



Wisconsin Employment Relations Commission

2012 WISCONSIN PUBLIC SECTOR LABOR RELATIONS CONFERENCE

APRIL 26, 2012

SO, WHAT'S NEW?

By Peter G. Davis-Chief Legal Counsel **

I. Agency Update

Chairperson Jim Scott-confirmed for a term expiring March 2015.
Commissioner Judy Neumann-confirmed for a term expired March 2013.
Commissioner Rodney Pasch-confirmed for a term expiring March 2017.

Twelve attorneys (9 in Madison and 3 out state) and 4.5 support staff.

Retirement of Coleen Burns, Marshall Gratz, Dan Nielsen and Rick
McLaughlin.

Significant Caseload Reduction since February 2011
Significant Caseload Increase in the near future?

Availability to serve as impartial hearing officer in local government civil
service/grievance procedures.

DOA Study

Administrative Rule Making

**** The speaker's remarks do not necessarily reflect the views of the
WERC.**

II. Some Issues Raised by 2011 Wisconsin Acts 10 and 32

Judge Conley's Decision

Duty to Bargain Between Introduction, Passage and Effective Date of Act 10?

- Richland Center Utilities
- City of Milwaukee

Bargaining Over Base Wages

- What is the Starting Point?
- What is the applicable CPI? Calculated by Department of Revenue
 - Contracts Beginning 1/1/11 = .97%
 - 7/1/11 = 1.64%
 - 1/1/12 = 2.01%
 - 7/1/12 = 3.16%
- Does bargaining extend to distribution of base \$?
- Scope of referendum requirement? Not a WERC issue.

Viability of Contracts Bargained/Renewed before Act 10 took effect (June 29, 2011) and Act 32 took effect (July 1, 2011) but with Start dates of July 1, 2011 or after?

- Initial applicability language in Acts 10 and 32
- Impairment of Right to Contract?
- Contract valid but limited to base wage provision?
- Implications for timing of initial annual certification elections (if required).

Do Jailers Fall within Scope of "Public Safety Employees" as defined in Sec. 111.70(1)(mm)1, Stats.?

- "1. Classified as a protective occupation participant under any of the following:
 - a. Section 40.02(48)(am) . . . 13 . . ."
- Section 40.02(48)(am) 13, Stats. = "deputy sheriff"
- Section 40.02(48) b. 3. Stats. provides a definition of "deputy sheriff."
- Does power of arrest matter?
- Does the percentage of time actually performing active law enforcement matter?
- Answered in WERC decisions in Douglas County, Winnebago County.

What is the Scope of Sec. 111.70(4)(mc)6, Stats. Prohibited Subject of Bargaining?

- The design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of the design and selection

of health care coverage plans on the wages, hours, and conditions of
employment

of the public safety employees.

-Decided by Milw Co. Circuit Court Judge Amato; WERC in Eau Claire
County,

Dec. No. 33662 (2/12), on appeal; to be decided by Brown Co. Circuit Court
Judge Warpinski

III. Matters I Currently Believe are True

- State and municipal employees still have a protected right to engage in lawful concerted activity.
- Individual employees and labor organizations still have the right to address public officials as to issues related to wages, hours and conditions of employment.
- It is not illegal for municipal employers to meet and confer with a labor organization as to any matter.
- Except for interest arbitration proceedings, litigation/grievance arbitration as to employee/union rights under pre-Act 10/32 law is not extinguished.
- If bargaining over base wage rate reaches an impasse, the employer can unilaterally implement its last offer as to base wages.
- Although increases in base wage rates that exceed the CPI-U must be approved by a referendum, municipal employers can unilaterally increase any other means of compensating employees.

IV. Unintended Results?

- No limit of the duration of contracts for municipal transit and public safety units.
- If the CPI-U is stable or decreases, employee base wages are frozen.

V. Future Issues

- Scope of lawful concerted activity by individual employees.
- Impact of recall election results.
- Impact of state and federal court litigation.