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MEMORANDUM

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TO: Chairman Theodore Lipscomb, Sr.
Committee on Judiciary, Safety and General Services

FROM: Margaret C. Daun, Corporation Counsel

CC: Interested Parties

DATE: November 29, 2017

RE: Milwaukee District Council 48 v. Milwaukee County, Circuit Court Case No. 2011CV016826, Court of Appeals Case No. 2016AP1525

This memorandum provides an overview of the current status of the above-referenced litigation, for consideration by the Committee on Judiciary, Safety and General Services, as well as the full County Board.

In November of 2011, Milwaukee District Council 48 of the American Federation of State, County & Municipal Employees, AFL-CIO (“DC 48”) sued Milwaukee County in Milwaukee County Circuit Court related to the County’s “Rule of 75” pension benefit. The Rule of 75 is an early retirement benefit by which some County employees may retire with full benefits when the sum of their service credits and age equals 75. DC 48 argued that pursuant to the County’s so-called “status quo” ordinances, which were passed in the wake of 2011 Wisconsin Act 10, those DC 48 members hired by the County between 1994 and 2005 were entitled to this benefit—despite the fact that the last collective bargaining agreement between the County and DC 48 cut off Rule of 75 eligibility for DC 48 employees hired after December 31, 1993.

The Milwaukee County Circuit Court judge assigned to the case ultimately decided the matter in favor of DC 48 on May 27, 2016. Shortly thereafter, the Circuit Court granted the County’s motion for a stay of its decision pending further appeal, and the County initiated an appeal to the Wisconsin Court of Appeals. The Court of Appeals issued a decision affirming the Circuit Court decision in favor of DC 48 on November 7, 2017.

Upon analysis of the Court of Appeals decision, the Office of Corporation Counsel has concluded that the best course of action for Milwaukee County is to: (1) seek a stay of the appeals court’s decision and (2) file a petition for review by the Wisconsin Supreme Court. These conclusions are based on multiple considerations.

First, if execution of the Court of Appeals’ decision is not stayed pending the outcome of a petition for review, it is likely that some of the plaintiff County employees who have become or

will become eligible to retire from County service with a full pension by virtue of the decision, will attempt to do so before said petition for review is resolved. Indeed, since the Court of Appeals decision was released on November 7, Retirement Plan Services has received numerous inquiries from such individuals. Absent a stay, and should the County ultimately prevail in its petition for review by the Wisconsin Supreme Court, the County's retirement office would be obligated to attempt to recover as overpayments any pension benefits received by individuals who retired based on a decision that was subsequently reversed.

Second, should the Court of Appeals decision ultimately stand, over 600 County employees will be deemed eligible for an early retirement benefit to which they were not previously entitled. According to the Comptroller, such a result will increase the actuarial accrued liability of the pension fund by approximately \$6.8 million, and will compound the operational demands on an already stressed RPS office.

Third, review of this case by the Wisconsin Supreme Court will hopefully provide clarity regarding the implications of union CBAs being incorporated into County ordinances via the status quo amendments. Such a clarification would be welcome, as DC 48 and other unions have at times taken contradictory positions regarding the ongoing significance of their CBAs. In short, DC 48 and other unions frequently argue that their former members are still, in effect, covered by the CBAs when it increases certain benefits to their members, and as to different benefits, when being non-represented increases benefits to its former members, like the "Rule of 75" benefit at issue in this case, DC 48 argues the opposite. This has led to significant operational confusion and inconsistent treatment of former DC 48 members, as well as inconsistent treatment among similarly-situated employees.

Because of the need to move promptly for a stay and to file a petition for review within 30 days of the November 7, 2017 Court of Appeals decision, the Office of Corporation Counsel could not wait for the next regularly scheduled meeting of the County Board of Supervisors to seek permission for its recommended course of action. The Office of Corporation Counsel therefore proceeded under MCGO § 1.28(2), which permits the County Executive and County Board Chairperson to authorize an appeal "[w]henver time limits do not permit making application to meet this section in cases of imminent emergency." On November 16, 2017, Chairman Lipscomb and County Executive Abele authorized the Office of Corporation Counsel to seek a stay and file a petition for review pursuant to MCGO § 1.28(2).

Outside counsel filed the County's motion to stay the Court of Appeals decision on November 17, 2017, and is preparing the petition for Wisconsin Supreme Court review, which must be filed no later than December 7.
