

Krohn, Margaret

From: Talis, John
Sent: Monday, May 31, 2021 10:21 PM
To: Krohn, Margaret
Subject: RE: Personnel & Finance registration/speaking at 5/10 meeting

Thank you, Margaret, for the opportunity to submit my testimony in writing on behalf of the Dane County Attorneys employee group. I had technical difficulties trying to participate in the 5/10/21 Personnel and Finance Committee meeting. I was fortunately able to see and hear the meeting.

Contrary to what some asserted at the meeting, there is simply no restriction on the Personnel and Finance Committee regarding reaching legal conclusions. DCO 18.08(2)(a) clearly states the Personnel and Finance Committee has “policy oversight of this ordinance [Ch. 18 DCO] subject to County Board approval.” The Personnel and Finance Committee is also explicitly given the power “[t]o make investigations regarding personnel matters on its own initiative or upon the request of any employee, any officer of the county, or any citizen.” In exercising these powers granted explicitly by ordinance, there is absolutely no language restricting the Personnel and Finance Committee from reaching legal conclusions. The assertion that the Personnel and Finance Committee cannot reach legal conclusions has zero textual basis in the ordinances. I certainly hope that the members of the Personnel and Finance Committee who appeared to give this argument consideration will reconsider their position. The practice of “adding” language to legislative enactments for purposes of argument when that language is not actually in the legislative text is much disfavored in the law.

I think practical consideration of this issue is also helpful. The essence of the “legal conclusions” argument is that legislators on the Personnel and Finance Committee cannot reach legal conclusions. But that is ultimately what a legislator does.

There was also raised a type of “bias” argument, asserting that participating in approval of the language proposed by Chairperson Miles regarding certain issues raised by the employee groups or other employees would prejudice the Personnel and Finance Committee. It would not. Each “policy oversight” or “investigation” (to use the words of the ordinances above) is taken on its individual facts and merits at the time they arise. If the Personnel and Finance Committee thinks action or investigation is necessary in a particular instance which supports employees, and in another circumstance acts to support the Department of Administration, neither instance reflects “bias.” The Personnel and Finance Committee is not a judicial entity and is not subject to that type of bias analysis. Legislators taking a good faith position on a policy issue is what legislators do. Their reasoning, over the course of time, could be found sound or not sound and require adjustments. But it is not subject to a bias analysis.

Last, it was suggested that the Personnel and Finance Commission should in effect stand aside on these employment issues and simply endorse Dane County's commitment to "the process" set forth in the Employee Handbook. This contention rests on the implicit conclusion that the Employer and employee groups (and employees generally) stand on an equal footing in terms of legal powers and financial resources. It is self-evident that we do not. While Dane County employees appreciate the rights which have been provided in the Handbook, those rights are not (and could not be) the rights of a labor organization as it existed prior to Act 10 in 2011. The Attorney's Association, for example, lacks the legal ability to compel the Department of Administration to bargain with it regarding any particular change it is proposing in the Handbook. And while the larger AFSCME employee groups have developed in independent hearing officer concept, that process is to a great extent not available to the Attorney's Association. We have fewer than 30 members, and we are fortunate if we can put aside financial resources that might protect one of our members potentially wrongly terminated or suspended. We do not have the financial capacity, for the foreseeable future, to challenge particular changes made by the Department of Administration to the Handbook before a neutral decision maker. That involves costs for legal counsel, hearing transcripts, and other expenses which are well beyond the capacity of a 30-person organization to sustain. Another way to consider the differential in resources is to be aware that the Attorneys Association has no paid staff (this writer serves on a volunteer basis), in comparison to multiple high level full time paid positions in the Department of Administration.

The Department of Administration has substantial advantages over the employee groups and individual employees, just as Governor Walker and his supporters intended it. The Department of Administration has significant advantages in legal power and financial resources over the employee groups and individual Dane County employees. That is why it is so critical for the Personnel and Finance Committee to maintain active oversight as described in the ordinances described. For that matter, consistent with those ordinances the Personnel and Finance Committee should also be approaching issues in appropriate cases supporting the perspective of Dane County management. But given the power differential between the parties, it can be anticipated that one of the Personnel and Finance Committee's significant roles will be protecting the rights of employees when those employees lack the legal power and financial resources to fairly advance their interests.

Thank you for your consideration.

John C. Talis
President, Dane County Attorneys Employee Group
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