



# Wisconsin Employment Relations Commission

## WISCONSIN SCHOOL ATTORNEYS ASSOCIATION

October 18, 2012

### 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.

Eleven attorneys (8 in Madison and 3 out state) and four support staff.

Departure of Matt Greer

Future of the WERC?

2013 WERC Conference? May 2, 2013.

Significant Caseload Reduction continues.

Limited Increase of State employee civil service work

A few requests for WERC staff 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. Act 10 Litigation**

Proceedings before Judge Colas

<http://aasaonline.mediasite.com/mediasite/Play/4ad9c57469b341eeac40739a13e0c2301d>

Proceedings in the Federal District Court and the Seventh Circuit Court of Appeals

## **III. Base Wage Rules**

## **IV. WERC Decisions**

DOUGLAS COUNTY, DEC. NO. 33853 (WERC, 4/12), appeal pending before Judge Niess (2012 CV 1747), Dane County Circuit Court, and WINNEBAGO COUNTY, DEC. NO. 33854 (WERC, 4/12) WERC 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.

Marquette County Circuit Court Judge Richard Wright (Case 11CV157-6/12), appeal pending Court of Appeals, District IV, (Case 2012AP001646) concludes that protective occupation designation is sufficient.

EAU CLAIRE COUNTY, DEC. NO. 33662 (WERC, 2/12), appeal pending before Judge Colas, Dane County Circuit Court, WERC 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.

Milwaukee County Circuit Court Judge Amato (Case 11CV15086 ), appeal pending Court of Appeals, District I (Case 12AP1920) reaches a contrary conclusion.

Same issue pending in Brown County Circuit Court.

DOOR COUNTY, DEC. NO. 33595 (WERC, 12/11), MANITOWOC COUNTY, DEC. NO. 33890 (WERC, 6/12), and SCHOOL DISTRICT OF HOLMEN, DEC. NO. 33889 (WERC, 6/12) reflect general inclination of WERC not to entertain declaratory ruling petitions where other forums are available. But see CITY OF BROOKFIELD, DEC. NO. 33892 (WERC, 6/12) where WERC asserts Sec. 227.41(1), Stats. jurisdiction over issue deemed to have state-wide impact despite potential for a grievance arbitrator to rule on same issue.

PUBLIC UTILITY COMMISSION OF RICHLAND CENTER, DEC. NO. 33281-B (WERC, 6/12), WERC 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. Related issue pending before WERC in appeal of CITY OF MILWAUKEE, DEC. NO. 33322-A (Greer, 2/12).

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.

STATE OF WISCONSIN, DEC. NO. 33125-C (WERC, 1/12) WERC reaffirms that pro se or non-lawyer litigants are nonetheless responsible for knowing the procedures/processes relevant to presentation of their case. WERC further concludes that attorney's strident language toward opposing litigant did not rise to level of a "threat" directed at job security or working conditions but rather was related to the course of the litigation.

## **V. Pending Issues**

WASHBURN COUNTY, Case 70-Declaratory ruling as to meaning of 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.

CITY OF BROOKFIELD, Case 135-Declaratory ruling as to whether Act 32 prohibits employee share retirement payments for public safety employees hired on or after July 1, 2011 under a pre-Act 32 contract.

CITY OF MARINETTE, Case 110-Declaratory ruling as to whether a contract provision funding an HRA is a prohibited subject of bargaining under Sec. 111.70(4)(mc) 6, Stats. Same/similar issue pending before St. Croix County Circuit Court in CITY OF HUDSON, Case 12CV371. Manitowoc Circuit Court (Case 12CV22 ) recently decided HAS funding was a prohibited subject of bargaining.

CITY OF MONONA-pending in Dane County Circuit Court-Can a collective bargaining agreement automatically roll over in face of Act 10/Act 32?

CITY OF RACINE-pending Racine County Circuit Court-Are successor "stacked" collective bargaining agreements reached before Act 10/Act 32 took effect valid?