

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: August 15, 2012

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel *MAG*
Colleen Foley, Principal Assistant Corporation Counsel

SUBJECT: Appeal of decision related to payment of sick allowance at retirement for employees who change from union to non-union positions
Judith Pasko v. Milwaukee County, Case No. 10-CV-2657
Robert Porth v. Milwaukee County, Case No. 11-CV-908
Bruce Koehn v. Milwaukee County, Case No. 12-CV-1402

Please refer the attached resolution to the Committee on Judiciary, Safety and General Services.

As noted in the resolution, circuit court Judge Pocan has ruled that two employees (Pasko and Porth) who were promoted from union to non-union positions are entitled to use the union formula for payment of unused sick allowance that existed at the time that the sick allowance accrued rather than use the ordinance formula that applies based on their non-union status at retirement. Thus, according to this decision, these employees, who were in AFSCME and then were promoted to non-represented positions, are entitled when they retire to utilize the formula in the AFSCME agreement for sick allowance that accrued while they were in AFSCME and the formula in the ordinance for non-represented employees for sick allowance that accrued while they were non-represented. The County has always utilized the formula that applies based on the employee's status at retirement. Among other things, the union formula is more favorable than the non-union formula because approximately five (5) more years of unused sick allowance accrued from 2002 to 2007 is 100% paid at retirement (because the union did not agree to eliminate this benefit until about five years after the County eliminated it for non-represented employees). The court also applied, to the employees' advantage, the LIFO (last in, first out) formula from the union agreement rather than the FIFO (first in, first out) formula that exists in the ordinance. The court awarded attorneys' fees to the plaintiffs under the wage claim statute, Chapter 109, but declined to award any wage claim penalty against the County. The current judgments in the Pasko and Porth cases total approximately \$93,000.00. The Koehn case is still pending before a different judge and no decision has been granted in that case yet.

The proposed attached resolution authorizes appeals in the pending cases. An appeal of the Pasko and Porth cases is recommended and requested. If the Koehn case results in an unfavorable decision, permission is requested to appeal that decision too. Pursuant to

§1.31, M.C.G.O., the Judiciary Committee is delegated the responsibility of making a recommendation to the County Board for such an appeal.

A review by the Comptroller indicates that the principle of this decision could apply to the advantage of approximately fifty (50) other employees at a potential additional sick allowance payment cost of \$325,000.00. The County's legal fees for outside counsel to continue to handle this case are covered by the County's insurance policy. Interest costs accruing during the appeal are minimal. If the appeal is unsuccessful, the court may award additional attorneys' fees to the plaintiffs. It is difficult to predict that amount, but it could be an additional \$10,000.00 – 20,000.00, and a larger amount if the appeal proceeds to the Supreme Court.

Attachments

cc(w/att.): Scott Manske
Amber Moreen
Janelle Jensen