

Wisconsin Employment Relations Commission

LABOR AND EMPLOYMENT RELATIONS ASSOCIATION

March 13, 2015

STILL LUCKY AFTER ALL THESE YEARS

By Peter G. Davis-Chief Legal Counsel **

I. Agency Update

Commissioners and Staff

Chairperson James Scott-confirmed for a term which expired March 1, 2015.

Phone #- 608 243-2431

Commissioner Rodney Pasch-confirmed for a term expiring March 2017.

Phone #- 608 243-2430

Commissioner Vacancy- for a term expiring March 1, 2019.

Street and Mailing Address=4868 High Crossing Blvd. Madison, WI 53704-7403

General Phone #-608 243-2424

Fax #-608 243-2433

Five attorneys (4 in Madison and 1 out-state (Millot)) and two support staff.

Peter Davis 608 243-2421

Bill Houlihan 608 243-2422

Raleigh Jones 608 243-2426

Stuart Levitan 608 243-2423-retiring 5/1/2015

Lauri Millot 715 362-0370

Dawn Clark (Paralegal) 608 243-2434

Carol Lynch (Office Manager) 608 243-2427

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

Annual Certification Elections

Permanent Administrative Rules (ERC 70,71 and 80) as to all certification elections took effect July 1, 2014.

To date, WERC has conducted 954 annual certification elections. Union has won 787=82%

City/County/Village/Tech College elections set for Noon April 1 thru Noon April 21

By toll free phone and online 24/7

Voter eligibility linked to employment on date the petition was filed=employees hired between that date and date of the election are not eligible absent mutual agreement BUT anyone either union or employer asserts is eligible will be allowed to vote (subject to challenge with status resolved after election if needed).

Pending unit clarification petition will not delay the election. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14).

Pending prohibited practice complaint will not delay the election. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14).

Union must file for and win a certification election to remain the collective bargaining representative even where it won a "regular" election to obtain certified status only months before. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14).

Employer refusal to provide home addresses of employees was not improper. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14); **State of Wisconsin**, Dec. No. 31271-B (WERC, 8/06).

Employer blocking union emails to voters could impact election. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14).

Failure to provide requested affidavits is valid basis for concluding election objections had been abandoned. **State of Wisconsin**, Dec. No. 34479-A (WERC, 5/14)

Employee who leaves the bargaining unit between eligibility date and date of election is not eligible. **Elmbrook Schools**, Dec. No. 34304-A (WERC, 3/14).

Employee failure to vote due to difficulty with phone voting procedure is not a basis for conducting a new election. **Herman Schools**, Dec. No. 34318-A (WERC, 4/14).

Employees forgetting to vote is not a basis for conducting a new election. **Town of Woodruff**, Dec. No. 34944-A (WERC, 5/14).

Employer failure to post election information is a basis for conducting a new election. **Town of Manitowish Waters**.

Substantial errors in the voter eligibility list (including omission of eligible voters) is a basis for conducting new election. **Milwaukee Schools (substitute teachers)**.

Petitions filed one day after the filing deadline (established by administrative rule) are dismissed. **Milwaukee Schools**, Dec. No. 35447 (WERC, 11/14)

Resurgence of “Regular” Election Petitions

No deadline for filing as long as at least one year of unrepresented status has passed. **Kenosha Schools**, Dec. No. 34694 (WERC, 11/14)

Right to Work

TRO hearing March 19-Dane County Circuit Court (Judge Foust)

Base Wage Issues

No administrative rules planned and no litigation pending.

CPI-U Calculation Methodology-1.62% is max for contracts covering 7/1/15-6/30/16.

Ability to exceed CPI-U as to non-Base Wage compensation.

Lawful Concerted Activity . . . For . . . Mutual Aid or Protection

Few complaint filings and no post-Act 10 Commission decisions re this Sec. 111.70(2), Stats. right (Sec. 111.82 for State employees) enforced thru Sec. 111.70(3)(a) 1, Stats. (111.84(1)(a) for State employees) prohibited practice complaint.

Relevance of statutory “strike” definition (see Secs. 111.70(1)(nm), and 111.81(18) Stats.) as to extent of “lawful, concerted activity”

Do provisions in employee handbook restrict or chill exercise of such rights?

Does the Internet use policy restrict or chill exercise of such rights?

II. WERC Decisions

City of Cudahy, Dec. No. 34698 (WERC, 2/14)

A union is not a “party in interest” for purposes of filing a prohibited practice complaint alleging interference with employee rights if it is not the current collective bargaining representative or actively attempting to obtain that status.

LaCrosse Schools, Dec. No. 34685-A (Davis, 3/14) aff’d by operation of law Dec. No. 34685-B (WERC, 4/14)

By seeking to make the Union a party to an employee resignation agreement, Employer bargained over a prohibited subject of bargaining and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 4, Stats.

Union had no duty of fair representation as to the employee in the context of her discharge or resignation. Union had no claim or right (independent of employee’s) to settle by way of being a signatory to the agreement. Union can choose to offer advice (upon employee request) and union/employer interaction on that basis (as long as union is not made a party to any agreement) is permissible.

Madison Schools, Dec. No. 34973 (WERC, 4/14)

Employees are not “professional” within the meaning of Sec. 111.70(1)(L), Stats.

City of Milwaukee, Dec. No. 35042 (WERC, 6/14)

Union proposal that City offer two health care plans is a prohibited subject of bargaining under Sec. 111.70(4)(mc) 6, Stats.

III. Little Known (??) Matters

1. No limit of the duration of contracts for municipal transit, police and fire units.
2. Although there is a general one year limit on the duration of collective bargaining agreements for municipal employees not referenced in (1) above, the length of “initial” collective bargaining agreement for such municipal employees is unregulated (see Sec. 111.70(4)(cm) 8m. Stats.) and presumably is a mandatory subject of bargaining.
3. If the CPI-U is stable or decreases, employee base wages are frozen.

4. Because certification elections provide an annual opportunity for union representation to end or change, it is likely that certification elections have supplanted employee decertification or rival union “raid” election petitions. But see Sec. 111.70(3)(a) 4, Stats as to employer filed “good faith doubt” petitions.

IV. Union and Employer Reaction to the Post-Act 10 World

1. Unions seek even greater influence on local elected officials.
2. Unions focus on organizing internally.
3. Employers consider new compensation models.
4. Employers compete to market place for employees.
5. Employers look for new ways to communicate with employees.
6. Employers struggle with how to handle meet and confer interactions with employees where union is still active.

V. WERC Future

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Sample of Base Wage CPI Calculation Methodology
(for contracts beginning 7-1-15)

Consumer Price Index for All Urban Consumers (CPI-U) U.S. City Average, All Items, Not Seasonally Adjusted 1982-84=100 Source: Bureau of Labor Statistics, U.S. Department of Labor		
	2012-13	2013-14
December	230.280	233.916
January	232.166	234.781
February	232.773	236.293
March	232.531	237.072
April	232.945	237.900
May	233.504	238.343
June	233.596	238.250
July	233.877	237.852
August	234.149	238.031
September	233.546	237.433
October	233.069	236.151
November	233.049	234.812
Average	232.957	236.736
% Change		1.62