



Wisconsin Employment Relations Commission

LABOR AND EMPLOYMENT RELATIONS ASSOCIATION

January 13, 2023

WERC UPDATE

By Peter G. Davis-Staff Attorney**

I. Agency Information

Commission and Staff

Chairman James Daley-appointed and confirmed by the Senate for a term expiring March 1, 2023.

Attorney Peter Davis (1975-present)

Attorney Anfin Jaw (2022-present)

Attorney Katherine Scott (2022-present)

Office Manager Elena Lugo (2020-present)

Paralegal Carolyn Gallagher (2020-present)

General Agency Contact Information

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** As always, the speaker's views and remarks are not necessarily those of the WERC.

II. Case Intake Stable

The total WERC case intake has been stable for the last four fiscal years with roughly half of matters filed being “traditional” labor relations cases-excluding recertification elections.

Major Case Type	18/19	19/20	20/21	21/22
Grievance Arbitration	27	27	37	44
Mediation	30	27	22	32
Initial Election Petitions	18	14	18	22
Unfair Labor Practice Complaints	16	18	7	10
Declaratory Rulings	2	2	2	1
Independent Hearing Officer Requests	7	6	5	5
State Employee Civil Service Appeals	94	110	123	106
Recertification Elections	366	354	342	331

III. Judicial Review of Labor Relations Issues

Green Bay Prof. Police Ass’n v City of Green Bay, 2021 AP 102-argued before the Wisconsin Supreme Court December 12, 2022.

1. Does providing notice to law enforcement officers of “the nature of the investigation” prior to being interrogated, satisfy Loudermill’s requirement that a public employee be provided with notice and an opportunity to be heard with respect to disciplinary “charges” after a personnel investigation has been completed?
2. Is due process satisfied when a law enforcement officer is disciplined for “charges” never identified in either a Loudermill notice or Loudermill hearing, simply because his employer identified the policies that eventually led to such discipline (along with a host of others) prior to interrogating the officer?
3. Does Loudermill limit the government’s ability to discipline its employees to the “charges” that are actually identified in a Loudermill notice and/or at a Loudermill hearing?
4. Did the arbitrator “manifestly disregard the law” articulated in Loudermill?

Wisconsin Professional Police Ass'n v WERC, 2022CV001674-Dane County CirCt-Judge Jacob Frost. Briefing on motion to stay pending.

Appeal of two City of Racine declaratory rulings (Dec No. 39447-Fire and Dec. No. 39446-Police) issued by WERC on July 6, 2022 determining that various health insurance provisions in existing collective bargaining agreements were prohibited subjects of bargaining under Sec. 111.70(4)(mc)6, Wis. Stats.

Service Employees International Union Healthcare Wisconsin v WERC, 2022CV003199-Dane County CirCt-Judge Jacob Frost. Briefing schedule to be established.

Appeal of a November 11, 2022 WERC declaratory ruling (Dec. No. 39765) concluding that the University of Wisconsin Hospital and Clinics Authority is not an “employer” under the Wisconsin Employment Peace Act.

IV. WERC Labor Decisions

Southern Door County Schools, Dec. No. 39499-A (WERC, 11/22) WERC concludes that it will count late mail ballots postmarked at least six calendar days prior to the election date.

City of Madison, Dec. No. 39476 (WERC, 8/22) WERC determination as to whether certain employees must be excluded from the bargaining unit as “confidential” employees.

Madison Schools, Dec. No. 38944-A (Davis, 1/22), aff'd by operation of law, Dec. No. 38944-B (WERC, 1/22) Employer violated its duty to bargain by communicating directly with union represented employees regarding base wages.

Kettle Moraine Schools, Dec. No. 39585-A (WERC, 4/21) WERC prospectively prohibits election raffles.

Waukesha County, Dec. No. 38742-A (Davis, 5/21), aff'd Dec. No. 38742-B (WERC, 8/21) Employer interfered with employee rights by denying request for union representation and inaccurately minimizing the role of a union representative. Representation right exists even if no discipline issued.

Waukesha County, Dec. No. 38743-A (Davis, 4/21), aff'd by operation of law, Dec. No. 38743-B (WERC, 5/21) Employer interfered with employee rights by advising union representative she was not needed and could leave because no discipline would be imposed.

City of Milwaukee, Dec. No. 37964-A (Davis, 8/20), aff'd by operation of law, Dec. No. 37964-B (WERC, 9/20) Union not entitled to Employer's investigative file prior to Weingarten meeting.

City of Beloit, Dec. No. 38484-A (Davis, 9/20) aff'd 38484-B (WERC, 12/20) Sec. 111.70 (4) (d)1, Stats. does not create an enforceable employee statutory right to present a grievance to the Employer.