



## OFFICE OF CORPORATION COUNSEL

---

PAUL BARGREN  
Corporation Counsel

MARK A. GRADY  
COLLEEN A. FOLEY  
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ  
MOLLY J. ZILLIG  
ALAN M. POLAN  
JENNIFER K. RHODES  
DEWEY B. MARTIN  
JAMES M. CARROLL  
PAUL D. KUGLITSCH  
KATHRYN M. WEST  
JULIE P. WILSON  
CHRISTINE L. HANSEN  
Assistant Corporation Counsel

Date: December 11, 2015

To: Chairman Lipscomb

cc: Comptroller Manske

From: Paul Bargren *PB*  
Corporation Counsel

Re: Mid-year COLA for represented employees

Chairman,

This responds to your request of December 8, 2015, for a report on the Administration's enactment of the mid-year cost-of-living adjustment (COLA) authorized in File No. 15-526 and specifically as it relates as to enactment of the COLA for County employees in the four certified bargaining units, namely, Nurses, Trades, Attorneys and Teamco.<sup>1</sup>

Comptroller Manske has prepared financial data showing that the fiscal effect of the raise in 2015 is about \$127,285 for the 257 union employees. None of the unions has a 2015 contract now. My report and Comptroller Manske's report should be read together for a complete picture.

It is my understanding that the County Executive plans to take steps to put the raises for the members of these four unions in place, effective retroactively to June 21.

### Background

The Resolution adopted July 30 in File No. 15-526 granted a 1.5% COLA for general non-elected County employees outside BHD, but the Resolution specifically exempted from the raise all employees "otherwise covered by a separate labor bargaining agreement." Even though the unions do not have 2015 contracts, under the principal of "dynamic status quo,"<sup>2</sup> they remain "covered" by their earlier agreements. Thus File 15-526, by its terms did not extend the COLA to the union employees.

Regardless, now there is apparently interest among both the County Board and Executive in doing so.

---

<sup>1</sup> More precisely, the unions are the Federation of Nurses and Health Professionals Local 5001, AFT, AFL-CIO; Milwaukee Building & Trades Construction Council; the Association of Milwaukee County Attorneys; and the Technicians, Engineers and Architects of Milwaukee County.

<sup>2</sup> See *Jefferson Cty. v. Wisconsin Employment Relations Comm'n*, 187 Wis. 2d 647, 654-55, 523 N.W.2d 172, 175-76 (Ct. App. 1994)

The fiscal note in File 15-526 included the same language excluding employees covered by a bargaining agreement. However, the sums actually reflected in the fiscal note apparently accounted for extending 1.5% raises for the 257 employees. Thus there is money available for the raise.

### **Questions posed**

You posed these questions to the Comptroller and me, and my answers follow.

**1. Could you provide the Board an update on what steps have been taken, or what steps would be needed, to effectuate a pay adjustment for all employees including represented employees?**

The appropriate vehicle for extending the raises will be a 2015 contract negotiated with each union establishing a 1.5% base salary increase effective June 21, 2015. Under Act 10, total base wages is the only topic that can be negotiated, and the contract can only be for one year. Wis. Stat. §§ 111.70(4)(mb)1; 111.70(4)(cm)8m. Act 10 also sets cost-of-living caps for base salary increases, § 111.70(4)(mb)2.a. However the cap for a calendar 2015 contract is 1.57% increase in total compensation for the unit, so the mid-year 1.5% increase is well under the cap.<sup>3</sup>

**2. What groups of represented employees have yet to receive a mid-year COLA in 2015?**

Nurses, Trades, Attorneys and Teamco.

**3. Would represented employees be required to collectively bargain for this pay adjustment?**

Yes. Existing terms (in this case the carryover terms) must be renegotiated; because they are subject to negotiation, base wage increases could not be unilaterally imposed without at least initiating negotiations. *See generally* Wis. Stat. § 111.70(3).

**4. Does the 1.5% COLA amount (provided mid-year) fall within or under the statutory limitations (inflation) on pay increases permitted for represented employees who collectively bargain?**

The 1.5% COLA amount provided as of June 21 falls within the allowable base wage increase cap for 2015.<sup>3</sup>

**5. Does the Board have any further role in the process of ensuring the policy is fully effectuated (i.e., contract approvals)?**

The County Board must ratify any contracts. §§ 63.03, 63.11; *see also* § 59.60(10). The Executive has full authority over negotiations. Wis. Stat. §§ 59.17(2)(b)1; 111.70(1p). It appears contracts reflecting the COLA will come to the County Board for ratification in the January/February 2016 cycle.

---

<sup>3</sup> The Comptroller's memo discusses this in detail.