

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: August 21, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Acting Corporation Counsel *MAG*
Molly J. Zillig, Principal Assistant Corporation Counsel *mjz*

SUBJECT: *District Council 48, AFSCME, AFL-CIO, et al. v. Milwaukee County*
E.D. Case No. 12-CV-00543

Please refer this matter to the Committee on Judiciary, Safety, and General Services to be placed on the agenda for its September 12, 2013 meeting. We are seeking settlement approval of the lawsuit involving District Council 48 and Milwaukee County asserting a pattern and practice of race discrimination at the Milwaukee County House of Corrections ("HOC"), which is pending before the U.S. District Court for the Eastern District of Wisconsin, Case No. 12-CV-00543.

This lawsuit was initiated by District Council 48 with the filing of an EEOC charge against Milwaukee County on behalf of its representative members who were employed as Correctional Officers at the HOC. The charge alleged that the County discriminated when it applied more severe discipline to African American officers because of their race than non-African American officers. A timely complaint was filed in the Eastern District of Wisconsin on May 31, 2012 under Title VII. This lawsuit was defended by Attorney Oyvind Wistrom of Lindner and Marsack, S.C., through Wisconsin County Mutual, with the assistance of the Office of the Corporation Counsel.

Although the Plaintiffs have presented no evidence that African American Correctional Officers were disciplined more frequently than other non-African American Correctional Officers, they have presented some evidence that the degree of discipline imposed on African American officers was significantly greater than for non-African American officers. Although there was a statistical difference in the severity of the discipline imposed upon African American officers, each case of discipline is based on its own set of facts and the County asserts that these facts explain the disparities. However, due to the uncertainty of the litigation and rather than risk greater damages and attorney fees, both Mr. Wistrom and the Office of the Corporation Counsel believe that settlement of the above claim is appropriate.

We are seeking approval to settle this matter pursuant to the following terms and conditions:

- a. To reinstate Marsha Spells to employment as a Correctional Officer at the HOC with the receipt of pension service credit for the period of time since her termination (June 22, 2011 to present), but without any back pay for the two-plus years that she has been out of work. She would also agree to dismiss her WERC case. Her PRB case will be settled with her returning to work as a Correctional Officer.
- b. To consider Alicia Magee for any future promotional opportunities to any Lieutenant positions at the HOC for which she is qualified. This does not guarantee employment in the event there is an opening and she submits an application.
- c. To provide preferential rehire to the following former Correctional Officers should they seek reemployment at the HOC: Caribe Baker, Marvin Daniels, Acacia Wilson, Monique Turner, Nikki Franklin, Markata Smith and Sammie Reed. This does not guarantee employment in the event there is an opening and they submit an application.
- d. The County's insurer (WCMIC) agrees to pay reasonable attorneys' fees and costs of \$21,000.00. This represents approximately one-third of the costs and attorney fees that Mark Sweet of Sweet & Associates, LLC has incurred in the prosecution of this case.

Lindner and Marsack, S.C., the Office of Corporation Counsel and the Wisconsin County Mutual recommend this settlement for approval.

cc: Amber Moreen
Kelly Bablitch
Alexis Gassenhuber
Stephen Cady
Raisa Koltun