

# Wisconsin Employment Relations Commission

## STATE BAR OF WISCONSIN-LABOR AND EMPLOYMENT LAW SECTION

January 19, 2012-Milwaukee

January 20, 2012-Madison

### WERC UPDATE

By Peter G. Davis-Chief Legal Counsel \*\*

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#### **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.

April 26, 2012 WERC Conference.

Administrative Rule Making-February 2, 2012 Hearing.

Initial Annual Certification Elections.

Significant Caseload Reduction since February 2011.  
Significant Caseload Increase in the near future under new State employee compensation plan/grievance procedure.

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

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

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

### **Bargaining Over Base Wages**

- What is the Starting Point? To be answered by rulemaking
- 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%
- Does bargaining extend to distribution of base \$?-Case law.
- 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 of Act 10 (Section 9332)
- Initial applicability of Act 32 (Section 9332)
- Impairment of Right to Contract?
- Contract valid but limited to Base Wage provision?
- Implications for timing of initial annual certification elections.

### **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?

To be answered in upcoming WERC decisions in Douglas County, Winnebago County.

### **What is the Scope of Sec. 111.70(4)(mc) 6, Stats.?**

6. 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 and to be decided by WERC in Eau Claire County and 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 bargaining unit and non-bargaining unit employees without referendum approval.

### **IV-Unintended Results of Acts 10/32**

- No limit of the duration of contracts for municipal transit, police and fire units.
- If the CPI-U is stable or decreases, employee base wages are frozen.
- Call into question validity of private sector union security agreements.

### **V-Bluster/Hyperbole**

- Still generally permissible even when directed toward pro se litigant.  
STATE OF WISCONSIN, DEC. NO. 33125-C (WERC, 1/12)