



# Wisconsin Employment Relations Commission

## LABOR AND EMPLOYMENT RELATIONS ASSOCIATION

October 9, 2009

### WERC UPDATE

By Peter G. Davis- WERC General Counsel \*\*

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#### **I. Agency Update**

Chairperson Judy Neumann-confirmed for a term expiring March 2013.  
Commissioner Paul Gordon-confirmed for a term expired March 2009.  
Commissioner Sue Bauman-confirmed for a term expiring March 2011.

Fifteen attorneys (10 in Madison and 5 out state) and 4.5 support staff.

Filing fees rose January 2, 2008 to fund five attorney positions.

- \$100 unfair labor practice/prohibited practice complaint cases.
- \$800 (split equally between union and employer) for mediation, interest arbitration and fact-finding cases.
- \$800 (split equally between union and employer) for grievance arbitration cases where WERC staff or commissioners serve as arbitrators.
- Still no fee for election, unit clarification, referendum and declaratory ruling cases and no fee for requesting a panel of arbitrators who are not WERC staff or commissioners.

Hiring of John Carlson  
Retirement of Sharon Gallagher.  
Stuart Levitan- Part-time until 1/1/2010.

April 29, 2010 WERC Conference

Office Closures due to Furloughs (See Appendix A)

Budget cuts and caseload drop may prevent WERC from filling a current fee funded attorney vacancy.

WERC receives two new tax funded attorney positions 7/1/2010.

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

## **II. Recent Statutory Changes**

2009 Wisconsin Act 28 (the budget bill) makes many changes to statutes administered by WERC (Appendix B) including:

- End of QEO for contracts beginning July 1, 2009.
- Elimination of "Greatest" and "Greater" weight factors for school employee interest arbitration effective with contracts entered into on or after July 1, 2009.
- Right of school employees to combine bargaining units.
- School district employee contracts can be for a term of 4 years.

Act 28 created the University of Wisconsin System Faculty and Academic Staff Labor Relations statute as a separate subsection of Chapter 111 which authorizes collective bargaining for up to 15 faculty and 15 academic staff bargaining units.

Act 28 authorized collective bargaining (and established three bargaining units) under the existing State Employment Labor Relations Act for research assistants and directs WERC to establish a procedure for a union to obtain recognition as the collective bargaining representative by use of authorization cards.

Act 28 authorized collective bargaining under the existing State Employment Labor Relations Act for a state-wide bargaining unit of home care providers with a provision that a collective bargaining unit may not take effect before July 1, 2011.

Act 28 authorized collective bargaining under the Wisconsin Employment Peace Act for day care providers for not more than 8 children with the employer being defined as the "state, counties, and other administrative entities involved in the regulation and subsidization" of the providers.

2009 Wisconsin Act 21 (Appendix C)-effective June 23, 2009-makes it illegal for: (1) a municipal employer to fail to follow a contractual fair-share provision during a contract hiatus; and (2) a municipal employer or union to fail to follow a contractual grievance arbitration provision during a contract hiatus.

2009 Wisconsin Act 34 (Appendix D) makes preparation time a mandatory subject of bargaining effective with contracts beginning July 1, 2011.

### **III. Recent WERC/Court Decisions**

#### **STATE OF WISCONSIN, DEC. NO. 32239-B (WERC, 8/09)-appeal filed.**

Where the Employer has decided there is enough evidence to require the employee to attend a pre-disciplinary due process Loudermill hearing, WERC concludes that Employer violated its duty to bargain obligation to provide information relevant and reasonably necessary to administration of the collective bargaining agreement by its blanket denial of the Union's pre-hearing request for the Employer's investigative file. Employer could have redacted or otherwise limited the required disclosure if it had demonstrated confidentiality concerns specific to the particular situation.

#### **STATE OF WISCONSIN, DEC. NO. 32392-B (WERC, 5/09)**

In the factual context of the disciplinary investigation in question, the Employer violated the employee's statutory right to engage in concerted activity by issuing (and enforcing) a directive to employee being investigated that she not talk to fellow employees until investigation is completed. WERC balanced the interests of employer in the integrity of the investigation against right to engage in concerted activity and concluded the employer's interest was not strong enough to excuse the interference with the employee's statutory rights. WERC noted that such a prohibition may be appropriate in other fact situations.

#### **MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 30980-B (WERC, 3/09)**

Where a bargaining unit employee has requested an opportunity to present a grievance pursuant to Sec. 111.70 (4)(d) 1, Stats., it is not unlawful for the municipal employer to condition the meeting upon the presence of the employee's collective bargaining representative.

#### **MADISON SCHOOLS V WERC, Appeal No. 2007AP2557 CT APP. District IV (2/09)**

Court of Appeals concludes a party cannot file a petition for judicial review unless the party has exhausted WERC remedies by filing a petition for review as to an Examiner decision with WERC and obtaining a Commission decision.

#### **CITY OF MILWAUKEE, DEC. NO. 32661 (WERC, 2/09)**

WERC rejects union claim that City of Milwaukee Housing Authority employees should be clarified into a City of Milwaukee bargaining unit because said employees are actually City of Milwaukee employees or the Housing Authority and the City are a “joint employer” Evidence establishes that the Housing Authority is the employer because it controls the decisions as to employees’ wages, hours and conditions of employment.

**WASHINGTON COUNTY, DEC. NO. 32185-B (WERC, 1/09)-Appeal filed**

While bargaining a successor agreement, the County engaged in bad faith bargaining by failing to tell Union that it was seriously considering subcontracting certain unit work during the term of the successor agreement. Outcome very fact specific. Remedy does not provide retroactive back pay for the employees whose work was subcontracted but does require offer of reinstatement and bargaining over decision and impact of subcontracting in the context of successor contract bargaining=impasse is subject to statutory interest arbitration.

**STATE OF WISCONSIN, DEC. NO. 32019-B (WERC, 1/09)**

Employer did not refuse to accept grievance arbitration award because the award in question did not conclusively determine issues (factual or language) that were present in a subsequent grievance. Party arguing there has been a refusal to accept an award (typically the union) has a relatively heavy burden of persuasion in such cases. Even where grievance arbitration award did conclusively determine the issues present in the subsequent grievance, if circumstances that affected the prior outcome to have changed, then there is no obligation to follow the prior award.

**MILWAUKEE COUNTY, DEC. NO. 32257-C (WERC, 12/08)**

County violated Sec. 111.70(3) (a) 3, Stats. when Sheriff and other managers transferred two employees at least in part out of hostility toward the employees’ lawful concerted activity.

Commission rejects argument that the transfer of employees is a constitutional power of the Sheriff and thus that Commission lacks authority to remedy the illegal transfers.

**IV. PENDING ISSUES**

In the context of 2007 Wisconsin Act 20's creation of Secs. 111.70(4)(c)2.b. and (4)(mc), Stats., is it a prohibited subject of bargaining to propose no access to grievance arbitration to resolve disputes over discipline imposed pursuant to Sec. 62.13, Stats. CITY OF MENASHA-Case 115-Petition for Declaratory Ruling.



# Wisconsin Employment Relations Commission

## Agency News Archive

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September 24, 2009

### WERC OFFICE CLOSURES ANNOUNCED

WERC Chair Judy Neumann announced today that the WERC Madison office will be closed to the public on the following eight dates as part of the WERC's plan for implementing State service-wide furloughs during the two year period ending June 30, 2011:

Columbus Day in 2009 and 2010 (10-12-09 and 10-11-10)  
the Friday after Thanksgiving in 2009 and 2010 (11-27-09 and 11-26-10)  
President's Day in 2010 and 2011 (2-15-10 and 2-21-11)  
the Friday before Memorial Day in 2010 and 2011 (5-28-10 and 5-27-11)

Because the WERC's Madison office will be closed on those days, there will be no mail delivery on those dates and no one will be present in the office to accept physical delivery of any materials. If the last date for filing any document with WERC or its staff falls on one of these dates, the deadline for filing will be extended to the next business day the WERC's Madison office is open. Any material received by fax or email in the WERC's Madison office on the closure dates will be treated as having been filed on the next business day the WERC's offices are open.

Questions on this subject should be directed to [Peter Davis](#).

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August 5, 2009

### NEW WEBSITE PAGE LISTS LATEST AWARDS AND DECISIONS

The WERC has added a [new page](#) to its website, consisting of linked lists of the latest two months of each type of decision and award posted on the site. A link to it appears in the Updates section in the middle of the [opening page](#) of the site. The lists on the new page will be updated monthly at the same time as the four single category pages listed in that Updates section.

Besides offering a single page for a user to get a quick update as to what has been issued recently, the new page is small enough in size that it refreshes more quickly than our single category linked lists when the user returns to it after following a link to a decision or award file.

Users with questions about the new page or the website generally are welcome to contact [Marshall Gratz](#).

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July 30, 2009

### STAFF ATTORNEY HIRED

WERC Chair Judy Neumann has announced that John Carlson, Jr. has been offered and has accepted employment as a WERC attorney to replace Sharon Gallagher.

Since earning his JD degree at the University of Wisconsin Law School in 1998, Carlson has been



# Wisconsin Employment Relations Commission

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## LABOR RELATIONS PROVISIONS OF 2009 STATE BUDGET ACT

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The labor relations provisions of the executive budget act of the 2009 Legislature, 2009 Wisconsin Act 28, contain the following numbered sections concerning the following topics relating to labor relations (see the NOTE below):

### Revisions of the Wisconsin Employment Peace Act as follows:

- 2216g - "collective bargaining unit" definition
- 2216j - "day care provider" definition
- 2216L and n - "employer" definition
- 2216p - "fair share agreement" definition
- 2216r and t - "maintenance of membership agreement" definition
- 2216v - "referendum" definition
- 2216w and y - bargaining unit determination regarding day care providers

### Revisions of the Municipal Employment Relations Act as follows:

- 2220 - "collective bargaining" definition
- 2221 - "collective bargaining unit" definition
- 2222 - repeal of "economic issue" definition
- 2223 - repeal of "fringe benefit" definition
- 2223m - "municipal employer" definition re transit authority
- 2224 - repeal of "qualified economic offer" definition
- 2225 - "school district employee" definition and repeal of "school district professional" definition
- 2225f - term of agreement for school district employees units
- 2225p - term of agreement for child care provider services unit
- 2226 - voluntary impasse resolution procedure interest arbitration standards
- 2227 - repeal of "issues subject to arbitration"
- 2228 - scope of disputes subject to interest arbitration
- 2229 - processing of interest arbitration petition
- 2230 - applicability of greatest weight factor
- 2231 - applicability of greater weight factor
- 2232 - other factors considered
- 2233 and 2234 - term of agreement for school district employee units and other units
- 2235 - repeal of "professional school employee salaries"
- 2236 - repeal of "forms for determining costs"
- 2237 - repeal of "term of professional school employee agreements"
- 2238 - determination of appropriate bargaining unit
- 2239 - prohibited subjects of bargaining

### Revisions of the State Employment Labor Relations Act as follows:

- 2240 - "consumer" definition
- 2241 - home care providers made state employees only for collective bargaining purposes
- 2242 - "home care provider" definition
- 2242s - "research assistant" definition

2243 - home care provider collective bargaining procedures  
2243d and 2244 - additions to list of unclassified service bargaining units  
2245 - assignment of employees to appropriate bargaining units  
2246 - petition for recognition  
2246 - exclusivity of representative status  
2248 - representation election procedures for home health care providers  
2249 - prohibited practices  
2250 - consumer rights in relation to home care providers  
2251 - scope of collective bargaining for home care providers  
2251w, 2252 and 2253 - subjects of bargaining  
2254 - approval process for collective bargaining agreements  
2254g - earliest effective date for home health care providers coll. barg. agreement  
2254L - card check recognition procedure regarding research assistants units

**Creation of Subchapter VI regarding UW Faculty and Academic Staff Labor Relations**  
2255

**Implementation Provisions**

9316 - Initial applicability, Employment Relations Commission regarding QEO, MERA.  
9416 - Effective Dates, Employment Relations Comm.regarding UW Research Assistants

NOTE: The listing above is offered as an unofficial listing of topics. It is not intended to be either a comprehensive summary of the contents of the statutory provisions or an interpretation of those provisions.

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**Act 28**

09 Act 28, s. 9316

**Section 9316.** Initial applicability; Employment Relations Commission.

09 Act 28, s. 9316 - continued



(1x) **QUALIFIED ECONOMIC OFFERS.** The treatment of section 111.70 (1) (dm), (fm), (nc), and (ne) and (4) (cm) 5s., 6. a. and am., 8p., and 8s. and (m) 6. of the statutes first applies to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

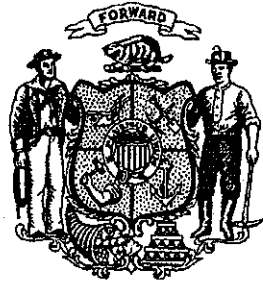
09 Act 28, s. 9316 - continued



(2j) **MUNICIPAL EMPLOYMENT RELATIONS ACT.** The treatment of section 111.70 (1) (b), (3) (a) 4., and (4) (cm) 5., 7., 7g., 7r. (intro.), and 8m. a., b., and c., (cn), and (d) 2. a. of the statutes first applies to collective bargaining agreements entered into, extended, modified, or renewed, whichever occurs first, on the effective date of this subsection.

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# State of Wisconsin



2009 Senate Bill 46

Date of enactment: June 8, 2009  
Date of publication\*: June 22, 2009

## 2009 WISCONSIN ACT 21

**AN ACT** to create 111.70 (3) (a) 8. and 9. and 111.70 (3) (b) 7. of the statutes; relating to: arbitration and fair-share agreements during collective bargaining negotiations under the Municipal Employment Relations Act.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 111.70 (3) (a) 8. and 9. of the statutes are created to read:

111.70 (3) (a) 8. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement in the expired collective bargaining agreement.

9. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any fair-share agreement in the expired collective bargaining agreement.

**SECTION 2.** 111.70 (3) (b) 7. of the statutes is created to read:

111.70 (3) (b) 7. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement in the expired collective bargaining agreement.

\* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

# State of Wisconsin



2009 Assembly Bill 95

Date of enactment: July 20, 2009  
Date of publication\*: August 3, 2009

## 2009 WISCONSIN ACT 34

AN ACT to amend 111.70 (1) (a); and to create 111.70 (4) (n) of the statutes; relating to: preparation time as a mandatory subject of collective bargaining.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. 111.70 (1) (a) of the statutes is amended to read:

111.70 (1) (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours, and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, and for a school district with respect to any matter under sub. (4) (n), except as provided in sub. (4) (m) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be

required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours, and conditions of employment of the municipal employees in a collective bargaining unit. In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety, and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

SECTION 2. 111.70 (4) (n) of the statutes is created to read:

111.70 (4) (n) *Mandatory subjects of bargaining.* In a school district, in addition to any subject of bargaining on which the municipal employer is required to bargain under sub. (1) (a), the municipal employer is required to bargain collectively with respect to time spent during the school day, separate from pupil contact time, to prepare lessons, labs, or educational materials, to confer or collaborate with other staff, or to complete administrative duties.

SECTION 3. *Initial applicability.*

\* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(1) This act first applies to collective bargaining agreements that cover any period that begins after June 30, 2011.

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