



OFFICE OF THE COUNTY EXECUTIVE

Milwaukee County

CHRIS ABELE • COUNTY EXECUTIVE

December 17, 2012

Chairwoman Dimitrijevic:

As you and I discussed, the Sheriff filed a lawsuit on December 12, 2012 in response to the Board's policy on the HOC transition. Given this clear signal that neither he nor his staff will cooperate, I am writing to reiterate the need for flexibility on the implementation date.

In order to recruit and plan for a transition, we need:

- Certainty regarding the date of transition that is now put into question by a lawsuit;
- Total cooperation from the Sheriff; and
- Access to the facility, staff, operations and documents.

These are critical concerns for me and the many law enforcement and corrections experts I have met with over the past month. It is my understanding that the Sheriff is unwilling to grant us such access and cooperation. In addition to the signals provided in the lawsuit, the Office of the Sheriff has communicated that they will not allow an appointed Superintendent access to the CCFS prior to April 1.

While it is my intent to work toward the transition given the policy passed by the Board, it is in the best interest of the inmates and the community to delay implementation until the Courts have given the County certainty regarding how to proceed. As a result, **I request that the Board clarify that implementation will not happen until at least 4 months after legal clarity is secured.** I have spoken with numerous law enforcement experts, including the District Attorney, who share my concern and support my call for a change in implementation date.

Thank you, in advance, for your consideration of this important issue.

Sincerely,

Chris Abele

Cc: Milwaukee County Board of Supervisors
HOC Transition Implementation Committee
Sherriff David A. Clarke, Jr.

**INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE**

DATE: December 18, 2012

TO: Marina Dimitrijevic, County Board Chairwoman

FROM: Kimberly R. Walker, Corporation Counsel
Mark A. Grady, Deputy Corporation Counsel *MAG*

SUBJECT: Kenneth Kraemer v. County of Milwaukee
ERD Case No. CR200800323

We request that this matter be referred to the Committee on Judiciary, Safety and General Services to be placed on the agenda for a special committee meeting in order to approve payment by the Wisconsin County Mutual Insurance Corporation of \$70,587 to Mr. Kraemer's attorneys, Tricia Knight and Horizons Law Group, and payment of \$8,698.25 to Kraemer in back wages, as ordered by the State of Wisconsin, Labor and Industry Review Commission ("the Commission") in its October 11, 2012 Order and Memorandum Opinion.

In its Memorandum Opinion, the Commission found that Milwaukee County discriminated against Mr. Kraemer, a former Milwaukee County employee who served as the Deputy Director of Operations/Maintenance for General Mitchell International Airport, based upon his arrest record, within the meaning of the Wisconsin Fair Employment Act. An individual's arrest record is a prohibited basis of discrimination under Wis. Stat §111.321. However, it is not employment discrimination because of an arrest record to suspend from employment any individual who is subject to a pending criminal *charge* if the circumstances of the *charge* substantially relate to the circumstances of the job. See Wis. Stats §111.335(1)(6). The Commission determined that Kraemer had an arrest record and was protected under Wis. Stats §111.321 because he was never charged with a crime. Moreover, even if there had been pending charges against him, the Commission found that the record did not establish a substantial relationship between those alleged crimes (alleged sexual abuse of a child) and the circumstances of his job as a Deputy Director at the Airport.

However, although the Commission found that Kraemer's suspension was illegal, it found that Kraemer's discharge was not. Consequently, the Commission did not order the County to reinstate Kraemer to his position and did not order additional back pay. If an employee is discharged solely because of an impermissible motivating factor, he normally would be awarded a cease and desist order, reinstatement, back pay and interest and attorney's fees. However, if an employee is discharged in part because of an impermissible motivating factor and in part because of other legal motivating factors (a so-called "mixed motive"), and the termination would have taken place in the absence of

the impermissible motivating factor, the employee should be awarded only a cease and desist order and attorney's fees. See *Hoell v. Narada Productions, Inc.* (LIRC, Dec. 18, 1992) *aff'd.*, Waukesha County Circuit Court, 05/27/1993.

The Commission found that Kraemer was discharged for both an impermissible reason (his arrest record) and a permissible one (his violation of the County's Use of Technologies Policy). Thus, the suspension prior to discharge based on his arrest record was unlawful, but the discharge based on a mixed motive was lawful. Therefore, Kraemer's remedy was limited to the award of attorney's fees and the back pay for the time he served an unlawful suspension before he was discharged. The Commission ordered that he receive \$8,698.25 in wages for the period of his unlawful suspension from February 27, 2007, the day on which he was notified he was suspended, through April 2, 2007, the day on which he was notified of his discharge from County service. The Commission denied Kraemer any back wages for the period after his discharge on April 2, 2007 through its decision on October 11, 2012.

Kraemer also sought recovery of \$130,740 in attorneys' fees. The Commission reviewed those fees and found that a large portion were not appropriate for recovery. The Commission ordered payment of \$70,587 in fees.

Kraemer recently appealed the Commission's decision to circuit court, arguing primarily that he should be entitled to all of the back pay he sought, that he should be reinstated to his County job and that he should be paid all of the attorney fees he requested. Kraemer filed this petition pro se (without his attorney). Milwaukee County cross-appealed the Commission decision, in order to preserve its potential litigation rights and arguments. The County's cross-appeal was the subject of a notification to the Judiciary Committee that was discussed at the Committee's meeting on December 6, 2012.

Subsequently, our office has discussed this matter with outside counsel, Al Levy of Lindner & Marsack S.C., and with Kraemer's prior attorney. Our office and outside counsel believe that it is in the County's interest to pay the order of the Commission. Among other things, doing so will eliminate any potential liability for interest and will satisfy the current attorney's fee claims. If the attached resolution is adopted, Kraemer's attorney will not be involved in the circuit court petition for review and Kraemer will represent himself. The County will also align itself with the Attorney General's office, which represents the Commission, and will seek the circuit court's affirmation of the Commission order.

Payment of the \$70,587 in attorneys' fees will be made by the Wisconsin County Mutual and will be applied to the County's deductible. Payment of the \$8698.25 in wages to Kraemer will come from the Airport budget and will not have any tax levy impact.

cc: Janelle Jensen
Jennifer Collins
Amber Moreen

1
2
3 An authorization to pay attorneys' fees and back pay awarded in the matter of
4 *Kenneth Kraemer v. Milwaukee County*, Equal Rights Division Case No.
5 CR200800323, by recommending adoption of the following:

6 A RESOLUTION

7
8 WHEREAS, Kenneth J. Kraemer (hereinafter "Kraemer") filed a complaint
9 with the State of Wisconsin Equal Rights Division, Case No. CR200800323, against
10 Milwaukee County; and

11
12 WHEREAS, the complaint alleged that Milwaukee County discriminated
13 against Kraemer based upon his arrest record, within the meaning of the
14 Wisconsin Fair Employment Act; and

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16 WHEREAS, on October 11, 2012, the State of Wisconsin Labor and Industry
17 Review Commission found that Milwaukee County discriminated against
18 Kraemer based upon his arrest record when it suspended his employment, but
19 that Milwaukee County did not discriminate against Kraemer when it
20 discharged him; and

21
22 WHEREAS, the Commission denied Kraemer's request for an award of
23 attorneys' fees in the amount of \$130,740.00, but ordered that Milwaukee
24 County pay Kraemer's reasonable attorney fees incurred in pursuing this matter
25 in the total amount of \$70,587.00, with \$53,526.00 of that amount payable jointly
26 to Kraemer and Attorney Tricia Knight and \$17,061 of that amount payable
27 jointly to Kraemer and Horizons Law Group, LLC.; and

28
29 WHEREAS, the Commission ordered that Milwaukee County pay Kraemer
30 wages for his unlawful suspension from February 27, 2007 through April 2, 2007,
31 the day on which he was notified of his discharge, totaling \$8,698.25, but the
32 Commission declined to grant Kraemer's request for reinstatement to his County
33 position and declined to order payment of back wages for the period between
34 Kraemer's discharge on April 2, 2007 and its decision on October 11, 2012; and

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36 WHEREAS, Kraemer has filed a *pro se* petition for review of the
37 Commission's decision and order in Milwaukee County Circuit Court and
38 Milwaukee County filed a cross-appeal of the Commission's decision; and

39
40 WHEREAS, the Office of Corporation Counsel and retained counsel for the
41 County, Al Levy of Lindner & Marsack S.C., recommend that the Commission's
42 order be paid as ordered and that Milwaukee County seek the circuit court's

43 affirmation of the Commission order and its dismissal of Kraemer's petition for
44 review; and

45
46 WHEREAS, the Committee on Judiciary, Safety and General Services at its
47 meeting on December 20, 2012 voted (_____) to recommend
48 adoption of this resolution;

49
50 NOW, THEREFORE;

51
52 BE IT RESOLVED, that Milwaukee County approves the payment of a total
53 of seventy thousand, five hundred eighty-seven dollars (\$70,587.00) to Kraemer
54 and Attorney Tricia Knight and Horizons Law Group, LLC., with fifty-three
55 thousand, five hundred twenty-six dollars (\$53,526.00) payable jointly to Kraemer
56 and Attorney Knight and seventeen thousand, sixty-one dollars (\$17,061.00)
57 payable jointly to Kramer and Horizons Law Group, LLC., and approves a
58 payment to Kraemer in the amount of eight thousand six hundred ninety-eight
59 dollars and twenty-five cents (\$8,698.25) for back wages; and

60
61 BE IT FURTHER RESOLVED, that Milwaukee County shall seek the circuit
62 court's affirmation of the decision and order of the Commission and its dismissal
63 of Kraemer's petition for review.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: December 18, 2012

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: An authorization to pay attorneys' fees and back pay awarded in the matter of *Kenneth Kraemer v. Milwaukee County*, Equal Rights Division Case No. CR200800323.

FISCAL EFFECT:

- | | |
|---|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact | <input type="checkbox"/> Increase Capital Expenditures |
| <input type="checkbox"/> Existing Staff Time Required | <input type="checkbox"/> Decrease Capital Expenditures |
| Increase Operating Expenditures
(If checked, check one of two boxes below) | <input type="checkbox"/> Increase Capital Revenues |
| <input type="checkbox"/> Absorbed Within Agency's Budget | <input type="checkbox"/> Decrease Capital Revenues |
| <input type="checkbox"/> Not Absorbed Within Agency's Budget | |
| <input type="checkbox"/> Decrease Operating Expenditures | <input type="checkbox"/> Use of contingent funds |
| <input type="checkbox"/> Increase Operating Revenues | |
| <input type="checkbox"/> 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.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	\$8698.25	0
	Revenue	\$8698.25	0
	Net Cost	0	0
Capital Improvement Budget	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. 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.

Approval of this resolution will result in a charge being applied to Milwaukee County's deductible with the Wisconsin County Mutual Insurance Corporation in the amount of \$70,587.00 and will result in a payment of back wages of \$8698.25 from the Airport budget ,with no tax levy impact.

Department/Prepared By Corporation Counsel

Authorized Signature

Mark C. Boyd

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.