



Wisconsin Employment Relations Commission

LABOR AND EMPLOYMENT RELATIONS ASSOCIATION

September 23, 2011

WERC UPDATE

By Peter G. Davis-Chief Legal Counsel **

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.

Fourteen attorneys (10 in Madison and 4 out state) and 4.5 support staff.

Retirement of Coleen Burns and Marshall Gratz.
Impending Retirements of Dan Nielsen and Rick McLaughlin

April 2012 WERC Conference?

Significant Caseload Reduction since February 2011
Significant Caseload Increase in the near future?

Availability 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. 2011 Wisconsin Acts 10 and 32

End collective bargaining rights for UW faculty and academic staff, home care providers and day care providers.

Almost end collective bargaining rights for state and general municipal employees.

- Bargaining limited to base wage rates
- WERC to engage in rule-making

-All other matters are prohibited subjects of bargaining

Restrict collective bargaining rights and modify interest arbitration factors for municipal police and fire employees.

- Bargaining prohibited over "the design and selection of health care coverage plans" and "the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment."
- More emphasis on local economic conditions.

Leave collective bargaining and interest arbitration rights intact for transit employees.

Require all state and general municipal employee unions (all except transit, law enforcement and fire) to win an annual certification election by receiving the votes of at least 51% of all eligible voters.

- Emergency election administrative rules effective September 15, 2011.
See Appendix A Summary

Require that municipal employers create a written civil service/grievance procedure with the following minimum requirements:

- Addresses employee discipline, terminations and workplace safety.
- Advises the employee of the process that will be followed.
- Provides for a hearing before "an impartial hearing officer."
- Provides an appeal process with the highest step is the "governing body of the local governmental unit."

III-Matters I Currently Believe are True

-Current contracts entered into before June 29, 2011 continue to be valid and are unaffected by Acts 10 and 32 until they expire.

-State and municipal employees still have a protected right to engage in lawful concerted activity.

-Individual employees and labor organizations still have the right to address public officials as to issues related to wages, hours and conditions of employment.

-It is not illegal for municipal employers to meet and confer with a labor organization as to any matter.

-Except for interest arbitration proceedings, litigation/grievance arbitration as to employee/union rights under pre-Act 10/32 law is not extinguished.

-If bargaining over base wage rate reaches an impasse, the employer can unilaterally implement its last offer as to base wages.

- Although increases in base wage rates that exceed the CPI-U must be approved by a referendum, municipal employers can unilaterally increase any other means of compensating employees.

IV-Unintended Results?

-No limit of the duration of contracts for municipal transit, police and fire units.

-If the CPI-U is stable or decreases, employee base wages are frozen.

APPENDIX A

~~Related Statute or Rule~~

None.

Rule Summary

By these emergency rules, the Wisconsin Employment Relations Commission creates chs. ERC 70 to 74 and 80 concerning the cost, timing and procedures for any requested initial annual certification elections required by 2011 Wisconsin Act 10 and 2011 Wisconsin Act 32 to determine whether a bargaining unit of general (i.e., non-public safety and non-transit) employees in the municipal or state sector that is represented by a labor organization for collective bargaining with the employer involved shall continue to be represented by that organization or by another organization or shall not be so represented.

2011 Wisconsin Act 32 requires that the Commission charge a fee for conducting any requested election. These rules require that the labor organization or organizations requesting the election should pay the fee and that the following fee structure applies.

\$200	1-100 eligible voters
\$350	101-250 eligible voters
\$500	201-500 eligible voters
\$750	501-1000 eligible voters
\$1500	1001-3000 eligible voters
\$2000	over 3000 eligible voters

Under these rules, the timing of requested elections is as follows:

--in October 2011 for units of all general state employees (covered in ch. ERC 80)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 22, 2011;

-- in October 2011 for units of general municipal employees who are subject to an extension of their collective bargaining agreement (covered in ch. ERC 70)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 22, 2011;

-- no later than December 1, 2011, for units of general municipal school district employees who, as of September 30, 2011 are not subject to an extension of their collective bargaining agreement and not subject to a collective bargaining agreement or who, as of September 30, 2011, are covered by a collective bargaining agreement entered into on or after June 29, 2011. (covered in ch. ERC 71)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 30, 2011;

-- no later than December 1 following the earliest of expiration, termination, extension, modification or renewal of a collective bargaining agreement that was in effect on September 30, 2011 and entered into before June 29, 2011 for units of general municipal school district employees (covered in ch ERC 72)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before September 30 of the year following said expiration, termination, extension, modification or renewal;

-- no later than May 1, 2012; for units of general municipal non-school district employees who as of January 30, 2012 are not subject to an extension of their collective bargaining unit and not subject to a collective bargaining agreement or who, as of January 30, 2012 are subject to a collective bargaining agreement entered into on or after June 29, 2011 (covered in ch. ERC 73)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before January 30, 2012.

--no later than May 1 following the earliest of expiration, termination, extension, modification or renewal of a collective bargaining agreement that was in effect on January 30 2012 and entered into before June 29, 2011 for units of general municipal non-school district employees (covered in ch. ERC 74)-union wishing to continue as the collective bargaining representative must file election petition and applicable fee on or before January 30 of the year following said expiration, termination, extension, modification or renewal.

Under these rules, if a union does not timely file an election petition and fee, the union loses its status as the collective bargaining representative as of the filing deadline.

In each of the new chapters, the first section, Section ERC xx.01, describes the general policy and purpose of chapter.

Section ERC xx.02, include definitions of terms as used in the chapter and defines the scope of application of the chapter as is outlined above.

Sections ERC xx.03(1) limit the right to file a petition to the existing representative and other any labor organization interested in representing the bargaining unit. No provision is made for petitions by employees or by the employer because decertification automatically results if no timely petition is filed by a labor organization.

Sections ERC xx.03(3) provide that no showing of interest is required to support a petition filed by the existing exclusive representative of the bargaining unit, but that a petition filed by another organization must be supported by a 30% showing of interest. The practice and procedure for submission and determination of the showing of interest is made parallel to that in existing s. ERC 11.05 (2), which generally involve a commission determination as to the sufficiency of the showing of interest in the context of the employee personnel data provided by the employer, without providing a copy of the showing of interest to any party other than the party that submitted it.

Sections ERC xx.03(5) specify the time by which a petition must be filed and the consequences that follow from no timely petition being filed by any labor organization. Sections. ERC xx.03 (5) (c) each provide that the commission will issue a notice equivalent to a decertification upon the request of any interested party or any affected employee.

Sections ERC xx.04 provide the procedures and consequences of a withdrawal of a petition. Each provides that if withdrawal of a petition leaves no pending timely petition, the consequences are the same as if the existing representative filed the only timely petition, an election was conducted, and no representative achieved the support of 51% of the eligible voters.

Sections ERC xx.05 describe the obligation of the employer and petitioning union(s) to provide the Commission with lists of proposed eligible voters and related information.

Sections ERC xx.06 provide for commission issuance of a direction of election or other dispositional order without an intervening hearing to resolve possible disputes concerning voter eligibility or other matters. In cases where the commission is directing an election, the direction shall provide that all individuals on the list provided by the municipal employer and on the list, if

any, provided by the petitioner or any other interested party, shall be allowed to complete and submit a ballot, subject to the right of any interested party to challenge the eligibility of the voter during post-balloting procedures.

Sections ERC xx.07 provide that all elections are to be conducted by secret ballot and under the supervision of the commission or impartial agents designated by the commission, with the commission determining on a case by case basis whether the secret balloting shall be conducted on-site, by mail or automated telephone system. Each chapter also contains provisions generally paralleling those in s. ERC 11.09, regarding notice of election, observers, challenge of voters, and count and tally of ballots.

Sections ERC xx.07 (6) provide that if more than one proposed representative appears on the ballot and if at least 51% of the eligible voters favor representation but no single representative receives the votes of at least 51% of the eligible voters, the commission, on receipt of a timely request of any party, may conduct a runoff election as provided in ss. 111.70 (4) (d) 4. or 111.83 (4), Stats.

Sections ERC xx.08 and xx.09 provide procedures concerning the commission's certification of results of election and the filing and service of objections to election.

Sections ERC xx.10 provide procedures for commission action on challenges or objections, including the conduct of a hearing if one is needed.

Sections ERC xx.11 list the consequences of no representative achieving support of 51% of the eligible voters in the election. Those consequences are that the commission will issue a certification of the results of the election decertifying the existing representative, and providing that for 12 months from the date of decertification the affected employees shall be nonrepresented and shall not be included in any substantially similar bargaining unit.

Sections ERC xx.12 outline the procedures by which any person aggrieved by a final order of the commission may file and have processed a petition for rehearing.