

Wisconsin Employment Relations Commission

WISCONSIN BAR –LABOR AND EMPLOYMENT SECTION

November 17, 2016-Milwaukee

November 18, 2016-Madison

WERC UPDATE

By Peter G. Davis-Chief Legal Counsel **

I. Agency Update

Commissioners (2/3's time) and Staff(all full-time)

Chairman James Scott-confirmed for a term expiring March 1, 2021.

Phone # = 608 243-2431

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

Phone # = 608 243-2430

Commissioner James Daley- confirmed for a term expiring March 1, 2019.

Phone # = 608 243-2432

Four attorneys and one attorney vacancy and two support staff.

Peter Davis 608 243-2421

Raleigh Jones 608 243-2426

Karl Hanson 608 243-2436

Danielle Carne 608 243-2422

Dawn Clark (Paralegal) 608 243-2434

Carol Lynch (Office Manager) 608 243-2427

Retirements-Bill Houlihan

Departures-Lauri Millot

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

II. Current Caseload Mix (7/1/15-6/30/16 cases received excluding recertification election petitions)

136 State Employee Civil Service Appeals (mainly discipline)
152 "Traditional" Labor Relations Cases

48 Grievance Arbitration
41 Election
40 Mediation
17 Unfair Labor Practice
15 Impartial Hearing Officer
5 Declaratory Ruling

III. Annual School District/State Employee Certification Elections

282 school district/state employee elections with over 56,000 voters conducted between noon October 27 and noon November 16. Preliminary vote results now on WERC website.

By phone and online 24/7-conducted with the assistance of the American Arbitration Association

As to 2015 school district elections, Dane County Circuit Court Judge Peter Anderson issued a declaratory ruling that the public records law required WERC to provide the names of those who had already voted while voting was ongoing. WERC has appealed and has not honored such a records request during the current 2016 elections. On November 15, 2016, Judge Anderson did not grant a motion seeking sanctions for the 2016 refusal. WERC does provide that information upon request after the election is over.

On October 12, 2016, Court of Appeals, District 1 (2015AP2224) affirms Milwaukee County Circuit Court decision (Judge John DiMotto Case No. 2014CV9307) ruling that WERC was obligated to conduct annual certification elections even if no election petition was filed (plaintiffs filed one day late with WERC=bad facts make bad law). WERC is seeking Supreme Court review.

In response to Judge DiMotto, WERC has advised all unions/employers that a petition need not be filed but that filing fees still needed to be timely received and that WERC

still needed to receive the information contained on the petition form to be able to conduct an election. In response to the Court of Appeals, WERC contacted all unions that could have but did not file a recertification election petition to confirm that the unions consciously chose not to file.

Voter eligibility linked to individual's 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).

Commission rejects an election objection when voter on leave did not open email from the Employer advising how a recertification election vote could be cast. Voters have responsibility to seek readily available election information. Union loses election having received 50.79% of the votes. **Montello Schools**, Dec. No. 35957-A (WERC, 2/16)

Commission strictly applies ERC 70.09 requirement that "the facts upon which the objections are based" be raised in timely manner and thus does not consider the disputed eligibility of an employee whose name was on already filed objections after the eight days objection period had expired. **Milwaukee Public Schools**, Dec. No. 35948-A (WERC, 1/16).

Commission rejects claim that substitute teachers lost voter eligibility by verbally telling Employer that they would not be working anymore as substitute teachers. A written resignation was required. Union loses the election having received 50.93% of the votes. **Milwaukee Public Schools**, Dec. No. 35948-A (WERC, 1/16).

Objections to election dismissed because alleged misconduct, if proven, would not be sufficient to impact the outcome of the election. **Racine Schools**, Dec. No. 35149-A (WERC, 3/15)

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)

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

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)

Substantial errors in the voter eligibility list (primarily omission of many eligible voters) is a basis for conducting new election. **Milwaukee Schools, Dec. No. 34373-A (WERC, 5/14)**

IV. Base Wage Issues

No administrative rules planned.

Initial contracts.

New positions.

Classification studies.

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

Employer decision to pay non-represented employees more \$\$ potentially influenced by Union's pre-Act 10 unwillingness to reopen pre-Act 10 contract did not violate Secs. 111.70(3)(a) 1 or 3, Stats. **Moraine Park Technical College**, Dec. No. 35461-B (Houlihan with final authority-1/16)

State interfered with employees' rights to engage in lawful concerted activity for mutual aid or protection when supervisor called employees "silly ass hos" for filing civil service appeals regarding employer's practices when filling vacancies. **State of Wisconsin**, Dec. No. 35730-B (Davis, 6/16) aff'd by operation of law.

Employer did not discharge union steward because of hostility toward her lawful concerted activity. **Clark County**, Dec. No. 35793-B (WERC, 8/16; appeal pending Clark County Circuit Court.

VI. Subjects of Bargaining-Police/Fire Units

Is an opt out payment for those who decline to take insurance now a prohibited subject of bargaining given the language of Sec. 111.70(4)(mc) 6, Stats? City of Monona, Case ID 482.0004. Decision issued 11/16/16