

PROCEEDINGS OF THE BROWN COUNTY EXECUTIVE COMMITTEE

Pursuant to Section 18.94 Wis. Stats., a special meeting of the **Brown County Executive Committee** was held on Wednesday, May 9, 2012 in Room 200 of the Northern Building – 305 East Walnut Street, Green Bay, Wisconsin

Present: Chair Lund, Supervisor Evans, Supervisor Erickson, Supervisor Wetzel, Supervisor Moynihan, Supervisor Buckley, Supervisor Fewell

Also Present: Supervisor Hopp, Supervisor Robinson, Supervisor Carpenter, Supervisor Landwehr, Supervisor Sieber, Supervisor Van Dyck, Supervisor Vander Leest, Debbie Klarkowski, Fred Mohr, Troy Streckenbach, Kristen Hooker, Brent Miller

I. Call Meeting to Order:

The meeting was called to order by Chair Tom Lund at 5:30 p.m.

II. Approve/Modify Agenda:

Motion by Supervisor Evans, seconded by Supervisor Wetzel to approve the agenda. Vote taken. MOTION CARRIED UNANIMOUSLY

- 1. Discussion with Possible Action re: Discuss with Brown County Corporation Counsel possible legal implications relating to previous actions taken in regards to Brown County Supervisor health benefits/insurance and whether to refer the matter to the Attorney General for legal opinion or retain outside Counsel for further assistance.**
 - b. Possibility of Closed Session Pursuant to Wis. Stats. § 19.85(1)(g) to confer with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.**

Chair Lund stated that he did not feel a closed session would be necessary.

Motion made by Supervisor Erickson, seconded by Supervisor Evans to refer to the Attorney General, WCA and NACO for an outside opinion. *Motion Withdrawn*

Chair Lund asked Interim Corporation Counsel Kristen Hooker what her position was with regard to this. Hooker stated her intention was to put together a submission of what she considered to be the issues, going all the way back to when the resolution was passed and up through the present time to get a full opinion from the Attorney General. She did note that it would likely take a significant amount of time to get an opinion from the Attorney General's office.

Lund asked about continuing the funding of benefits for those Supervisors who took the insurance and Hooker responded that if this was to be discussed in detail she would prefer to do it in closed session. Lund did not feel that closed session was necessary; he

simply wanted to know if it is the County's position that they would still have to offer benefits. Hooker stated that her position is that it could remain as an unfunded resolution.

Supervisor Fewell arrived at 5:37 pm.

Supervisor Wetzel stated there was a lot of confusion at the May 7 Executive Committee meeting as to whether Supervisors are even eligible for insurance. He stated that he had contacted Human Resources to see what happened as several different things were stated in the earlier meeting. His understanding following his conversation with Human Resources was that COBRA letters were sent out in February stating that benefits would be terminated as of April 30, 2012 and further setting forth rights under the law with COBRA for up to 60 days, and that the Supervisors would have to cover the expense.

Hooker could not speak as to why COBRA notices were sent nor if it was appropriate to do so. She stated this is another issue that remains up in the air as well as whether Supervisors are supposed to be treated in the manner they are being treated which is almost as employees. Her legal opinion is that Supervisors are not to be treated as employees. Wetzel asked if the issue of the COBRA letters should be included in the issues that need an opinion and Hooker responded that at this time she felt that everything that had occurred from the beginning to where things stand today should be reviewed by the Attorney General as she believed all these types of direct and indirect issues will come up if there is no definitive opinion.

Supervisor Buckley felt that a legal opinion was needed as it was his understanding that benefits were not extended to Supervisors and that Supervisors do not currently have insurance. Hooker answered that she is not sure whether they have insurance or not. Lund asked Human Resources Manager Debbie Klarkowski if there are people under the impression they still have insurance. Klarkowski stated that COBRA letters were sent out at the end of February, 2012 because Human Resources was of the understanding that the benefit was no longer to be offered to County Board Supervisors. Klarkowski continued that under COBRA laws a person has 60 days to select if you wish to have COBRA or not. She stated that someone could have an injury or illness in the middle of May and then pay the premium for COBRA and the bill would be covered. She also stated that COBRA premiums would not be a cost to the County, but the premium that a person would be paying has a 2% fee on top of the normal premium. She felt that the question that needs to be answered is if the Board wished to continue that way or offer the benefit as it has been offered until an opinion is received from the Attorney General.

Buckley asked Klarkowski at what point she was advised that someone disagreed with the COBRA coverage and felt they should be carried under regular insurance. Klarkowski replied that she is not personally aware of anyone coming into Human Resources until sometime in April. She also stated that some individuals contacted Attorney Mohr directly. When asked if she had asked Attorney Mohr to provide a legal opinion, Klarkowski stated that an opinion was not requested of Attorney Mohr, but they did request an opinion from Corporation Counsel. Lund stated that in the May 7

Executive Committee meeting it was indicated that Corporation Counsel then passed this back to Mohr.

Klarkowski continued that the 60 days she referred to earlier is the timeframe for someone to elect to take the COBRA coverage. Buckley asked if anyone had paid for their insurance and Klarkowski responded that she cannot answer that because Benefit Advantage administers the insurance for Brown County and she does not know if anyone contacted them.

Buckley recalled from the May 7 meeting that Mohr explained that this is part of a contract the Supervisors have and that if they did not pay their part of the contract they did not enact their part of the contract. In other words, you would have to participate in the contract if you are going to enforce the contract. At this point Mohr advised that somebody had paid COBRA and there have also been several Supervisors that have offered to pay 50% of the premiums, but there is no authority for this. Mohr continued that he alerted County Executive Troy Streckenbach of this situation sometime in early April and asked him what should be done. Mohr did not get a response from the County Executive and he then then sent a letter in late April to the new County Board Chair informing him of the facts and suggesting either a legal opinion or putting the issue on the Executive Committee agenda.

Buckley further recalled from the May 7 meeting that Mohr indicated he had given authority to continue coverage however, Mohr said that he had misspoken. Mohr did want to ensure that nobody was left hanging and further that the County did not have potential liability. Buckley asked Mohr what capacity he was acting in as far as providing legal advice to Supervisors who came directly to him and Mohr said that those who came directly to him had gone to Corporation Counsel first, but were told that he (Mohr) was handling the issue. Mohr said he was acting in his capacity as labor attorney and he also said that it was his understanding that one person has paid for COBRA.

Buckley asked County Executive Troy Streckenbach if the information from Attorney Mohr was accurate. Streckenbach stated that he was informed that there was a number of Supervisors that had inquiries regarding the insurance issue and Mohr had asked if he should respond. Streckenbach stated he felt this should be discussed with Corporation Counsel. Several days later he received a communication from Mohr setting forth his stance and opinion as well as the suggestion that this come before the Executive Committee. He was somewhat alarmed by the comments that the continuation of the benefit had been authorized and he then went to Human Resources and spoke with an employee to find out what took place. He was then informed that the benefit had been authorized to be continued. Klarkowski clarified that this meant under COBRA only.

Supervisor Erickson pointed out that there was a possibility that some Supervisors who received the COBRA letter in February are no longer on the Board. He also stated that this was passed in the budget and even though it is unfunded it is still in the budget and there may have been people elected that very possibly are planning on taking the

benefit. Klarkowski stated that those elected in April would have received a letter stating that benefit is not offered to County Board Supervisors. Erickson asked Klarkowski if she meant not offered or not funded as he felt that it is technically offered by what was passed in the budget. Hooker confirmed that it was passed as an unfunded benefit.

Lund told Hooker that her dissertation on the issue should be whether the veto really vetoed the benefit or just unfunded the benefit. Hooker said the legal stance she would have taken had she been asked is that unfunded resolutions exist all the time and the County Board did what it did and the County Executive acted appropriately under his constitution rights in vetoing the appropriation. She continued that case law indicates there is really nothing more that the County Board necessarily has to do in this respect and the benefit can just remain an unfunded resolution.

Evans stated that he had been contacted by a Supervisor who was under the understanding after speaking with Klarkowski and Mohr that his regular insurance was still in effect as long as he paid the 50% premium. Evans asked if the only way to now get the insurance is through COBRA and Klarkowski stated that that was correct. She continued that according to the COBRA regulations, the Supervisor would have 60 days to make the decision to elect COBRA. Klarkowski said that HR's interpretation of the veto is that this is not a benefit to be offered to part time elected officials and that is how the COBRA letter got sent out.

Evans asked Klarkowski if when it comes to health insurance, the Supervisors have a benefit or COBRA as both he and Hooker view these as two different things. He asked Klarkowski if she also viewed these as two different things and Klarkowski answered that she did not feel it was her place to get into the middle of this. Buckley stated that continuation of health insurance via COBRA is more of a federal requirement and Human Resources would have to follow their normal procedures in this regard just as they would when someone quit or was terminated. Lund felt that the question is whether the veto unfunded the benefit and whether the funding can be made up by the individual. Buckley clarified that the veto does not unfund the COBRA and everyone was in agreement. Evans felt that perhaps they should err on the side of continuing on with the County insurance and having Supervisors pay their 50% portion while waiting for a legal opinion. Buckley felt that upon the COBRA letters being sent out, coverage was terminated.

Supervisor Fewell felt that not only did the benefit for Supervisors end upon the unfunding of it, but also that the press presented it that way and that is how the public viewed it as well. He also stated that as far as the benefit being unfunded, there are unfunded positions that remain in the table of organization and the only way the position can be funded again is to go the Board and ask for a vote and find the money. Fewell felt that to be safe Supervisors could pay for the COBRA, put a communication in to ask the County Board if they wish to fund the benefit, if the Board votes to fund it then it's funded. With regard to the Attorney General's opinion, Fewell felt that this would take a long time and perhaps a more expeditious way to proceed would be to

seek a declaratory judgment in Circuit Court. He also wondered if a benefit that is started in a term can be terminated within the term. He felt that compensation set at budget time may have to remain that way for the entire two year term similar to salaries that cannot be adjusted during a term.

Hooker stated that compensation was set at the time of the budget and then vetoed by the County Executive, and at that point it would have gone back to the Board for reconsideration and a 2/3 vote could have arguably overturned the veto of the appropriation. Hooker was not sure if the issue of compensation could be taken up at any Board meeting or if it needed to wait until the annual meeting where these types of items are decided. This goes to what constitutes compensation and as pointed out earlier by Mohr, there are opinions on both side of the fence as far as what compensation is.

Hooker continued that she had not been asked to provide an opinion on this, but she can certainly do that before seeking an Attorney General opinion. Lund felt that Hooker should probably weigh this out, but also formulate what questions would be asked of the Attorney General because the Board will want to see what she would send to the Attorney General and what opinion they are looking for.

Vice Chair Moynihan clarified that Hooker's point is to hold off on the Attorney General's opinion and for her to garner information and form her own opinion and Hooker confirmed that that would be her suggestion. Fewell pointed out that even after the opinions are formulated, the Board would still have to come back and vote to fund the benefit. Lund reiterated that it is not clear if they could vote to fund it at this point or whether it would have to wait until November and this would involve another legal opinion.

Moynihan stated that he would not support the motion to refer to the Attorney General, WCA and NACO as he felt this would really muddy the water, and he is of the opinion that seeking a declaratory judgment to expedite the situation would be more appropriate.

Erickson withdrew his motion at this time.

Mohr stated that one other issue that should be included in an opinion that has not been discussed is what if a Supervisor says the benefit was passed but unfunded and now wants to pay 100% of the premium.

Mohr asked Streckenbach if it was his intention at the time of the veto that if a Supervisor would pay the entire premium they could continue on the plan. Streckenbach stated that his intention with the veto was to not allow the insurance to be available to the Supervisors and he went into it with the understanding that it is an unfunded resolution that at some point in time if the County wanted to fund it, they could do so. Streckenbach felt that his intentions were clear as he ran on it as an issue

and proposed it through the budget and followed through the veto process. He also felt that there were pros and cons to each scenario and option discussed.

Wetzel stated his understanding was that this was unfunded and if they wished to fund it they would have to bring it to the Board and vote on it like everything else. He was somewhat disturbed to hear that some Supervisors went to Mohr directly instead of going through Human Resources which would be the appropriate point of contact. Klarkowski stated Supervisors who went to Mohr went directly there and not at the direction of Human Resources. Wetzel felt that if Supervisors were under the understanding that they still had regular insurance as part of their benefit it didn't make sense to go to Mohr. He felt that perhaps these Supervisors realized that they no longer had their insurance when they received the COBRA letter or if they followed the regular procedure they would be denied. He also said that when the COBRA letters were received, one could not claim ignorance on a letter that says insurance will terminate on April 30. He felt that these questions and issues should have been raised sooner. Lund stated that due diligence was done by Human Resources when they sent out the COBRA letters.

Buckley felt that Supervisors should not have gone directly to Mohr but rather should have gone through the Human Resources process. Buckley felt this should revert back to Corporation Counsel for an opinion rather than the Attorney General and he would like to see an opinion by Corp. Counsel by the next Executive Committee meeting.

Motion made by Supervisor Buckley, seconded by Supervisor Moynihan to refer to Corporation Counsel to come back to June Executive Committee meeting with recommendation. Vote taken. MOTION CARRIED UNANIMOUSLY

Supervisor Carpenter stated that he spoken with representatives in Human Resources three weeks ago to have questions answered. Specifically the question was whether it was correct to sign up for the COBRA plan when his interpretation was that funding for the insurance was eliminated and not the benefit and he felt that he would be able to continue to pay 100% of the premium of the benefit. He was told by Human Resources staff that they would get back to him with an answer later that same afternoon or the following morning, but now, three weeks later, he has still not received an answer from Human Resources. Since he did not receive answers he does not know if he should pay COBRA or the County but his impression is that he should be making a check to the County for the premium because the benefit is still eligible. He felt that Human Resources and Corporation Counsel should have done more work to figure these things out. He also felt that sending this to Corporation Counsel makes more sense than sending it to the Attorney General at this point to expedite some answers.

Supervisor Hopp stated that he had been at a Counties Association workshop earlier in the day and this question was presented. He stated that there is a difference between compensation and benefits and the Counties Associations' interpretation is that health insurance is a benefit and not compensation, in part because Supervisors that do not partake in the insurance are not off set with increased pay. There were two actions

taken by the Board during budget time, one being to fund and one to have the benefit and the action to provide the benefit can be stopped at any time, even within the two year period since it is not part of overall compensation. Therefore, Hopp felt the benefit could be pulled and his position is that it should be pulled. He understood the position of Supervisors who had the insurance but he did not feel it would be appropriate to spend further funds on this matter for outside opinions or court orders.

Hooker stated that former Corporation Counsel John Luetscher had given an opinion similar to what was set forth by Hopp. She came to pretty much the same conclusion from what she has reviewed and agreed that getting an opinion from Corporation Counsel would be the most efficient way to handle this at this time. Hooker also stated that she had concerns about the Court even accepting this case at this time as it may not be ripe enough for a declaratory judgment.

Fewell felt that there were legal opinions being exercised on budget day when these decisions were being made. His recollection was that Supervisors would have the right to have the insurance but they would have to pay 100%.

Carpenter also pointed out that a decision needs to be made as soon as possible as to if the benefits are eligible or not eligible because there are situations that if a spouse has health insurance they need to disclose if they are eligible to receive other insurance.

2. Such other matters as authorized by law.

Motion made by Supervisor Fewell, seconded by Supervisor Wetzel to adjourn at 6:31 p.m. Vote taken. MOTION CARRIED UNANIMOUSLY

Respectfully submitted,

Therese Giannunzio
Recording Secretary