

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

**DATE:** March 12, 2012

**TO:** Lee Holloway, Chairman, County Board of Supervisors

**FROM:** Mark A. Grady, Deputy Corporation Counsel

**SUBJECT:** WERC decision related to 2010 furlough days

Please refer the attached resolution to the Committee on Judiciary, Safety and General Services for its special meeting on March 14, 2012.

As noted in the resolution, the WERC ruled, among other things, that the County violated its duty to bargain in good faith when it imposed the 22 furlough days in 2010 for affected AFSCME employees. An appeal is recommended at this time. Pursuant to §1.31, M.C.G.O., the Judiciary Committee must make a recommendation to the County Board for such an appeal, or Corporation Counsel may utilize the emergency provisions in the absence of a decision by the Judiciary Committee.

Attachments

cc(w/att.): County Executive Chris Abele  
Carol Mueller  
Janelle Jensen

A RESOLUTION

WHEREAS, AFSCME filed a complaint with the Wisconsin Employment Relations Commission (WERC) related to, among other things, the negotiation of a successor collective bargaining agreement for 2009 – 10 and related to the County’s imposition of furlough days for 2010; and

WHEREAS, the WERC ruled that the County failed to bargain in good faith with respect to the successor agreement and with respect to the imposition of 22 furlough days in 2010; and

WHEREAS, the WERC ordered, among other things, that the tentative successor agreement for 2009 – 10 should be deemed to have been constructively approved by the County Board and presented to the County Executive for approval or veto and further order that AFSCME employees affected by the 22 furlough days should be re-paid, with interest; and

WHEREAS, the County sought review of the WERC decision in circuit court; and

WHEREAS, the circuit court issued a decision dated February 27, 2012 that reversed the WERC decision requiring that the tentative agreement be presented to the County Executive, remanded for further hearing on the issue of the County’s bargaining practices with respect to the successor agreement, but affirmed the WERC ruling that the County violated its obligation to bargain in good faith when it imposed the 22 furlough days for affected AFSCME employees; and

WHEREAS, the order requiring repayment to employees of the 2010 furlough days has a cost of approximately four million dollars (\$4,000,000.00) and interest will continue to accrue in the future of approximately \$15,000.00 per month; and

WHEREAS, the attorney fees for retained counsel to prosecute an appeal in the Court of Appeals would be approximately twenty-five thousand dollars (\$25,000.00), payable from the Litigation Reserve Account in the Office of Corporation Counsel; and

NOW, THEREFORE, BE IT RESOLVED that Milwaukee County approves the filing of an appeal in the Court of Appeals in this matter.

**MILWAUKEE COUNTY FISCAL NOTE FORM**

**DATE:** March 12, 2012

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Appeal of WERC decision related to 2010 furlough days for AFSCME employees.

**FISCAL EFFECT:**

No Direct County Fiscal Impact

Increase Capital Expenditures

Existing Staff Time Required

Decrease Capital Expenditures

X Increase Operating Expenditures  
(If checked, check one of two boxes below)

Increase Capital Revenues

X Absorbed Within Agency's Budget

Decrease Capital Revenues

Not Absorbed Within Agency's Budget

Decrease Operating Expenditures

Use of contingent funds

Increase Operating Revenues

Decrease Operating Revenues

*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.*

	<b>Expenditure or Revenue Category</b>	<b>Current Year</b>	<b>Subsequent Year</b>
<b>Operating Budget</b>	Expenditure	25,000	0
	Revenue	0	0
	Net Cost	25,000	0
<b>Capital Improvement Budget</b>	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

## 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. <sup>1</sup> 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.

Approval of this Resolution will result in an appeal in the Court of Appeals and the payment of attorney fees for retained counsel in the approximate amount of \$25,000 for handling the matter in the Court of Appeals. This payment will be made from the Litigation Reserve Account in the Office of Corporation Counsel. Interest costs of approximately \$15,000 per month will accrue during the appeal.

Department/Prepared By    Corporation Counsel

Authorized Signature \_\_\_\_\_

Did DAS-Fiscal Staff Review?                      Yes    X                      No

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<sup>1</sup> 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.

**INTEROFFICE COMMUNICATION  
COUNTY OF MILWAUKEE**

**DATE:** March 12, 2012

**TO:** Lee Holloway, Chairman, County Board of Supervisors

**FROM:** Mark A. Grady, Deputy Corporation Counsel

**SUBJECT:** MilES and MECA layoff and recall rights; lawsuit resolution

Please refer the attached resolution to the Committee on Judiciary, Safety and General Services for its special meeting on March 14, 2012.

As noted in the resolution, the circuit court has entered an injunction requiring Milwaukee County to provide layoff and recall rights to approximately 300 employees who previously worked in the MilES and MECA programs that were absorbed into state operations. Milwaukee County has exhausted any legal avenues at this time to overturn this injunction. Litigating this matter for an extended period of time, without a change in the decision, will result in extreme administrative difficulty in providing the layoff and recall rights at some future time. Additional litigation, if unsuccessful, will also increase the potential liability to Milwaukee County for backpay and other costs, including potential attorneys' fees. Settlement is recommended at this time. If approved, the parties anticipate entering a stipulated order in the circuit court that provides the layoff and recall rights. Such an order will result in, among other things, bumping of some current employees, the recall to vacant positions of other affected employees and possible backpay for some of the employees. Approval may be sought at a later date for a possible attorneys' fees payment to AFSCME's counsel.

Attachments

cc(w/att.): County Executive Chris Abele  
Carol Mueller  
Janelle Jensen

A RESOLUTION

WHEREAS, the State of Wisconsin absorbed the operation of the Milwaukee Early Care Administration (MECA) into the Department of Children and Families (DCF), effective October 1, 2011, and absorbed the operation of the Milwaukee Enrollment Services (MilES) into the Department of Health Services (DHS), effective January 1, 2012; and

WHEREAS, every Milwaukee County employee in MECA was transferred to state employment in DCF, but Milwaukee County employees in MilES were required to apply for and interview with DHS for state employment and not all Milwaukee County employees in MilES received state employment in DHS; and

WHEREAS, based on the interplay of the provisions of §49.825 and §49.826, Stats, the Milwaukee County Civil Service Rules and the enactment of 2011 Wis. Act 10, Milwaukee County did not believe that the affected employees were entitled to layoff rights and therefore did not provide those rights to the affected employees; and

WHEREAS, AFSCME filed a circuit court action seeking an injunction requiring Milwaukee County to provide layoff and recall rights to the affected employees; and

WHEREAS, the circuit court issued an injunction on November 22, 2011 requiring Milwaukee County to provide layoff and recall rights to all of the MECA employees and issued an injunction on December 16, 2011 requiring Milwaukee County to provide layoff and recall rights to all of the MilES employees; and

WHEREAS, Milwaukee County filed with the Court of Appeals a petition for leave to appeal these non-final orders, but the Court of Appeals denied the petition on January 11, 2012; and

WHEREAS, the circuit court action will be scheduled for a hearing on a permanent injunction in the summer of 2012; and

WHEREAS, continued litigation will make any decision requiring Milwaukee County to provide layoff and recall rights to these employees extremely difficult to administer and will have increasing potential liability costs, for backpay and other matters, to those employees who did not receive state employment;

NOW, THEREFORE, BE IT RESOLVED that Milwaukee County authorizes the Office of Corporation Counsel to negotiate and enter into a court approved stipulation and order providing layoff and recall rights to the affected employees and authorizes the

45 Department of Human Resources, and any other county department, to implement any  
46 such provisions.

## MILWAUKEE COUNTY FISCAL NOTE FORM

**DATE:** March 12, 2012

Original Fiscal Note

Substitute Fiscal Note

**SUBJECT:** Settlement of litigation related to layoff and recall rights of employees of MilEs and MECA programs.

**FISCAL EFFECT:**

No Direct County Fiscal Impact

Increase Capital Expenditures

Existing Staff Time Required

Decrease Capital Expenditures

Increase Operating Expenditures  
(If checked, check one of two boxes below)

Increase Capital Revenues

Absorbed Within Agency's Budget

Decrease Capital Revenues

Not Absorbed Within Agency's Budget

Decrease Operating Expenditures

Use of contingent funds

Increase Operating Revenues

Decrease Operating Revenues

*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.*

	<b>Expenditure or Revenue Category</b>	<b>Current Year</b>	<b>Subsequent Year</b>
<b>Operating Budget</b>	Expenditure	unknown	0
	Revenue	0	0
	Net Cost	unknown	0
<b>Capital Improvement Budget</b>	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0

## 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. <sup>1</sup> 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.

Approval of this Resolution will result in Corporation Counsel being authorized to enter into a court-approved stipulation and order providing for layoff and recall rights to former employees in the MilES and MECA programs and setting forth a process to do so. Because the court decision provides a number of options for the former county employees, including recall, placement, back pay and potential bumping of current employees, the final fiscal impact is not fully quantifiable at this time. It is possible that up to approximately 50 former employees will be eligible to receive back pay dating to December 31, 2011, which after payroll deductions and unemployment offsets could produce unbudgeted payments of approximately \$15,000 to \$20,000 per affected employee, assuming a backpay award of six months. Recall, placement and bumping of employees will have only marginal fiscal impacts. The amount of attorney's fees is not included in this settlement and will be presented as an action item at a subsequent meeting of the Judiciary Committee for approval.

Department/Prepared By    Corporation Counsel

Authorized Signature    \_\_\_\_\_

Did DAS-Fiscal Staff Review?                      Yes    X                      No

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<sup>1</sup> 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.