

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

DATE: June 17, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Mark A. Grady, Deputy Corporation Counsel  
James M. Carroll, Principal Assistant Corporation Counsel

SUBJECT: Milwaukee County v. Labor & Industry Review Commission and  
Kimberly Carrington-Fields; Milwaukee County v. Labor & Industry  
Review Commission and Ellettra Webster.  
Milwaukee County Case Nos. 2012CV012833 & 2012CV012834

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for authorization of an appeal to the Wisconsin Court of Appeals pursuant to section 1.28 of the Ordinances.

This appeal relates to two consolidated unemployment compensation matters. Both employees worked for the Sheriff's Office at the time of their suspension pending their hearing before the Personnel Review Board (PRB). However, the issue in this case is not unique to the Sheriff's Office. The Sheriff has asked our office to pursue the legal issue set forth below until we receive an appellate decision. We agree that it is appropriate to do so to resolve this question.

When an appointing authority wants to discharge a civil service employee, the authority must investigate the basis for the discipline, decide whether to request discharge, then file written charges for discharge with the PRB, which then schedules and conducts a hearing to determine whether to affirm the charges and discharge the employee. Most employees are suspended without pay while they await their PRB hearing. Employees have the right to a hearing within three weeks of their suspension, but most employees waive that right to a prompt hearing. In those situations, the hearing is often not scheduled and held by the PRB until six to eight months later.

Unemployment compensation law generally allows unemployment benefits to be denied by an employer for up to three weeks of a suspension. After that period of three weeks, benefits must be paid regardless of the length of the suspension. The basic policy is that unemployment benefits cannot be denied during suspensions

that exceed three weeks. Thus, if an employee is suspended for more than 29 weeks waiting for their PRB hearings, the County argues that it can deny the first three weeks of the suspension, but admits it is responsible thereafter for up to 26 weeks of UC benefits. The issue in these cases is whether the County can deny unemployment benefits for the first three weeks of suspension pending PRB hearing.

The Labor and Industry Review Commission (LIRC) and the Unemployment Insurance Division of DWD have interpreted the statutory section on denial of benefits during suspensions (Section 108.04(6), Wis. Stats.) to apply only to "disciplinary" suspensions. Further, they have interpreted that section to mean only disciplinary suspensions that constitute the actual punishment or discipline. With respect to the County's process, the State's position is that the suspension pending discharge is not a disciplinary suspension, but is more like a non-disciplinary suspension while an investigation is being conducted, because the PRB has the final decision-making authority to impose discipline. Only if the PRB orders a suspension (exceeding ten days) does the State consider it a disciplinary suspension. The State also rejects the County's argument that because the suspension pending discharge hearing is part of the County's disciplinary process, it constitutes a disciplinary suspension. For these reasons, LIRC holds that the County cannot deny UC benefits at all during the entire period of the suspension pending the PRB hearing—not even during the first three weeks.

For various legal reasons, we have advocated that a contrary interpretation of the statute is required. Because appellate courts defer to statutory interpretations by LIRC, we face an uphill battle on our appeal. Nevertheless, we agree with the Sheriff that it is important to have this issue resolved. The case is being handled by our office and the only costs involved are the \$195.00 filing fee and copying costs. The circuit court decision affirming the LIRC was filed on June 4, 2013. An appeal must be filed by July 19, 2013. We are requesting approval for filing the appeal under the provisions of section 1.28 of the ordinances.

  
James M. Carroll, Principal Assistant Corporation Counsel

cc: Amber Moreen  
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Alexis Gassenhuber  
Steve Cady  
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