

File



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INTER-OFFICE COMMUNICATION

DATE : October 19, 2009

TO: Honorable Committee on Personnel

FROM: William J. Domina, Corporation Counsel *WJD*
 Jerome J. Heer, Director of Audits *JH*
 Richard J. Ceschin, Milwaukee County Board Research Analyst *RC*

SUBJECT: File No. 09-292; Proposed transfer of Division of Labor Relations from Department of Administrative Services to Office of Corporation Counsel

Your honorable committee took up the above referenced matter at its meeting on September 11, 2009. On the motion of Supervisor De Bruin, the committee referred the "original resolution" (that is, to our understanding, the resolution to transfer labor relations from DAS to the office of corporation counsel) to the corporation counsel, the director of audits and county board staff "for a review of the impact the transfer would have related to whether it legally changes the authority of the County Board or the County Executive, what the streamlining impact would be, and a fiscal review . . ."

The proposed transfer of the division of labor relations from DAS to the corporation counsel would not affect the fundamental allocation of authority between the county board and the county executive as described in case law and opinions of the attorney general. Although their realms inevitably overlap and coalesce, the county board is a legislative, policy-making body, whereas the functions of the county executive are managerial and administrative. *Schuetz v. Van De Hey*, 205 Wis. 2d 475, 480-481, 556 N.W.2d 127 (Ct. App. 1996). Applying that principle to contracts to which the county is a party, including collective bargaining agreements, establishing the terms of the contract is primarily a legislative or policy decision, whereas administration of the contract is primarily an administrative or management function. 80 Wis. Op. Att'y. Gen. 49 (1991).

Under the proposed resolution, the county board and the county executive would continue to share authority over the appointment of the director of labor relations. As now, the director would be appointed by the county executive and confirmed by the county board.

The impact of the proposed ordinance on the authority of the county board relative to that of the county executive in the collective bargaining process is more likely to flow from amendments to the language governing that process than from the position of the division of labor relations on the county's organizational chart. Under the proposed amendment, the director of labor relations would negotiate collective bargaining agreements "along policy lines established by the committee on personnel pursuant to Chapter 80". The words "the county executive and" are deleted from that sentence. The intended effect of that deletion is obviously to place authority to establish the county's collective bargaining strategy in the hands of the personnel committee of the county board, to the exclusion of the county executive.

Nevertheless, as a practical matter, a labor agreement cannot be negotiated without involvement and input on the part of the executive branch of county government. The proposed amendment does not affect the provisions of s. 79.02(1), M.C.G.O. that require the director of labor relations to submit a tentative agreement to the director of human resources for review and to the fiscal and budget administrator and the controller for the development of an appropriate fiscal note. In fact, the proposed amendment adds a requirement to submit tentative agreements to the director of employee benefits for his or her review as well. Although none of those officers is given explicit authority to direct the course of collective bargaining, we assume that the results of their review and fiscal analysis will influence the county's position as bargaining moves forward. Also, as recent events have demonstrated, the possibility that the county executive may veto a resolution approving a collective bargaining agreement must also be taken into account. Therefore, it is unclear to us how much impact the proposed amendment would have on the dynamics of the collective bargaining process.

Apart from the potential effect of the proposed amendment on the allocation of authority between the county board and the county executive, we are concerned that placement of a director of labor relations who is appointed by the county executive and confirmed by the county board within the corporation counsel's office may be inconsistent with Wis. Stat. s. 59.42(2), the statute that governs the Milwaukee County corporation counsel. That statute is set forth at length below for ease of reference:

(2) Corporation counsel in special counties; appointment, dismissal and duties. (a) In a county with a population of 500,000 or more there is created the office of corporation counsel, and such deputy corporation counsels, assistants, stenographers and clerks at such salaries as are authorized by the board. The corporation counsel and deputy and assistant corporation counsels shall be attorneys at law licensed to practice in this state. All such offices and positions shall be in the classified civil service of the county except the corporation counsel, who is in the unclassified service. The corporation counsel shall be appointed by the county executive, with the concurrence of a majority of the board and shall not serve at the pleasure of the county executive. Any incumbent corporation counsel serving on August 1, 1990, shall retain that position and title until a new appointee is confirmed by the board. The corporation counsel may

be dismissed at any time by the county executive with the concurrence of a majority of the members-elect of the board. The corporation counsel may also be dismissed at any time by a majority vote of the board. If the county executive vetoes an action by the board to dismiss the corporation counsel, the board may override the veto by a two-thirds vote of the members-elect of the board. The corporation counsel shall appoint deputies, assistants and clerical and stenographic help. Deputy corporation counsels shall have, according to their rank and seniority, the powers and duties of the corporation counsel in his or her absence or disability. The corporation counsel and deputy corporation counsels shall take and file the constitutional oath of office.

(b) The duties of the corporation counsel and assistant corporation counsels shall be, without limitation because of enumeration, to:

1. Prosecute and defend all civil actions, proceedings, applications and motions in any court, commission, board, tribunal or body in any jurisdiction of this or other states or of the nation in which the county or any board, commission, committee or officer thereof is interested or a party by virtue of the office; and shall in like manner represent or assist in representing the state, or any commission, board, agency or tribunal of the state, in such civil actions or proceedings when requested to do so by the attorney general or when the district attorney of the county is required by any statute to do so.
2. Give advice to the board, county park commission, county department under s. 46.215 or 46.22 and other departments, boards, commissions, committees, agencies or officers of the county, when requested, in all civil matters in which the county or state is interested or relating to the discharge of the official duties of such departments, boards, commissions, committees, agencies or officers; examine all claims against the county for officers', interpreters', witnesses' and jurors' fees in civil actions and examinations, when presented to the county board of supervisors, and report in writing thereto as to the liability of the county for any and all claims of whatever nature filed against it; and act as legislative counsel for the county board of supervisors when so authorized by it.
3. Serve as legal adviser to the county highway commissioner and county highway committee, draw all papers required in the performance of their duties and attend to all civil legal matters in and out of court where the commissioner or committee is a party or wherein the acquisition of lands for state or county highway purposes is concerned.
4. Perform all duties in connection with civil matters relating to the county or any agency, board, commission or officer thereof or to the state within the county that are imposed by any statute upon the district attorney of the county and for such purposes the term "district attorney" wherever it appears in the statutes relating to duties of a civil nature shall, with regard to counties containing a population of 500,000 or more, mean the corporation counsel. Opinions of the corporation counsel shall have the same force and effect as opinions of the district attorney except that in

matters relating to elections the district attorney shall have the right of review. After May 17, 1957, the district attorney's powers and duties as to civil matters shall cease to the extent that they are conferred upon the corporation counsel and the district attorney shall be relieved of the responsibility of performing such duties. The corporation counsel may request the attorney general to consult and advise with the corporation counsel in the same manner as district attorneys under s. 165.25(3).

Under that statute, the role of the corporation counsel is to represent the county and its various departments and officers in civil matters and to serve as legal advisor. Corporation counsel attorneys customarily assist the director of labor relations in collective bargaining and represent management in grievance arbitration cases, proceedings before the Wisconsin Employment Relations Commission and civil actions arising in the labor relations context. Although the negotiating of contracts is part of the regular, day-to-day assignment of the corporation counsel, negotiation of collective bargaining agreements and direction of other aspects of the county's labor relations policy are not among the corporation counsel's listed statutory duties.

This concern is supported by Wis. Stat. s. 59.42(2)(a), which expressly provides (1) that the Milwaukee County corporation counsel appoints all the deputies, assistants and support staff in his or her office; (2) that all of the corporation counsel's deputies and assistants must be attorneys; and (3) that all of the corporation counsel's deputies, assistants and support staff are appointed in the classified service. Those provisions preclude creation of a division of labor relations, with its own "director of labor relations" appointed by the county executive and confirmed by the county board, under the "administrative authority" of the corporation counsel because this position is not in the classified service.

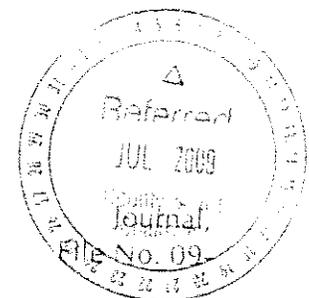
Finally, The director of audits and county board staff were also asked for their views on the subject matter. On July 15, 2002 the director co-signed a memo with the fiscal and budget administrator and county board director of research relating to the newly proposed Department of Administrative Services. The authors noted that:

the Department of Labor Relation (DLR) would be folded into the Division of Human Resources, where it would become a section of DHR. This recommendation is justified by the close working relationship that already exists between DLR and DHR and the desire to better coordinate the activities of each of those functions with the Fiscal Affairs Division. By housing all three entities under the new DAS — and including DLR within DHR — the County would achieve better coordination and inject greater fiscal foresight into the formulation of labor negotiating strategies.

As the director of audits testified at the September 11, 2009 meeting of your committee, one of the unintended consequences of the DAS model was the creation of an additional layer between the director of labor relations and the county executive and county board. He noted that this was of particular concern given the unique reporting line of the director

of labor relations to the committee on personnel on matters related to labor contract negotiation. That concern would not be obviated by moving the director of labor relations to the administrative authority of the corporation counsel. The department of audit and the county board staff have recommended previously that reestablishing an administratively independent department of labor relations was the preferred option to remove that intermediary layer of oversight.

FILE NO. 09-292



By Chairman Holloway

A RESOLUTION

To transfer the Division of Labor Relations from the Department of Administrative Services to the Office of Corporation Counsel.

WHEREAS, pursuant to Wisconsin State Statutes Section 111.70 (Municipal Employment Relations), Milwaukee County as an employer is required to collectively bargain employee wages and benefits with those employees who are represented by recognized collective bargaining units; and

WHEREAS, approximately eighty per cent of Milwaukee County's employee workforce is represented by one of eight collective bargaining units; and

WHEREAS, in 1968, the County Board adopted a resolution creating a division of Labor Relations (File No. 69-128) that was subsequently recognized as the Department of Labor Relations through the adoption of Chapter 79 of the Milwaukee County Code of General Ordinances (File No. 72-184); and

WHEREAS, the resolution authorizing the creation of the Department of Labor Relations noted that "the Personnel Committee of the County Board of Supervisors shall continue to be responsible for personnel matters in accordance with Chapter 80 (Employment Relations)" and that the county negotiating staff shall include members of the staff of Corporation Counsel; and

WHEREAS, the Department of Labor Relations worked in collaboration and proximity with the Office of Corporation Counsel for many years until 2002 when Labor Relations was reassigned as a Division of the Department of Administration renamed the Department of Administrative Services; and

WHEREAS, although Section 80.03 of the Milwaukee County Code of General Ordinances (Employment Relations) clearly assigns the Committee on Personnel with the function of directing collective bargaining, placement of Labor Relations within the Department of Administrative Services has resulted in the County's labor negotiator receiving conflicting direction on negotiating strategy and other labor matters; and

WHEREAS, the field of municipal labor law continues to evolve, requiring extensive knowledge of negotiation procedures and labor law; and

35 WHEREAS, transferring the Division of Labor Relations and its staff to the
36 Office of Corporation Counsel offers several strategic advantages for Milwaukee
37 County, including:

- 38 • Ready access to in-house counsel of general and specific expertise
39 in matters related to County government, personnel issues, and
40 municipal labor relations law,
- 41 • Interpretation and administration of collective bargaining
42 agreements,
- 43 • Administrative and operational support and resources,
- 44 • Co-location of compatible business functions, and alignment of
45 director-level administrators who share appointment and removal
46 conditions; and

47 WHEREAS, transferring the Division of Labor Relations into the Office of
48 Corporation Counsel as codified below does not alter the appointment or removal
49 conditions for the Director of Labor Relations; now therefore,

50 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
51 amends Chapter 79 of the Milwaukee County Code of General Ordinances by
52 adopting the following:

53
54 AN ORDINANCE

55
56 The Milwaukee County Board of Supervisors ordains as follows:

57
58 SECTION 1.

59 Chapter 79.01 of the Milwaukee County Code of General Ordinances, up to
60 and including _____, is hereby amended as follows:

61 79.01. Created; director.

62 There is hereby created a "division of labor relations" for the county within the
63 ~~department of administrative services~~ office of Corporation Counsel. The
64 departmental policies of this section shall be subject to the ~~jurisdiction of the~~
65 ~~county executive and the committee on personnel of the county board~~
66 provisions of Chapter 80 of these ordinances. The division shall be under the
67 administrative authority of the ~~director of the department of administrative~~
68 services Corporation Counsel to provide administrative support and back up, as
69 well as managerial support on an as-needed basis. The division shall be in
70 charge of an administrator designated as "director of labor relations" who shall
71 be appointed by the county executive and whose appointment shall require
72 confirmation by the county board. The director of labor relations may be
73 dismissed at any time by the county executive with concurrence by the majority

74 of the members of the county board, or by the county board with concurrence
75 by the county executive. In the event the county executive vetoes an action by
76 the county board dismissing the director, said veto can be overridden by a vote
77 of two-thirds of the members-elect of the county board. The director shall be
78 provided with an adequate number of staff assistants and such other personnel,
79 as in the opinion of the county board, are required to carry out the functions and
80 purposes of the division. Such staff positions shall be appointed under the
81 county's civil service system by the director of labor relations. The position of
82 director and all other positions in the division shall be compensated at a rate
83 fixed by the county board.

84
85 **SECTION 2.**

86 Chapter 79.02 of the Milwaukee County Code of General Ordinances, up to
87 and including _____, is hereby amended as follows:

88
89 **79.02. Responsibilities of the director.**

90 The director of labor relations shall be responsible for:

- 91 (1) The negotiation of all collective bargaining agreements with certified
92 bargaining representatives of the employees of the county conducted along
93 policy lines established by ~~the county executive and the committee on~~
94 personnel pursuant to Chapter 80. The director of labor relations shall not
95 agree, on behalf of the county, to any terms or provisions of a negotiated
96 contract without prior direction and approval from the committee. Prior to
97 drafting any tentative contract, the director of labor relations shall provide the
98 director of human resources and the director of employee benefits with a
99 copy of the terms of the proposed agreement for review relative to
100 administration of said proposal and shall provide the director of
101 administrative services, fiscal and budget administrator and controller with a
102 copy of the terms of the proposed agreement for preparation of a fiscal note
103 relative to the proposed agreement. Such fiscal note shall include, at
104 minimum, all assumptions used in developing the fiscal note including
105 actuarial assumptions where appropriate, calculations, estimates, one-time
106 costs and savings, ongoing costs and savings, annual incremental costs as
107 well as cumulative costs and shall otherwise be prepared in accordance with
108 established fiscal note policies and procedures. Subsequent to preparation of
109 the fiscal note - and prior to the drafting of the tentative contract - a copy of
110 the fiscal note shall be provided to the director of audits and county board
111 staff for review.
- 112 (2) The administration of all collective agreements during their term. In order to
113 discharge this responsibility, the county executive, when necessary, shall
114 direct compliance by operating department heads with the provisions of such
115 agreements.
- 116 (3) The establishment of labor relations training programs designed to improve
117 the supervisory skills of supervisory employees in county service.

118 (4) The conduct, on behalf of the county, of all proceedings ordered by the state
119 employment relations commission, the U.S. Department of Labor, the state
120 department of industry, labor and human relations or, as provided for by
121 contract, relative to certification and decertification of bargaining
122 representatives, bargaining unit structure, employee disputes and grievances,
123 and all administrative and judicial proceedings including mediation,
124 factfinding, and arbitration relating to the negotiation or administration of
125 existing or prospective collective agreements.

126

127 **SECTION 3.**

128 Chapter 79.03, 79.04 and 79.05 of the Milwaukee County Code of General
129 Ordinances, up to and including _____, are hereby amended by replacing
130 references to the "department of labor relations" with "division of labor relations".

131 **SECTION 4.**

132 The provisions of this Ordinance shall become effective upon passage and
133 publication.

134

135

136 I:\Personnel\holloway.labor relations.doc

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: July 6, 2009

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: A resolution transferring the Division of Labor Relations from the Department of Administrative Services to the Office of Corporation Counsel.

FISCAL EFFECT:

- No Direct County Fiscal Impact
 - Existing Staff Time Required
- Increase Operating Expenditures
(If checked, check one of two boxes below)
 - Absorbed Within Agency's Budget
 - Not Absorbed Within Agency's Budget
- Decrease Operating Expenditures
- Increase Operating Revenues
- Decrease Operating Revenues
- Increase Capital Expenditures
- Decrease Capital Expenditures
- Increase Capital Revenues
- Decrease Capital Revenues
- Use of contingent funds

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure		
	Revenue		
	Net Cost		
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

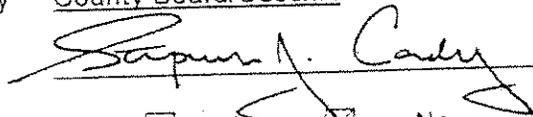
In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated. ¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

Adoption of this resolution will result in the administrative transfer of the Division of Labor Relations to the Office of Corporation Counsel. No expenditures are expected from the administrative transfer, however if the Division is physically relocated within the courthouse, a facilities charge would likely be required and would be absorbed within Facilities Management's budget.

Department/Prepared By County Board/Ceschin

Authorized Signature



Did DAS-Fiscal Staff Review?

Yes

No

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.