


**COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION**

DATE: October 14, 2013

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: Kerry Mitchell, Director, Department of Human Resources 
Prepared by Rick Ceschin, Deputy Director, Department of Human Resources

SUBJECT: “Crosswalk” of collective bargaining contract terms to County ordinances

Issue

The genesis of this report is the requirement for Milwaukee County to evaluate and adopt a large number and variety of employment and personnel policies that previously were contained in collective bargaining agreements (CBAs) for six unions at Milwaukee County and which, because of Act 10, no longer may be contained in CBAs. The Department of Human Resources is recommending amendments to various sections of the Milwaukee County Code of General Ordinances in order to do so.

Background

2011 Wisconsin Act 10 made all non-base wage collective bargaining items prohibited subjects of bargaining for non-public safety worker collective bargaining units. In the absence of those contract terms, guidance and authority for the administration of some employment terms and conditions, primarily those related to pay policies, would default to Milwaukee County ordinances which, upon review, proved not be adequate to provide administrative authority on certain employment terms.

The Division of Labor Relations in the Department of Human Resources has separately submitted proposed 2013 collective bargaining contracts with five certified bargaining units which, when adopted, will prohibit the recognition of all non-base wage employment terms of the expiring contracts. Those contracts are currently before the Committee on Finance, Personnel and Audit. The certified bargaining units with proposed 2013 base wage-only contracts are:

- Federation of Nurses and Health Professionals (Nurses)
- Association of Milwaukee County Attorneys (Attorneys)
- Milwaukee Building and Construction Trades Council (Building and Trades)
- Int'l Association of Machinists and Aerospace Workers (Machinists)
- Technicians, Engineers and Architects of Milwaukee County (TEAMCO).

Additionally, in February 2012, Milwaukee County adopted an “emergency and temporary” ordinance to preserve employment conditions that would become inapplicable upon the decertification of AFSCME District Council 48 (File No. 12-161). The action was “expressly intended not to be precedential” and was to be in effect only until such time as Milwaukee County could adopt new policies on employment conditions that previously were contained in the collective bargaining agreement. The resulting ordinance is codified in Chapter 17.015 of the Milwaukee County Code of General Ordinances (MCGO).

The changes discussed here are intended provide the policy direction necessary to clarify employment terms for Milwaukee County's employees, and for those who administer pay and employment policies in the interests of those employees.

Items previously addressed

Following the enactment of 2011 Wisconsin Act 10, Milwaukee County adopted a number of ordinance revisions that replaced contract terms for non-public safety worker collective bargaining units on major employee fringe benefit topics, including standardizing health care benefits and contributions, mandatory pension contributions, pension benefit changes, wage freezes, overtime, and sick leave policies. Those ordinances remain unchanged and, as such, those items are not further discussed in this report.

Review and mapping of Contract Terms

In the past several months, the Department of Human Resources has worked with Corporation Counsel and the Office of the Comptroller to review the expiring collective bargaining agreements with the above referenced certified bargaining units as well as the last contract (2007-2008) with AFSCME District Council 48. Human Resources, including Labor Relations, met several times with District Council 48, the Nurses, Building and Trades and TEAMCO (the machinists and attorney's associations did not participate) collectively and also held individual meetings with those groups. Those meetings were open exchanges to receive input on terms and conditions of their prior collective bargaining agreements.

The review identified no fewer than 80 distinct contract sections that covered subjects as diverse as, for example, management rights, severe weather procedures, weekend and shift differentials, grievance procedures, seniority definitions, the issuance of equipment and uniforms, and safety committees. In many cases, the collective bargaining agreements had language that was consistent across each bargaining unit - each unit had provisions that defined 'employee', expressed the rights of management, established affirmative action and non-discrimination policies, and set vacation allocations - and some of those terms had corresponding (in some cases identical) terms in the ordinances.

In order to appropriately map the contract terms to County policies, each term was reviewed to determine if it was or should be addressed within County ordinances, civil service rules, departmental work rules, administrative policies, or should be allowed to evaporate with no further action required. The items that require ordinance revisions are included in the attached resolution/ordinance. Those items that will be covered by civil service rules, departmental work rules or administrative policies will be identified in this report, but no County Board action is required.

Items addressed in the attached proposed resolution/ordinance

Fundamentally, prior to Act 10, the usual distinction made in the ordinances was between represented and nonrepresented employees, but now the distinction is between public safety workers in unions and all other employees. The primary goal of the attached ordinance amendments is to adopt some non-base wage employment and personnel policies for all employees not covered by public safety worker CBAs. Doing so requires amending the language of the ordinances to provide that they apply to all employees not represented by a public safety worker union. After that language change, the ordinances will address all employees previously represented by one of the five collective bargaining units above and all those employees previously represented by the AFSCME DC48 unit. Consequently, there no longer will be any need to continue the temporary "status quo" ordinance that addressed DC48.

Thus, the first section of the attached ordinance revisions repeals Chapter 17.015 pertaining to the continuation of certain compensation and fringe benefits for employees formerly represented by AFSCME District Council 48. The repeal of that section is the necessary and corresponding action to the expiration of contract terms for the other five non-public safety worker unions. As envisioned when that section was adopted in February 2012, the terms that had been preserved within that ordinance are comprehensively addressed either in the proposed resolution and ordinances, or in civil service rules, work rules or administrative policies and, as such, Chapter 17.015 can be repealed.

The following are the major employment terms that are addressed in the attached proposed ordinance revisions and are broken out by those items that continue (or slightly change) employment terms and those ordinances which will have a larger impact. Employees and policy makers will notice that many pay policies and provisions of the respective contracts are maintained in these revisions. However, those pay policies will receive further review by the Compensation Division of the Department of Human Resources and may result in recommendations for revisions at a later date.

Continued provisions

- **Shift differential, weekend differential, stand-by pay, call-in pay, vacation, holiday and personal days, short term disability insurance availability, and pre-tax dependent care deductions, and life insurance** are all maintained at, generally, the same terms as contained in the collective bargaining agreements, resulting in standardized terms for those items. Some bargaining unit members, however, will see minor adjustments in pay practices – for instance, call-in pay is set at a uniform three hours minimum paid at the base wage rate rather than four hours minimum at the overtime rate. Vacation for TEAMCO members will change going forward, but those members will not lose vacation time while transitioning to the normal vacation allocation.
- **Uniform allowances and tool allowances** are continued at existing rates but will switch to a reimbursement model rather than being a direct payment intended to be used for uniforms. Employees will be required to submit receipts for applicable uniform purchases in order to be reimbursed.

Modified provisions

- **Grievance** procedures in the prior collective bargaining contracts are no longer legally permissible. Thus, the applicable grievance procedure will be based on the grievance procedure in Chapter 17.207 that currently applies only to “nonrepresented” employees.
- Using both the City of Milwaukee and the State of Wisconsin’s grievance procedure as a guide, and with input from the Office of Corporation Counsel on the legal requirements for grievance procedures, the recommendation is to amend the ordinance to authorize the Director of Human Resources to create an administrative procedure that addresses employee discipline, to the extent permitted by law, and workplace safety, for employees not covered by a public safety worker CBA. The proposed administrative grievance procedure for applicable disciplinary matters and workplace safety is attached to this report. As noted in that proposed procedure, employee discipline greater than written reprimands are either heard by the Personnel Review Board or, as provided in State Statute, are outside the scope of a grievance.

Any previously grievable matter involving the application of wage schedules or benefits, will be referred to and handled by department-based Human Resources representatives or the Employee Relations Division of Human Resources, depending on the circumstances of the issue.

- **Reimbursement for professional activities** such as seminars, credentialing, license fees, continuing education and conferences had been covered under prescriptive contract language that specified dollar values for certain activities. The proposed ordinance gives department heads authority to develop reimbursement policies for these activities, dependent on availability of funding and further requires prior approval of the department prior to undertaking the professional activity.

Nurses

The economic terms contained in the collective bargaining agreement with the Federation of Nurses and Health Professionals were different in many areas than the terms in the other prior agreements and did not translate as well to ordinances addressing all employees. As such, the economic terms in Federation's contract are mapped to a separate ordinance section with no major changes. However, the proposed resolution calls for the Compensation Division to review those pay provisions and develop appropriate recommendations. Those terms are contained in the attached proposed Chapter 17.34.

Items covered by Civil Service Rules

As mentioned above, a number of subjects covered by collective bargaining language are addressed within Milwaukee County's Civil Service Rules. The County's Civil Service system was established by the Civil Service Commission, as authorized and directed under Wisconsin State Statute Chapter 63. The two most significant collective bargaining terms that map to Civil Service rules are the definition of seniority and the process for handling layoffs.

Seniority

Seniority is generally defined within the prior collective bargaining agreements as the number of scheduled or paid hours an employee had logged within the collective bargaining unit. An employee's level of seniority would often be the principal consideration for whether an employee could transfer to a different job, receive overtime assignments, select vacation, holiday or other off days, be laid off, or even receive a promotion. The definition also provided for how seniority could be "broken".

In the absence of the collective bargaining definition of seniority, Civil Service Rule I, Section 1(26) provides the definition of seniority:

Seniority. For the purposes where it applies, seniority shall be measured by the length of an employee's continuous full time service with Milwaukee County, including temporary, emergency and hourly employment. Seniority for employees with continuous but less than full time service shall be measured by the total straight time hours paid. If employees have the same hiring date then seniority shall be based on the last four (4) digits of their social security number with the highest number being the most senior. Continuous employment shall be interrupted and seniority shall be measured from the most recent date of hire under the following circumstances:

- (a) An employee who resigns employment with the county and is not reinstated to county employment within thirty (30) days of the effective date of resignation; and

- (b) An employee is discharged and is not reinstated to county employment pursuant to an appeal of such discharge.

Based on preliminary calculations, using the Civil Service definition could impact approximately 500 employees, of who approximately 330 would gain in seniority while, potentially, an estimated 170 could lose seniority. The attached resolution specifies that, upon converting to the new definition of seniority, any employee who might otherwise lose seniority will have their hours preserved at the current level.

Additionally, and aside from layoff considerations, seniority may no longer be the exclusive determinant when considering employee preferences, depending on applicable work rules and department policies. The Department of Human Resources will work with departments to ensure equitable rules are maintained with regard to all department work rules, but especially regarding those items that had previously been governed exclusively by the employee's seniority.

Layoffs

When layoffs have been required for represented employees in the past, the layoffs were conducted based solely on the employee's seniority within the affected classification, with provisions for 'bumping' less senior employees and placement options for displaced employees. Civil Service Rules (Rule VII, Section 4) requires layoffs of represented employees to be conducted by seniority within classification and affected department, with no provision for placement.

For non-represented classified employees, Civil Service Rules (Rule VII, Section 5) permit layoffs to be conducted by seniority, job performance, attendance, available funding, knowledge or skill in a program or function, or all of the above. In contrast to the layoff rule for represented employees, under this rule, if the layoff is conducted by seniority, some employees will have bumping rights (depending on classification) and may be entitled to placement in comparable positions. The attached resolution specifies that all layoffs of classified employees made in conjunction with the adoption of the 2014 Adopted Budget will be conducted on the basis of countywide seniority. The Civil Service Commission will be asked to re-evaluate and amend its rules to eliminate the distinction between represented and nonrepresented employees.

Other Civil Service Considerations

Also mapping to Civil Service rules are provisions relating to leaves of absence with and without pay, scope of job duties (to be consistent with the classification) and provisions for promotions and probation. Generally, the Civil Service provisions and the contract provisions are consistent, with one notable exception: under the prior contract of AFSCME District Council 48, certain Civil Service Rules amendments adopted in 1987 did not apply to District Council 48 members, including how promotions are handled, return to a position after a leave, and the definition of hourly employee. Going forward, those rules and amendments will apply to all classified employees regardless of bargaining unit status (with the possible exception of provisions in public safety worker CBAs). In the case of promotions specifically, rather than receive weighted credit for seniority in promotions, merit and fitness for the position will be the only consideration.

Items Covered by Work Rules

The main employment terms and conditions that will be addressed via work rules include overtime assignments, shift assignments (where applicable), vacation/holiday/off days selection, and time off requests from bargaining unit representatives to conduct union business.

The Department of Human Resources is currently reviewing all existing departmental work rules and, where such rules do not exist, will advise departments on how to create and apply equitable work rules. In many cases existing work rules largely adhere to the terms of the prior collective bargaining agreements. The attached resolution specifies that departments are to submit work rules and work with the Human Resources to create, and properly promulgate, equitable work rules so that all employees have an understanding of their department's working conditions.

Items Covered by Administrative Rule or Applicable Law

Among the collective bargaining agreement terms that map to existing administrative rules or applicable laws are participation in the County's Deferred Compensation program, indemnification against lawsuits for performance of job duties, access to personnel files, discrimination, military leave, workplace safety, jury duty, employee parking fees, and worker's compensation.

Items discontinued

Each prior collective bargaining agreement included language that is not recommended to be continued. In most cases, those terms were outside the scope of employment terms or conditions, are obsolete, or are otherwise prohibited. Those terms include the definition of management rights, fair share agreements, cafeteria hours, access to employee data, political contributions, and general contract clauses, among other terms.

Conclusions and Recommendations

The Department of Human Resources takes its obligations to Milwaukee County's employees very seriously and is committed to treating all employees fairly, equitably, and as uniformly as possible. The collective bargaining agreements that have been in force to this point addressed many of the same items that are normally captured within the purview of human resources departments in other public and private enterprises. The Department of Human Resources and Milwaukee County and its employees are best served by building an environment where employees are treated fairly, are well-informed, are recognized for their performance and have an understanding of what is expected of them. To that end, the Department believes the recommended revisions to County ordinances outlined in the attached proposed resolution/ordinance are in the best interest of our employees, the County and its taxpayers.

Please refer this report, the attached resolution/ordinance, proposed grievance procedure and fiscal note to the Committee on Finance, Personnel and Audit for consideration at the October 31, 2013 meeting.

Note: The Fiscal Note will be completed and signed by the Comptroller's office and will be submitted separately.

cc: County Executive Chris Abele
Amber Moreen, Chief of Staff, County Executive's Office
Kelly Bablitch, Chief of Staff, County Board
Don Tyler, Director of Administrative Services
Scott Manske, Comptroller
Paul Bargren, Corporation Counsel
Mark Grady, Deputy Corporation Counsel
Kerry Mitchell, Executive Director of Human Resources
Steve Cady, Fiscal and Budget Analyst, County Board
CJ Pahl, Comptroller's Office
Janelle Jensen, Committee Clerk

Grievance Procedure

This administrative process is intended to conform to Wisconsin State Statute 66.0509 (1m) and Milwaukee County Code of General Ordinances 17.207. Under State law, Milwaukee County is required to have a civil service system. Statutes require that discipline greater than ten (10) day suspensions (or a second suspension within six (6) months) must be addressed by the Civil Service Commission. By ordinance, that duty has been given to the Personnel Review Board. However, statutes, §63.10(1), provide that Milwaukee County department heads are entitled to discipline employees with suspensions of up to ten (10) days without further review. Statutes further provide that Milwaukee County is required to maintain grievance procedures that address workplace safety. Under MCGO Chapter 33, employee discharges, demotions, and suspensions in excess of 10 days are automatically referred for a hearing before the Personnel Review Board.

Grievable Matters

A grievance means any dispute which exists on a grievable matter as a result of an unsatisfactory adjustment or failure to adjust a claim or dispute by an employee or group of employees who are not represented by a public safety worker collective bargaining agreement. An employee may file a formal grievance through this grievance procedure on the following matters:

- Written reprimands (only through Step 2 of this procedure) if the employee alleges the action was taken without just cause.
- Workplace safety. "Workplace safety" means conditions of employment related to the health and safety of employees, and includes safety of the physical work environment, the safe operation of workplace equipment and tools, use of personal protective equipment, training requirements, warning requirements, workplace violence, and accident risk.

Considerations on Work Place Safety Issues

Every reasonable effort should be made by employees and supervisors to resolve work place safety concerns or problems before filing a grievance. Safety concerns or problems requiring immediate action or follow-up shall not be delayed due to the initiation of the grievance process. Any grievance filed regarding workplace safety must relate to issues personal to the grievant filing the grievance. To file a grievance on work place safety, the grievant must have been personally affected by or witness the alleged violation. The resolution may take into account:

- Whether the concern or hazard can be isolated
- The number and location of employees affected
- Whether appropriate temporary measures are possible or desirable
- Whether environmental monitoring is desirable
- The time that may elapse before the hazard or risk is permanently corrected

A formal grievance must be filed with and received by the employee's immediate supervisor within 30 calendar days from the date the grievant first became aware, or should have become aware (with reasonable diligence), of the matter grieved. Grievances or appeals not timely submitted under the timelines expressed in this procedure cannot be processed through the grievance procedure.

Representative

An employee may designate, in writing, a representative who shall be authorized to represent the employee at each step of the grievance procedure. If the grievant selects a County employee as a representative, the employee representing the grievant will have to receive permission to be excused from their regular duties and may be required to act on their own time. However, upon reasonable notice, the appointing authority will permit the employee and the representative a reasonable period of time, as determined by the appointing authority, during normal work hours to prepare and present a grievance without loss of pay.

After a grievance has been filed, the department will provide the employee with any documents management used to impose the written reprimand within three (3) days after receipt of a written request for such information from the employee.

Timing

Grievances or appeals not submitted within the designated time limits at any step of the grievance procedure will be considered as having been adjudicated on the basis of the last preceding management response and will not be further heard. Whenever possible, grievances will be handled during the regularly scheduled working hours of the parties involved. These timelines may be waived by mutual agreement of the parties involved.

Steps in the procedure

Employees and supervisors are encouraged to work together informally to resolve a potential grievance prior to the initiation of formal grievance procedures. Employees should first discuss the complaint with their immediate supervisor within three (3) working days of the situation whenever possible. If the complaint is not resolved as a result of this discussion, proceed to begin the formal grievance process.

To begin the formal grievance process, the employee must complete a Grievance Initiation Form that clearly specifies the issue being grieved and submit the form to the employee's immediate supervisor with a copy to the HR representative assigned to the employee's department. A representative may not file a grievance or an appeal on behalf of the employee.

The Step 1 meeting will be conducted by the employee's immediate supervisor or a departmental representative designated as the Step 1 hearing officer.

Step 1.

1. The supervisor or departmental representative must schedule a Step 1 meeting with the employee within three (3) working days of receipt of the Grievance Initiation Form.
2. The employee alone or with their representative will explain the grievance verbally to their immediate supervisor or the departmental representative designated to respond to Step 1 grievances.
3. The supervisor or departmental representative will verbally inform the employee of their decision on the grievance presented within three (3) working days of the Step 1 meeting.

Step 2.

1. If the grievance is not settled at the first step, the employee may appeal in writing on the Grievance Appeal form and will forward the appeal to the HR representative assigned to the employee's department, with a copy to the person who issued the Step 1 decision and the employee's appointing authority, within ten (10) working days of the verbal decision.
2. The HR representative in the department will serve as the hearing officer and will schedule a hearing with the person concerned within ten (10) working days from the date of service of the grievance appeal form.
3. Within 10 days of the conclusion of the hearing, the hearing officer shall inform the aggrieved employee and the department in writing of his/her decision. If the matter grieved was a written reprimand, the decision of the hearing officer in Step 2 is the final decision and cannot be appealed to Step 3.
4. If the grievance is not resolved at step 2 as provided, the employee or the department may appeal such grievance within ten (10) working days to step 3 if applicable.

Step 3.

1. If the grievance is not settled at the second step, the employee may appeal to the Employee Relations Division of the Department of Human Resources, within five (5) working days after receiving the written decision provided in step 2, provided the grievance is not related to a written reprimand.
2. The grievance officer in Employee Relations will review the record of the case, hold a hearing thereon as soon as practical, notify all interested persons of the time and place of the hearing.
3. Within ten (10) days of the conclusion of the hearing, the grievance officer will notify all interested persons of its decision in writing.