

LRB – FISCAL REVIEW SECTION ANALYSIS

FEBRUARY 22, 2001

ITEM 8, FILE 001468

FINANCE & PERSONNEL COMMITTEE

Hattie E. Billingsley

File No. 001468 is a resolution reserving \$75,000 in the Common Council Contingent Fund to cover expenses for hiring testing consultants for selection procedures for the City of Milwaukee Fire Department in connection with the case captioned Brotherhood of Firefighters v. City of Milwaukee, EEOC Charge No. 260970100.

**Background**

1. In October of 1996 charges of discrimination were filed by the Brotherhood of Firefighters in regards to the 1993 and 1995 entry level written selection and promotional exams for the 1995 Fire Lieutenant and 1996 Battalion Chief positions. A determination of reasonable cause was reached by the Federal Equal Employment Opportunity Commission (EEOC) in December of 1999. As a result of this finding the City, along with the EEOC and the Brotherhood of Firefighters, began the conciliation process with the goal of settling the pending charges without litigation. EEOC has referred this matter to the Department of Justice for assessment and possible prosecution after the conciliation process failed in October.
2. The Council adopted File #000202 in June 2000 which approved transferring \$20,000 to the Outside Counsel/Expert Witness Fund from the Contingent Fund to hire an expert witness, Dr. David Frieland, to evaluate the testing procedure. Dr. Frieland has rendered an opinion in regards to the past testing procedure. The City Attorney's staff indicated the entire \$20,000 appropriation would be expended for Dr. Frieland's services.

**Discussion**

1. The file reserves \$75,000 in the Council's Contingent Fund in the event it will be necessary to hire testing consultants to review existing and develop new selection procedures for City of Milwaukee firefighters, fire cadets and for promotional examinations for Fire Lieutenant and Battalion Chief.
2. The file also authorizes the Fire and Police Commission to enter into a contract with testing consultants to review and develop selection procedures in conjunction with the case captioned Brotherhood of Firefighters v. City of Milwaukee, EEOC Charge No. 260970100 **upon authorization from the Common Council.**
3. The Common Council adopted Resolution 921460 in 1992, which established criteria for appropriations of Council's Contingent Fund. Contingent Fund requests are expected to meet the following criteria to be considered by the Finance & Personnel Committee:
  - Emergency Circumstance
  - Obligatory Circumstance
  - Fiscal Advantage/Compliance with Fiscal Management Principles

**This request does not meet the criteria because the City Attorney staff indicated in Resolution #000202 the \$20,000 requested provided funds only for validating the past testing procedures for which the EEOC had indicated a determination of reasonable cause. In addition, the City Attorney's staff indicated at the time it was probable that additional funds would be needed to assure the current selection process was valid. Furthermore, the EEOC referred this matter to the Department of Justice for assessment and possible prosecution in October 2000 during the Budget hearings and prior to the adoption of the 2001 Budget.** The Council may wish to consider funding for the testing consultants from the Outside Counsel/Expert Witness Fund since the new test would be developed as a result of the Brotherhood of Firefighter v. City of Milwaukee. This account was funded at \$500,000 for the year 2001. Currently, no appropriations have been made from this account, but the City Attorney anticipates introducing two files at the next

Council meeting requesting appropriations in the amount of \$25,000 and \$8,000 (\$33,000 total) from this account.

**Fiscal Impact**

1. Adoption of this file will reserve \$75,000 in the Contingent Fund. The current balance in the Contingent Fund is \$4,977,213.
2. The Outside Counsel/Expert Witness Fund has a current balance of \$500,000. It is anticipated the Common Council will receive two requests at its next meeting requesting a total of \$33,000 be appropriated from that fund.

**Other Information**

1. The revised selection procedures for hiring entry-level positions within the police department is expected to be completed and implemented in June of this year. Although the fire testing validation is independent of the police selection validation process, it may be possible for some information gained during the revision of the police selection procedure to be used in the development of the fire selection procedure.

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