al.*

This is an action recently filed in federal court by Mr. Tietjen’s estate (he passed away in August 2016). The complaint filed by plaintiff’s counsel purportedly set forth a variety of claims against Milwaukee County and ERS. Defendants filed a motion for a more definite statement because the complaint was vague and confusing. In a February 7, 2017 decision federal magistrate judge Nancy Joseph issued an order agreeing with the defendants and granting the plaintiff leave to file an amended complaint by March 7.

f. *Walker, et al. v. Milwaukee County, et al.*

The plaintiffs/petitioners in this action are the four grandchildren of a deceased ERS member. These individuals received benefits from 2003 through 2012, at which time Retirement Plan Services (“RPS”) determined that they had improperly received backDROP payments that would have to be recouped by reducing their ongoing monthly benefits. After additional investigation, in 2015 RPS determined that the Walker grandchildren had not been properly designated as beneficiaries at all, and thus were not entitled to any benefits. The grandchildren appealed to the Pension Board, which issued a decision concurring with RPS in the summer of 2015.

The Walker grandchildren are now pursuing a certiorari and open records actions in Milwaukee County Circuit Court. The open records action is currently stayed pending

the outcome of the certiorari action. Judge Sankovitz issued a decision favorable to the Pension Board/ERS in June 2016. However, the case has since been transferred to Judge Fiorenza, who is presently considering the petitioners' request to amend their pleadings to assert equitable claims for what is now a third time.

g. *Wilson v. Pension Board*

Ms. Wilson is a former corrections officer who suffered a workplace injury that permanently prevented her from doing her job. She applied for an ADR, which was approved by the Pension Board in July 2015. However, it subsequently came to the Pension Board's attention that Ms. Wilson had withdrawn all of her employee contributions to her pension account in November 2014, and the Pension Board therefore concluded that Ms. Wilson was not an ERS member entitled to an ADR (or any other pension benefits). Ms. Wilson has appealed the denial of her ADR via certiorari action in Milwaukee County Circuit Court. The case is currently being briefed before Judge Yamahiro.

II. Recently Concluded Litigation (2016-17)

a. *Mecouch v. Pension Board, et al.*

Mr. Mecouch was erroneously permitted to purchase service credits. When this error was discovered, the Pension Board concluded that RPS had properly stopped his benefits and initiated efforts to recover overpayments. Mr. Mecouch filed a federal lawsuit, in which the federal district court ultimately granted the defendants' motion to dismiss but remanded the case to state court. Mr. Mecouch filed a notice of appeal with the Court of Appeals for the Seventh Circuit. The parties agreed to resolve the matter in August 2016.

b. *Stiff v. ERS, et al.*

Mr. Stiff, a retiree, appealed his monthly benefit amount to the Pension Board because it was allegedly less than an estimate he had previously received from RPS. The Pension Board denied the appeal and Mr. Stiff filed a certiorari action in Milwaukee County Circuit Court, where he chose to represent himself. Mr. Stiff subsequently voluntarily dismissed this action in February 2017.

c. *Trapp et al. vs. Milwaukee County, et al.*

The five plaintiffs in this case are ERS members who were allowed to purchase service credit dating back to the 1990s. It was subsequently determined that those purchases should not have been permitted. However, retroactive County ordinance amendments passed as part of the 2008 IRS Voluntary Compliance Program ("VCP") filing resolved the issues with these plaintiffs, who voluntarily dismissed their suit in February 2017.

NOTE – Please reserve any questions or comments regarding potential or future litigation for discussion in closed session. Thank you.

cc: Kelly Bablitch, Chief of Staff, Milwaukee County Board of Supervisors
Raisa Koltun, Chief of Staff, Milwaukee County Executive
Shanin Brown, Coordinator, Personnel Committee
Janelle Jensen, Coordinator, Finance & Audit Committee
Allyson Smith, Coordinator, Judiciary, Safety & General Services Committee
Amy Pechacek, Interim Director, Retirement Plan Services