

Wisconsin Employment Relations Commission

LABOR AND EMPLOYMENT RELATIONS ASSOCIATION

February 14, 2014

WERC-Alive and Well?

By Peter G. Davis-Chief Legal Counsel **

I. Agency Update

Commissioners and Staff

Chairperson Jim Scott-confirmed for a term expiring March 2015.

New Phone #= 608 243-2431

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

New Phone #= 608 243-2430

Commissioner-Vacant

New Street and Mailing Address=4868 High Crossing Blvd. Madison,WI 53704-7403

New General Phone #=608 243-2424

New General Fax #=608 243-2433

Five attorneys (4 in Madison and 1 out state) and two support staff.

Peter Davis 608 243-2421

Bill Houlihan 608 243-2422

Raleigh Jones 608 243-2426

Stuart Levitan 608 243-2423

Lauri Millot 715 362-0370

Dawn Clark (Paralegal) 608 243-2434

Carol Lynch (Office Manager) 608 243-2427

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

State Civil Service Appeals vs Traditional Labor Relations Work(excludes elections)

July 1, 2013-January 31, 2014

State Employee Civil Service Appeals 74

Grievance Arbitration 54

Mediation 51

Unfair Labor/Prohibited Practice Complaints 20

Annual Certification Elections

Nov/Dec 2013 School District Employee Elections(see attachment A)

400 elections with 56,112 eligible voters (39,903 votes cast=71%)

Unions met the 51% standard in 321 elections=80%

Unions failed to meet the 51% standard in 68 elections=17%

11 election results still in dispute=3%

14 additional elections currently underway (1925 eligible voters)

Upcoming April 2014 City/County/Village/Town/Tech College Employee Elections
(see attachment B)

238 elections with 2628 eligible voters

10 "late" petitions currently under consideration

Base Wage Issues

Rule Making History

Kenosha Schools Litigation

II. Litigation Update

State constitutional challenge to Act 10 before Wisconsin Supreme Court
(MTI/Milwaukee Laborers)

Federal constitutional challenge to Act 10 before Seventh Circuit(Madison Laborers)

III. Court Decisions

Waukesha County v WERC/WPPA, 2013AP375 (CT. APP Dist. II 1/14)

Sheriff's deputy has option of appealing dismissal to arbitration in lieu of circuit court review.

WPPA v WERC (Douglas County) 2012AP2721 (CT APP Dist. IV 7/13)

"Public safety employee" status under Sec. 111.70(1)(mm), Stats. is solely dependent on "protective occupation participant" status under Sec. 40.02(48(a), Stats.

WPPA v WERC/Eau Claire County, 2012AP2701 (CT APP Dist. IV 11/13)

Bargaining over health insurance deductibles not prohibited by then existing Sec. 111.70(4)(mc) 6, Stats.

But statute amended subsequent to this dispute arising to specify that only employee premium contributions are mandatory subjects of bargaining for public safety employees.

IV. WERC Decisions

Lacrosse Schools, Dec. No. 34659 (WERC, 11/13)

Home addresses of employees not "reasonably necessary" for union when communicating with employees over terms of tentative agreement/ratification vote. Employer offered alternatives.

Ozaukee County, Dec. No. 34205 (WERC, 8/13)

Section 111.,70(4)(d)2.a., Stats prohibits inclusion of public safety employees and general municipal employees in the same bargaining unit.

Once the Employer reports to DETF that an employee is no longer a "protective occupation participant", the employee is not a "public safety employee" and must be excluded from a public safety employee bargaining unit.

If an employee successfully appeals loss of "protective occupation participant" status to DETF, employee automatically returns to public safety employee status. Labor relations ramifications of return are unclear.

Manitowoc County, Dec. No. 34189 (WERC, 7/13)

Effective 6/29/11, WERC lost prohibited practice jurisdiction over alleged violations of collective bargaining agreements for general municipal employees except as to alleged base wage rate violations.

Duty to bargain as it existed pre-Act 10 did not prohibit employer from planning how to proceed post-Act 10.

Post-Act 10 status quo for general municipal employees is limited to maintaining base wage rates.

Dodge County, Dec. No. 34177 (WERC, 6/13)

If a collective bargaining agreement has been ratified by both sides and the union then decides not to file a certification election petition or loses a certification election, the union retains representative status until the expiration of the agreement for the purpose of enforcing its terms but not for the purpose of bargaining a successor agreement.

State of Wisconsin, Dec. No. 34029-B (WERC, 5/13)

WERC reaffirms long standing view that the Employer's general interest in maintain productivity and discipline in the workplace is sufficient to limited the employee exercise of statutory concerted activity rights in the workplace to non-work time.

It is permissible to bar non-employee organizers/representatives from the workplace unless there are unique obstacles to accessing employees.

City of Marinette, Dec. No. 34096 (WERC, 4/13)

An HRA is a "health care coverage plan" and thus a prohibited subject of bargaining.

Washburn County, Dec. No. 34803 (WERC, 3/13)

2011 Act 32 prohibits bargaining over employer payment of public safety employee retirement contributions for employees who were not part of their current public safety employee bargaining unit prior to July 1, 2011.

City of Brookfield, Dec. No. 33892-A (WERC, 12/12)

During the term of a 2010-2012 agreement, 2011 Act 32 does not prohibit an employer from making contractually required law enforcement employee retirement contributions for employees hired on or after July 1, 2011.

Ozaukee County, Dec. No. 33295-E (Davis, 6/13)

Union's settlement of a duty of fair representation claim does not end WERC jurisdiction over the remaining violation of contract claim but the employee must nonetheless prove a breach before such jurisdiction will be exercised over the merits of the contractual claim.

Hearsay issues created by *Gehin v Wis. Group Ins. Bd*, 278 Wis. 2d 111 (2005).

The following text was included in my September 2011 LERA outline. I still believe the matters addressed are correct

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.

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.