

**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 reimbursement of Medicare Part B premiums
WFNHP et al. v. Milwaukee County, Case No. 12-CV-1528

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

The Wisconsin Federation of Nurses and Health Professionals (WFNHP) and the Association of Milwaukee County Attorneys (AMCA) filed suit alleging that the elimination of reimbursement of Medicare Part B premiums for retirees entitled to premium-free health coverage, who retire after December 31, 2011, is a violation of the vested benefit contract. (This change was made for nonrepresented employees for retirements on or after April 1, 2011.) Circuit Court Judge Foley ruled in favor of WFNHP and AMCA. On November 5, 2012, the County Board authorized an appeal to the Court of Appeals (File No. 12-796). 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.

Attachments

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