



# Wisconsin Employment Relations Commission

STATE BAR LABOR AND EMPLOYMENT SECTION

February 17, 2011-Milwaukee

February 18, 2011-Madison

## **WERC UPDATE**

By Peter G. Davis- WERC General Counsel \*\*

---

### **I. Agency Update**

Chairperson Judy Neumann-confirmed for a term expiring March 2013.  
Commissioner Sue Bauman-confirmed for a term expiring March 2011.  
Commissioner-Vacant

Sixteen attorneys (11 in Madison and 5 out state) and 4.5 support staff.

Retirement of Coleen Burns

Office Closures due to Furloughs-2/21/11 and 5/27/11

WERC Conference April 28, 2011

WERC Website-just google WERC

---

\*\* The speaker's remarks do not necessarily reflect the views of the WERC. Questions? Contact Peter Davis at 608 266-2993 or [peterg.davis@wisconsin.gov](mailto:peterg.davis@wisconsin.gov).

## **II. Recent Decisions**

### **STATE OF WISCONSIN, DEC. NO. 33169 (WERC, 11/10); Writ of Prohibition pending CirCt Dane.**

WERC concludes that it has jurisdiction to determine whether employees designated "academic staff" by the University of Wisconsin are in fact employees eligible to be included in State Employment Labor Relations Act bargaining units.

### **PULASKI SCHOOLS, DEC. NO. 33037-B (WERC, 11/10)**

WERC determines that it is inappropriate to hold alleged duty to bargain, interference and discrimination allegations in abeyance awaiting outcome of related grievance arbitration proceeding noting that arbitration had no potential to resolve the complaint issues and the great importance of the statutory rights in question.

### **NEENAH SCHOOLS, DEC. NO. 32773-C (WERC, 10/10)**

In the context of the facts established, union failure to file a responsive preliminary final offer well after the 14 day statutorily-established time frame did not constitute bad faith bargaining.

### **SEIU LOCAL 150 V WERC, 2009AP1524, recommended for publication- CTAPP-DIST 1 (8/10)-petition for Supreme Court review denied.**

Court reverses WERC conclusion that Union's overall conduct when processing the grievance of a discharged employee breached its duty of fair representation.

### **GREEN BAY SCHOOLS, DEC. NO. 32602-B (WERC, 6/10)**

Where collective bargaining agreement contains a grievance arbitration procedure applicable to alleged violations of contract, that procedure is presumed to be the exclusive procedure for resolving such an allegation and thus WERC will not exercise its statutory jurisdiction to resolve such issues unless an employee asserts that their attempt to use the contractual procedure was unsuccessful because their collective bargaining representative breached its duty of fair representation. In such circumstances, a prohibited practices complaint against the bargaining representative (for breach of the duty of fair representation) and the employer (for violation of contract) is timely if the employee filed a grievance within one year of the date the employee knew or should have known that the employer allegedly violated the bargaining agreement and filed the complaint with WERC within one year of the date the employee know or should have known that the

employee's effort to exhaust the grievance arbitration procedure was ended by the bargaining representative.

A bargaining representative's decision to drop a grievance short of arbitration should at least consider the value of the employee's claim, the effect of the alleged breach on the employee and the likelihood of success in arbitration.

**CHIPPEWA FALLS SCHOOLS, DEC. NO. 33047 (WERC, 6/10)**

Employee is a confidential employee based on her exclusive knowledge of computer program the employer uses to assist it when making decisions regarding bargaining and contract administration and her participation in employer discussions as to such matters.

**WAUSHARA COUNTY, DEC. NO. 30222-B (WERC, 3/10)**

Where three paralegals in the Corporation Counsel's office interchangeably share a limited amount of confidential labor relations work, only one paralegal is a confidential employee. The other two paralegals are added to the bargaining unit. If employer wishes to shield the two unit paralegals from confidential labor relations information, that can be accomplished without undue disruption.

**ELKHART LAKE-GLENBEULAH SCHOOL DISTRICT, DEC. NO. 27370-C (WERC, 3/10)**

Employer gives former bargaining unit Head Custodian sufficient authority as to hiring, discipline, evaluation and direction of work of seven employees to make him a supervisor.

**MILWAUKEE COUNTY, DEC. NO. 32728-B (WERC, 1/10)**

Employer violated its duty to bargain by refusing to provide union with disciplinary files of a bargaining unit employee which union sought for purposes of determining whether it had a disparate treatment argument in an upcoming grievance arbitration proceeding.

**FLORENCE COUNTY, DEC. NO. 32435-C (WERC, 1/10); WEST SALEM SCHOOLS, DEC. NO. 32696-D (WERC, 10/09) see also WAUKESHA COUNTY TECHNICAL COLLEGE, DEC. NO. 32785-B (WERC, 12/09); MILWAUKEE COUNTY, DEC. NO. 32572-B (Davis, 11/09)**

In context of pre-hearing motion to dismiss, prohibited practice/unfair labor practice complaints will only be dismissed if even under a liberal interpretation of the content of the complaint itself, a timely claim as to which WERC has jurisdiction has not been raised.

**CLARK COUNTY, DEC. NO. 32933 (WERC, 12/09)**

Employee is not a supervisor because his role in hiring does not rise to level of an effective recommendation, he has no significant disciplinary authority and he is not on at the work site on a regular basis.

Employee is not a managerial employee because he lacks high level policy-making role and lacks the effective authority to commit the employer's resources.

**STATE OF WISCONSIN, DEC. NO. 32689-C (WERC, 12/09)**

Employee's discharge was not based on any hostility toward his lawful concerted activity but rather on his failure to heed instructions regarding use of internet on work time.

**MILWAUKEE COUNTY, DEC. NO. 32590-B (WERC, 11/09)**

Employer conduct did not demonstrate a refusal to comply with a prior grievance arbitration award.

**III. Pending Issues**

- Scope of duty to supply information in context of contract administration-FRANKLIN SCHOOLS.
- Duty to bargain over proposal limiting employer right to reduce hours of employees rather than layoff-MILWAUKEE COUNTY.