

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: June 27, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Kimberly Walker, Corporation Counsel *KRW*
Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Potential Appeal of decision related to the change in the pension multiplier from 2.0 to 1.6% per year
Stoker et al. v. Milwaukee County et al., Case No. 11-CV-16550

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

Ms. Stoker, a member of the Federation of Nurses and Health Professionals (FNHP) and FNHP filed suit alleging that the change in the pension multiplier from 2.0 to 1.6% per year is a violation of the vested benefit contract of employees who were members of the pension system prior to the date of the change. Circuit court Judge Pocan ruled in favor of Stoker and FNHP. The current decision applies to members of FNHP who were hired prior to January 1, 2012; the change in the multiplier can legally apply to FNHP members hired on or after January 1, 2012. On September 27, 2012, the County Board authorized an appeal to the Court of Appeals (File No. 12-646). The appeal has been filed and briefed and the parties are awaiting a decision.

Once a decision is received from the Court of Appeals, the losing party has thirty (30) days to file a petition for review with the Wisconsin Supreme Court. It is likely that we will not receive the decision on a date that happens to coordinate with the County Board cycle and therefore we would be required to utilize the emergency authorization procedure in section 1.28 of the ordinances (requiring approval by the County Executive and County Board Chairwoman). Rather than relying on the emergency procedures, the attached resolution is being submitted. In the event the Court of Appeals' decision affirms the lower court ruling and invalidates adopted County policy and ordinances, the full County Board can make a decision now, in advance, whether to file a petition for review with the Supreme Court. The Supreme Court has complete discretion whether or not to grant a petition and accept the appeal. Our office and outside counsel recommend the filing of a petition if an adverse decision is received.

The legal fees for outside counsel to handle this case, including any petition, are covered by the County's insurance policy.

Pursuant to §1.28, M.C.G.O., the Judiciary Committee is delegated the responsibility of making a recommendation to the County Board for such an appeal.

Our office and outside counsel recommend the filing of a petition for review in the event an adverse decision is received. Although any decision technically only applies to members of FNHP, the principle of any decision would apply to all employees who were hired prior to the effective date of the change in the multiplier shown below for each group:

Non-represented:	1/1/10
Machinists:	5/1/10
TEAMCO:	5/1/10
Attorneys:	6/1/10
Elected officials:	10/4/10
AFSCME:	8/1/11
Trades:	1/1/12
FNHP:	1/1/12

The principle of any decision may also apply to other retirement benefit policies adopted by the County.

The actuary previously calculated the annual pension contribution savings as a result of the multiplier change to be approximately \$4,000,000.00. In the future, if the decision is not reversed, the increased contributions that would be required related to these unattained savings would be split approximately fifty-fifty between the County and all of the employees making a pension contribution (all employees other than firefighters).

Attachments

cc(w/att.): Kelly Bablitch
Amber Moreen
Steve Cady
Alexis Gassenhuber
Scott Manske