

Wisconsin Employment Relations Commission

WISCONSIN SCHOOL ATTORNEYS ASSOCIATION

October 31, 2013

WERC UPDATE

By Peter G. Davis-Chief Legal Counsel **

I. Agency Update

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

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

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.**

II. Act 10 Litigation Update

III. WERC Decisions

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 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 maintaining productivity and discipline in the workplace is sufficient to limit 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 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.

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

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

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).