



Wisconsin Employment Relations Commission

STATE BAR LABOR AND EMPLOYMENT SECTION

Milwaukee, February 21, 2013

Madison, February 22, 2013

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General Counsel

Wisconsin Employment Relations Commission

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.

Departure of Commissioner Neumann

May 2, 2013 WERC Conference

Proposed 2013-2015 WERC Budget

Currently 11 attorneys (and 7 vacant attorney positions) and four support staff.

Proposed decrease is to five attorneys and two support staff.

Commissioners currently full-time.

Budget proposal would make Commissioners part-time (.66%)

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

Significant and increasing labor case load reduction as consequence of Act 10.

400 to 125 yearly grievance arbitration cases (estimate)
300 to 100 yearly mediation type cases (estimate)

Limited but increasing civil service case load-25 to 125 yearly discipline cases (estimate)

A few requests for WERC staff to serve as impartial hearing officer in local government civil service/grievance procedures

II. Act 10 and Act 32 Litigation

Proceedings before Wisconsin Court of Appeals-supplemental briefing re stay/state-wide impact/ramifications for WERC as named defendant in Colas litigation.

Proceedings before the Seventh Circuit Court of Appeals concluded February 11, 2013.

In Douglas County, Dec. No. 33853 (WERC, 4/12), and Winnebago County, Dec. No. 33854 (WERC, 4/12) WERC concludes (Commissioner Neumann dissenting) County jailers are “public safety employees” within the meaning of Sec. 111.70(1)(mm), Stats. if: (1) the jailers are sworn by the Sheriff as deputy sheriffs; and (2) the jailers have been designated by the County as protective occupation participants for WRS purposes. Dane County Circuit Court Judge Richard Niess reverses Douglas County (12CV3271) holding protective occupation designation is sufficient. Appeal pending Court of Appeals, District IV (2012AP2721)

Marquette County Circuit Court Judge Richard Wright (Case 11CV157-6/12), appeal filed but withdrawn Court of Appeals, District IV, (Case 2012AP1646) concludes that protective occupation designation is sufficient. WERC was not a party to the litigation.

Eau Claire County, Dec. No. 33662 (WERC, 2/12), WERC concludes (Commissioner Neumann dissenting) that proposal specifying the amount of a health insurance deductible to be paid by employees is a prohibited subject of bargaining within meaning of Sec. 111.70(4)(mc) 6, Stats. Judge Colas reverses (12CV1123). Appeal pending Court of Appeals, District IV (Case 2012AP270)

Milwaukee County Circuit Court Judge Dominic Amato (Case 11CV15086), appeal pending Court of Appeals, District I (Case 12AP1928) concludes “design” as used in Sec. 111.70(4)(mc) 6, Stats. does not allow employer to unilaterally determine “all aspects of health care coverage.” WERC is not a party to the litigation.

Brown County Circuit Court Judge Marc Hammer (Case 11CV2195) concludes that public safety employees unions are prohibited from bargaining over “their proportionate cost of, and financial exposure to, the ‘design and selection’ choices made by a municipality” as to health insurance. Appeal pending Court of Appeals, District III (12AP1928). WERC is not a party to the litigation.

Racine County Circuit Court Judge Gerald Ptacek (12CV1964) concludes that 2013-2014 City of Racine collective bargaining agreements reached before Acts 10 and 32 took effect are valid. WERC was not a party to the litigation. Dane County Circuit Judge Colas (12CV1240) reaches same conclusion as to City of Monona collective bargaining agreement.

Manitowoc County Circuit Court Judge Patrick Willis (12CV222) concludes that contributions to HSA accounts for public safety employees are a prohibited subject of bargaining. Same/similar issue pending before St. Croix County Circuit Court in City of Hudson, Case 12CV371 and before the WERC in City of Marinette, as to HRA contributions.

City of Brookfield, Dec. No. 33892-A (WERC, 12/12). Commission concludes that employees hired on or after July 1, 2011 are “covered” by existing collective bargaining agreement and Act 32 does not invalidate the contractual requirement that the City pay the employee share of the WRS for said employees.

Public Utility Commission of Richland Center, Dec. No. 33281-B (WERC, 6/12), WERC concludes (Commissioner Neumann dissenting) that Employer did not violate its duty to bargain by temporarily suspending bargaining due to uncertainty of law as to status of Act 10. City of Milwaukee, Dec. No. 33322-B (WERC, 2/13), WERC concludes (Commissioner Neumann dissenting) that Employer did not violate its duty to bargain by failing to submit a tentative agreement for ratification due to uncertainty as to status of Act 10.

Washburn County, Case 70-Declaratory ruling pending before the WERC as to meaning of Sec. 111.70(4)(mc) 5, Stats. prohibition against payment of employee WRS contributions for public safety employees “initially employed” on or after July 1, 2011.

Adams County, Case 123-Declaratory ruling pending as to the state-wide impact and holding of Judge Colas’ Act 10 decision.

III. NON-ACT 10 or 32 LITIGATION

Green Bay Schools, Dec. No. 32602-C (WERC, 7/12) WERC concludes that employee can pursue breach of contract claim against employer where employee settles related duty of fair representation claim against the union.