

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: June 6, 2016

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

FROM: Colleen Foley, Acting Corporation Counsel

SUBJECT: *Milwaukee District Council 48 v. Milwaukee County*
Case No. 11-CV-16826

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for a recommendation, prior to authorization and approval by the County Board of Supervisors, to appeal the trial court ruling in *Milwaukee District Council 48 v. Milwaukee County* per Milwaukee County General Ordinance (MCGO) 1.28(1).

Background

On November 4, 2011, Milwaukee District Council 48 of the American Federation of State, County & Municipal Employees, AFL-CIO (“DC 48”) filed a complaint (subsequently amended on November 14, 2011) for declaratory and injunctive relief against Milwaukee County (“the County”) in the Milwaukee Circuit Court. Ultimately, the matter resulted in cross motions for summary judgment and a May 27, 2016 decision (received by the Office of Corporation Counsel on June 1, 2016) in favor of DC 48. The circuit court deemed the language of the subject ordinance (11-15) unambiguous, counter to the County’s argument, and therefore declined to reference legislative intent or history and granted summary judgment for DC 48 and against Milwaukee County.

At its core, this action involves separate and long-standing provisions triggering eligibility for retirement and receipt of pension benefits under the “Rule of 75” dependent upon status as a represented or non-represented employee.

“Rule of 75”: 1991 through 2005

The “Rule of 75” derives from Milwaukee County General Ordinance (MCGO) 201.24(4.1), created in 1991 and amended in 1993. The “Rule of 75” permits an employee in the Employee Retirement System (ERS) to retire with full benefits when the employee’s age plus years of service equal 75. Full retirement otherwise

occurs when an employee reaches age 60 or 64, dependent upon date of hire. Under the ordinance, non-represented employees became eligible for the Rule of 75 upon retirement on or after September 1, 1993.

Beginning in 1994, DC 48 employees, as represented employees under the terms of their collective bargaining agreement (CBA), became eligible for the Rule of 75 upon retirement on or after January 1, 1994. Additionally, DC 48 employees hired January 1, 1994 forward were *not* eligible for the Rule of 75.

“Rule of 75”: 2006 through September 28, 2011

In 2006, the County amended MCGO 201.24(4.1) to limit eligibility for the “Rule of 75” to those non-represented employees hired before January 1, 2006 and retired after September 1, 1993. The ordinance did not apply to employees under a CBA at the time of retirement.

Approximately 2 years later, DC 48’s CBA was set to expire on December 31, 2008 and got extended by agreement to March 31, 2009. Thereafter, the parties reached a tentative agreement not approved by the Board or ratified by the membership. Nonetheless, pre-Act 10, employers had a duty to maintain the status quo regarding wages, hours and conditions of employment during contract negotiations or were deemed in breach of the duty to bargain collectively.

Effective June 29, 2011, 2011 Wisconsin Act 10 became law and limited the subject of CBA to base wages, eliminating hours and conditions of employment for collective bargaining purposes. DC 48 argues that its members became non-represented on that date and were therefore immediately eligible for the “Rule of 75” under MCGO 201.24(4.1).

Amendment to Rule of 75: September 29, 2011

On September 29, 2011, the Board adopted MCGO 11-15 amending MCGO 201.24(4.1) by providing that members of the employee retirement system (ERS) employed on that date and *not covered* by the *terms* of a CBA, would be eligible for the Rule of 75 if hired before January 1, 2006 and retired after September 1, 1993. ERS members on that date employed and *covered* by the *terms* of a CBA would be eligible for the Rule of 75 if hired before January 1, 1994.

The intent of the ordinance amendment was to preserve the status of employees hired between 1994 through 2006 and covered by the terms of a CBA was to maintain their status as ineligible for the “Rule of 75” as established by the CBA terms.

Stay of Circuit Court Decision

On June 3, 2016, Milwaukee County moved for a stay of the circuit court's decision pending an appeal. The motion cited the irreparable injury that will occur should the appellate court reverse the trial court's decision and the necessity thereafter for the ERS to recover pension benefits paid out to impacted employees and somehow require employees to "un-retire". The motion referenced that the pensions are funded by taxpayers and active employees and that failing to stay the decision pending appellate review would have a detrimental effect on the administration and financial stability of the publicly funded pension system. Finally, the motion emphasized that the amount of harm to the plaintiff employees is substantially outweighed by the potential irreparable harm to all parties if the trial court is reversed on appeal. Should the circuit court deny the motion for a stay, Milwaukee County would ask the Court of Appeals to intervene and delay the decision's implementation pending completion of the appeal.

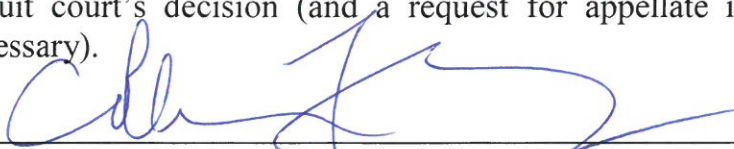
Any appeal must first be approved by this committee and the full Board. This memo requests such approval for the potential interim step (requesting the Court of Appeals to intervene if the circuit court declines the County's motion) and the full appeal once the trial court matter is concluded.

Costs, attorney fees

The Wisconsin Mutual will cover the costs of defending this matter before the Court of Appeals. The Mutual did not defend the County in the circuit court matter.

Recommendation and Request

Given the number of employees impacted (approximately 640 active employees are eligible for the "Rule of 75" with this ruling) and the 2011 estimates from the County's actuary regarding the potential fiscal impact (then estimated at approximately \$10,000 to \$50,000 per impacted ERS member), the Office of Corporation Counsel respectfully requests authorization to file an appeal of the circuit court's decision (and a request for appellate intervention for a stay if necessary).



Colleen Foley, Acting Corporation Counsel

cc: Kelly Bablitch
Shanin Brown
Erica Hayden
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