INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: May 6, 2015

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

FROM: Mark A. Grady, Deputy Corporation Counsel MAG

SUBJECT: File 15-353, a resolution to amend section 201.24(4.1) of the ordinances

You asked that I provide background for the resolution referenced above that you have sponsored. The subject is the "rule of 75" pension benefit. The resolution makes a technical correction to a drafting error contained in prior resolutions and ordinance amendments in order to fully effectuate the County Board's intentions in those prior resolutions.

Historically, based on the ordinances or collective bargaining agreement provisions, eligibility for the rule of 75 pension benefit depended on the employee's status *on the date of retirement*. The staff of the retirement system would review the employee's union status at retirement and then apply the relevant hire date rule for that union or status to determine the employee's eligibility. Thus, for example, an employee who was represented by AFSCME at retirement and who was hired prior to 1/1/94 would be eligible for the rule of 75. This would be true whether the employee had always been an AFSCME employee or whether the employee had been a deputy sheriff, or a nonrepresented employee, or a nurse, or something else, and had become an AFSCME employee only just prior to retirement. It was represented status on the date of retirement that mattered.

Following Act 10, there was concern that some union bargaining units might fail to re-certify and those employees would become nonrepresented employees. For example, prior to Act 10, an AFSCME, TEAMCO or Machinists union employee who was hired after 1/1/94 would not have been eligible for the rule of 75, assuming the employee remained in one of those bargaining units at retirement, whereas nonrepresented employees hired prior to 1/1/06 would be eligible for the rule of 75, assuming they remained nonrepresented at retirement. But after Act 10, if AFSCME, TEAMCO or the Machinists bargaining units were decertified, then employees in those bargaining units would become nonrepresented employees and those AFSCME, TEAMCO or Machinists employees hired after 1/1/94 and before 1/1/06 who were not previously eligible would become eligible for the rule of 75 based on their nonrepresented status at retirement.

Consequently, after Act 10, the Board adopted amendments to the pension ordinances governing the rule of 75. First, in July of 2011, the Board merely took the provisions governing eligibility for the rule of 75 from the non-public safety worker collective bargaining agreements and codified those provisions in the pension ordinances. Next, on September 29, 2011, the Board amended the rule of 75 pension ordinances to change the relevant date for determining eligibility for the rule of 75. Instead of determining eligibility for the rule of 75 based on the employee's union or represented status *on the date of retirement*, the Board amended the ordinance to provide that it is the employee's union or represented status *on the date of September 29, 2011* that is relevant.

Thus, if an employee was an AFSCME,TEAMCO or Machinists member on 9/29/11, then the employee's eligibility for the rule of 75 is based on the hire date rule for AFSCME, TEAMCO or Machinists on 9/29/11 (that is, must be hired prior to 1/1/94). If an employee was not represented on 9/29/11, then the employee's eligibility at retirement is based on the hire date rule for nonrepresented members on 9/29/11 (that is, hired prior to 1/1/06). Consequently, an employee's change in union or represented status after 9/29/11, or an employee's status on the date of retirement, is no longer is relevant. As a result, employees who were eligible for the rule of 75 on 9/29/11 retained that eligibility regardless of job changes or union decertification that might occur later and, conversely, employees who were not eligible for the rule of 75 on 9/29/11 would not gain eligibility regardless of job changes or union decertification that might occur later. Put simply, if the employee had eligibility on 9/29/11, they kept it; if they didn't have it, they would not gain it.[1]

However, at the time the ordinance was amended, the Federation of Nurse and Health Professionals (FNHP) had an existing collective bargaining agreement in place that pre-dated Act 10. That CBA provided that FNHP members would be eligible for the rule of 75 as they were hired; in other words, it did not have a cutoff hire date for eligibility. Thus, for example, a member of FNHP hired on October 1, 2011 was eligible for the rule of 75 at retirement under FNHP's then-existing CBA. Therefore, limiting eligibility for FNHP members in the ordinance to their status on 9//29/11 was contrary to the CBA and illegal. Consequently, in November of 2011, the Board adopted an amendment to the rule of 75 ordinance for FNHP (§201.24(4.1)(2)(c)) to remove the 9/29/11 reference date.

At the time of either the September or November 2011 amendments, the appropriate and relevant reference hire date for FNHP should have been added, but was not. The relevant date for FNHP is December 31, 2012. That is the date the pre-Act 10 CBA with FNHP expired and is the last possible date of hire of any FNHP members whose eligibility had to be protected under that CBA. By inserting the date of December 31, 2012 into the FNHP rule of 75 pension ordinance, the employees who were members of FNHP on that

[1] AFSCME has filed suit to challenge this interpretation and claims that its members hired between 1/1/94 and 1/1/06 gained the rule of 75 upon adoption of Act 10. That case is pending.

date and who were eligible for the rule of 75 on that date will maintain that eligibility regardless of any later job change or union decertification that might occur; those hired after that date are not eligible.

Without the inclusion of the December 31, 2012 date in the ordinance, should FNHP ever decertify, *all* FNHP employees regardless of hire date would lose eligibility for the rule of 75.[2] Without the addition of this date, and should a decertification occur, the ordinance would provide that members of FNHP at retirement are eligible for the rule of 75, but there would not be any such members. In that scenario, the former FNHP members would not be eligible under any other ordinance provision because they would not have been members of another union or nonrepresented employees on 9/29/11.

The intent expressed in the resolution and ordinance amendment in September of 2011 was to fix in place eligibility for the rule of 75 to those employees eligible at that time. The addition of the 12/31/12 date for FNHP does the same thing for FNHP employees as the addition of the 9/29/11 date did for all other non-public safety worker employees.

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[2] Within the last month, the Wisconsin Employment Relations Commission conducted a recertification vote for FNHP, the Trades, TEAMCO and the Attorneys and all four units received sufficient votes to be recertified for another year.