

**CITY OF MADISON  
OFFICE OF THE CITY ATTORNEY  
Room 401, CCB  
266-4511**

Date: September 30, 2011

**OPINION # 2011 - 002**

TO: Mayor Paul Soglin  
FROM: Michael P. May, City Attorney  
RE: Authority to Conduct Labor Negotiations On Behalf of the City

You requested my opinion on who has the authority to conduct labor negotiations on behalf of the City. In particular, you asked that I address the roles of the Mayor and the Common Council in labor negotiations.

**Question Presented:**

Who has authority to conduct labor negotiations on behalf of the City of Madison?

**Brief Answer:**

Section 3.13(5), MGO, commits the authority to conduct labor negotiations to the Human Resources Director, or the Director's designee, under the direction of the Mayor.

The Common Council has a role at the start of this process, through a meeting with the Board of Estimates, and at the conclusion of the process, through approval of the collective bargaining agreements, but is not authorized to conduct negotiations.

**Discussion:**

Section 3.13, MGO, deals with the Human Resources (HR) Department of the City. Subsection (5) of that section of the ordinances deals with the Labor Relations Unit in the HR Department.

The ordinance is quite clear, and further legal explanation is not required. I have attached a complete copy of sec. 3.13(5), MGO, to this opinion. The relevant sections read in part as follows (emphasis added):

(5) Labor Relations Unit.

(a) Under the supervision of the Director or the Director's designee, this unit is responsible for the conduct of all Labor Relations work in which the City is interested and shall deal with labor organizations representing City employees in conferences and negotiations within the scope of collective bargaining . . . .

(b) The Human Resources Director or the designee shall be charged with the responsibility of representing the Mayor and the Common Council in all conferences and negotiations with representatives of recognized bargaining units on matters relating to wages, hours of work and conditions of employment, . . . . The Director or the designee shall perform the following duties:

1. Under the direction of the Mayor, negotiate the terms of labor agreements on wages, hours of work and conditions of employment with representatives of duly recognized bargaining units, subject to the approval of the Mayor and the Common Council and in compliance with Sections 111.70, 111.71, and 111.77 and other related sections of the Wisconsin Statutes. For purposes of this paragraph, the Human Resources Director or the designee shall report to the Mayor.

...  
(d) Mayor and Common Council Control. The Board of Estimates shall confer with the Mayor and the Human Resources Director regarding initial bargaining proposals to be presented to each duly recognized bargaining unit. All labor contracts and agreements negotiated under the terms of this section shall be subject to the approval of the Mayor and Common Council. . . .

Beyond the clear dictates of sec. 3.13(5), MGO, there is an additional reason that persons other than the designated representatives of the City should not be involved in labor negotiations. Under Wis. Stat. sec. 111.70(3)(a):

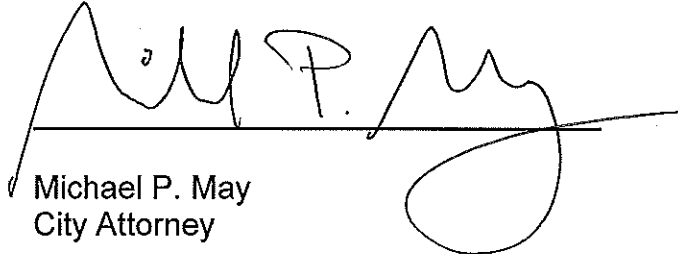
It is a prohibited practice for a municipal employer individually or in concert with others: 1. To interfere with, restrain or coerce municipal employees in the exercise of their rights guaranteed in sub. (2).

If representatives of the City, other than the HR Director or designee or the Mayor, were to participate in labor negotiations with representatives of a City union, it is arguable that such acts might constitute a prohibited labor practice under sec. 111.70(3)(a)1, by interfering with the employees' right to bargain.

If other representatives of the City, including alderpersons, want to be involved in labor negotiations, they should bring their concerns to the HR Director and the Mayor.

**Conclusion:**

Under sec. 3.13(5), MGO, labor negotiations on behalf of the City are to be conducted by the Human Resources Director or designee, under the direction of the Mayor. Other City representatives should not be involved in those negotiations. The Common Council has a role at the start of negotiations, and must approve any labor agreement.



Michael P. May  
City Attorney

CC: All Alders  
Department and Division Heads  
City Clerk

**SYNOPSIS:**

Under sec. 3.13(5), MGO, labor negotiations on behalf of the City are to be conducted by the Human Resources Director or designee, under the direction of the Mayor. Other City representatives should not be involved in those negotiations. The Common Council has a role at the start of negotiations, and must approve any labor agreement.

MGO Sec. 3.13(5)

(5) Labor Relations Unit.

(a) Under the supervision of the Director or the Director's designee, this unit is responsible for the conduct of all Labor Relations work in which the City is interested and shall deal with labor organizations representing City employees in conferences and negotiations within the scope of collective bargaining and shall develop and administer a working labor relations program except as provided herein. The Director's designee or any person permanently employed to act as head of this unit or to negotiate labor contracts on behalf of the City shall be appointed by the Director subject to the approval of the Mayor.

(b) The Human Resources Director or the designee shall be charged with the responsibility of representing the Mayor and the Common Council in all conferences and negotiations with representatives of recognized bargaining units on matters relating to wages, hours of work and conditions of employment, in accordance with the provisions of Sections 111.70, 111.71, and 111.77 and other related sections of the Wisconsin Statutes. The Director or designee shall recommend labor relations policies to the Mayor and Common Council and shall establish labor relations standards, methods and procedures. The Director or the designee shall perform the following duties:

1. Under the direction of the Mayor, negotiate the terms of labor agreements on wages, hours of work and conditions of employment with representatives of duly recognized bargaining units, subject to the approval of the Mayor and the Common Council and in compliance with Sections 111.70, 111.71, and 111.77 and other related sections of the Wisconsin Statutes. For purposes of this paragraph, the Human Resources Director or the designee shall report to the Mayor.
2. Petition on behalf of and represent the City in actions before the Wisconsin Employment Relations Commission on matters related to: bargaining unit determination, mediation, fact-finding, arbitration, declaratory rulings, and other matters within the jurisdiction of the Wisconsin Employment Relations Commission; administer the application of Sections 111.70, 111.71, and 111.77 of the Wisconsin Statutes in relation to the labor relations program of the City.
3. Interpret the provisions and applications of all duly authorized labor agreements; assist management personnel in the administration of contract grievance procedures. The Director or designee is authorized to enter into memoranda of understanding on behalf of the City to clarify the provisions and application of such labor agreements and to implement resolution of contract grievances within such labor agreements.

(c) Relationship to City Departments. All departments of the City shall cooperate with the Human Resources Director or designee to the end that s/he may discharge the duties and responsibilities contemplated by this

section. Department heads are directed to cooperate fully with the Human Resources Director and the designee in this purpose.

1. All City departments shall make available all such information as may be required as determined by the Human Resources Director or designee.
2. The Human Resources Director shall keep City department heads informed on matters which affect their operations in labor relations matters.
3. The City Attorney or his/her designated assistant shall provide legal counsel to the Human Resources Director.

(d) Mayor and Common Council Control. The Board of Estimates shall confer with the Mayor and the Human Resources Director regarding initial bargaining proposals to be presented to each duly recognized bargaining unit. All labor contracts and agreements negotiated under the terms of this section shall be subject to the approval of the Mayor and Common Council. No labor contract or agreement shall be binding upon the City nor shall any of the terms of such agreements be implemented until such time as the agreement is approved and executed by the Mayor and City Clerk in the manner prescribed by law.

1. The Human Resources Director shall report periodically on labor relations activities to the Mayor and the Board of Estimates.
2. The Human Resources Director shall complete such reports as the Mayor and Common Council shall require and attend such conferences or meetings as designated for purposes of ensuring sufficient communications with the Mayor, Board of Estimates and Common Council on labor relations matters.