

# **WERC Ad Hoc Arbitrator Conference**

**September 13, 2004**

**Madison, Wisconsin**

## **A. Role of the Commission as to Ad Hoc Panel**

Oversee panel for professionalism, quality and neutrality.

Provide advice.

Resolve disputes over whether Sec. 111.70(4)(cm), Stats. interest arbitration award is enforceable.

Resolve disputes over whether grievance arbitration award is enforceable.

## **B. Recent Cases**

### **Madison Teachers v. Metro. Sch. Dist., 271 Wis.2d 697 (Ct. App. 2004)**

Court review limited to whether there is any evidence that could support arbitrator's award.

Court should not disturb arbitrator's judgment on weight, credibility and competency of evidence.

Failure of arbitrator to explain his views is not basis to vacate.

Inadvertently overlooking evidence would be at most a factual error.

### **Milwaukee Schools, Dec. No. 30590-B (WERC, 5/04)**

Where unanticipated remedial issues arise at conclusion of arbitration proceedings, employer is obligated to complete arbitration process but retains right to de novo review of arbitrator's resolution of such remedial matters to the extent issues of substantive arbitrability are created.

### **City of Fennimore, Dec. No. 30454-B (WERC, 9/03)**

WERC has statutory authority under Sec. 111.70(4)(cm) 6, Stats., to allow a party to correct its final offer to conform to its intent.

Although interest arbitrator has same authority to allow such correction under both Secs. 111.70 (4)(cm) and 111.77, Stats., correction by WERC allows the parties and the arbitrator to proceed with certainty and without de novo review of that issue by the WERC (Sec. 111.70(4)(cm) awards) and is an appropriate exercise of WERC discretion despite resultant delay and expense.

**City of Madison, Dec. No. 30009-B (WERC, 9/01)**

If final offer is too indefinite to allow appropriate statutory assessment by interest arbitrator, WERC has authority to interrupt arbitration proceeding and reopen investigation to resolve the ambiguity.

**Waukesha County, Dec. No. 29929-A (WERC, 11/00)**

Consistent with Lacrosse Prof. Police v. City of Lacrosse, 212 Wis. 2D 90 (Ct.App. 1997), WERC applies a de novo standard of review when issue is whether interest arbitrator acted within the scope of arbitrator's authority as opposed to whether arbitrator selected right offer for right reasons.

**Ozaukee County, Dec. No. 30551-B (WERC, 2/04)**

Where employer illegally modified the status quo as to insurance benefits but parties' final offers both conformed to the illegal change, WERC did not order restoration of the status quo but did order employer to make employees whole for status quo change until parties' receive interest arbitrator's award.

**C. Reminders**

In interest arbitration cases, double check to make sure you have been formally appointed by WERC.

Use WERC subpoena form (attached) in Sec. 111.70(4)(cm), Stats, interest arbitration proceedings.

Consider options in 8/6/01 memo (attached) for consent awards.

**D. Administrative Rule Revisions**

Draft ERC 50 (attached)