



# Wisconsin Employment Relations Commission

## 2013 Wisconsin Public Sector Employment Relations Conference

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Wisconsin Employment Relations Commission

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### **I. Agency Update**

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

Departure of Commissioner Neumann

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 state employee 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. Annual Certification Elections**

## **III. Base Wage Calculations**

## **IV. Act 10 and Act 32 Litigation**

### **Constitutional Challenges to Act 10**

Wisconsin Court of Appeals-MTI v Scott Walker et. Al. 2012AP2067-Court considering the merits of Judge Colas' decision that portions of Act 10 which amend the Municipal Employment Relations Act are unconstitutional.

Proceedings before the Seventh Circuit Court of Appeals (Case No. 12-1854) concluded February 11, 2013. The Court concluded that the Act 10 amendments of the State Employment Labor Relations Act are not unconstitutional.

### **Act 32 Decisions**

Court of Appeals, District I, concludes that deductibles, co-pays and prescription costs are prohibited subjects of bargaining within the meaning of Sec. 111.70(4)(mc) 6, Stats. (2012AP1928-4/16/13-recommended for publication). 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 (2013AP270). WERC is not a party to the litigation.

Manitowoc County Circuit Court Judge Patrick Willis (12CV222) concludes that contributions to HSA accounts for public safety employees are a prohibited subject of bargaining. Appeal pending Court of Appeals, District II (2013AP1). Same/similar issue pending before St. Croix County Circuit Court in City of Hudson, (Case 12CV371), as to HRA contributions. WERC is not a party to the litigation in either case.

Eau Claire County, Dec. No. 33662 (WERC, 2/12), Commission 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 2012AP2701)

City of Marinette, Dec. No. 34096 (WERC, 4/13). Commission concludes that HRA accounts for public safety employees are a prohibited subject of bargaining within the meaning of Sec. 111.70(4)(mc) 5, Stats.

Washburn County, Dec. No. 34803 (WERC, 3/13). Commission concludes (Commissioner Neumann dissenting) that the 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 applies to public safety employees of an employer who move from one public safety bargaining unit to another same employer unit on or after July 1, 2011.

In Douglas County, Dec. No. 33853 (WERC, 4/12), and Winnebago County, Dec. No. 33854 (WERC, 4/12) Commission 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.

Racine County Circuit Court Judge Gerald Ptacek (12CV1964), appeal pending Court of Appeals, District II (Case 2013AP290) concludes that collective bargaining agreements reached before Acts 10 and 32 took effect but with commencement dates after those Acts generally took effect are valid. WERC is not a party to the litigation.

City of Brookfield, Dec. No. 33892-A (WERC, 12/12). Commission concludes that employees hired on or after July 1, 2011 are "covered" by a pre-Act 32 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

## Act 10 Decisions

Dane County Circuit Judge Colas (12CV1240) concludes that a City of Monona collective bargaining agreement reached before Act 10 took effect but with a commencement date after that Act generally took effect is valid. WERC was not a party to the litigation.

Public Utility Commission of Richland Center, Dec. No. 33281-B (WERC, 6/12). Commission 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), Commission 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.

## Pending Act 10 or Act 32 Litigation at the WERC

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

Prohibited practice/unit clarification proceedings as to the ramification of Employer decisions to end the WRS protective occupation status of employees.

## **V. 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.

Oregon Schools, Dec. No. 33664-C (WERC, 4/13). Commission concludes Union did not breach its duty of fair representation when deciding not to arbitrate teacher discharge.