



# Wisconsin Employment Relations Commission

## WISCONSIN SCHOOL ATTORNEYS ASSOCIATION

October 3, 2014

### WERC UPDATE

By Peter G. Davis-Chief Legal Counsel \*\*

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#### I. Agency Update

##### Commissioners and Staff

Chairperson James Scott-confirmed for a term expiring March 1, 2015.

Phone # = 608 243-2431

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

Phone # = 608 243-2430

Commissioner Vacancy- for a term expiring March 1, 2019.

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

General Phone # = 608 243-2424

Fax # = 608 243-2433

Five attorneys (4 in Madison and 1 out-state (Millot)) 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.**

### **Annual School District and State Employee Certification Elections**

Permanent Administrative Rules (ERC 70,71 and 80) as to all certification elections took effect July 1, 2014

School district employee elections set for Noon November 5 thru Noon November 25

By phone and online 24/7

Voter eligibility linked to individual's employment on date the petition was filed=employees hired between that date and date of the election are not eligible absent mutual agreement BUT anyone either union or employer asserts is eligible will be allowed to vote (subject to challenge with status resolved after election if needed).

Pending unit clarification petition will not delay the election. **State of Wisconsin**, Dec. No.34481-A (WERC, 7/14).

Pending prohibited practice complaint will not delay the election. **State of Wisconsin**, Dec. No.34481-A (WERC, 7/14).

Union must file for and win a certification election to remain the collective bargaining representative even where it won a "regular" election to obtain certified status only months before. **State of Wisconsin**, Dec. No.34481-A (WERC, 7/14).

Employer refusal to provide home addresses of employees was not improper. **State of Wisconsin**, Dec. No.34481-A (WERC, 7/14), **State of Wisconsin**, Dec. No. 31271-B (WERC, 8/06).

Employer blocking union emails to voters could impact election. **State of Wisconsin**, Dec. No. 34481-A (WERC, 7/14)

Employee who leaves the bargaining unit between eligibility date and date of election is not eligible. **Elmbrook Schools**, Dec. No. 34304-A (WERC, 3/14).

Employee failure to vote due to difficulty with phone voting procedure is not a basis for conducting a new election. **Herman Schools**, Dec. No. 34318-A (WERC, 4/14).

Employees forgetting to vote is not a basis for conducting a new election. **Town of Woodruff**, Dec. No. 34944-A (WERC, 5/14).

Employer total failure to post election information is a basis for conducting a new election. **Town of Manitowish Waters**

Failure to provide requested affidavits is valid basis for concluding election objections had been abandoned. **State of Wisconsin**, Dec. No. 34479-A (WERC, 5/14)

Substantial errors in the voter eligibility list (primarily omission of many eligible voters) is a basis for conducting new election. **Milwaukee Schools, Dec. No. 34373-A (WERC, 5/14)**

### **Base Wage Issues**

No administrative rules planned and no litigation pending.

### **Lawful Concerted Activity . . . For Mutual Aid or Protection.**

No post-Act 10 Commission decisions re this Sec. 111.70(2), Stats. right that is enforced thru Sec. 111.70(3)(a) 1, Stats. prohibited practice complaint.

Relevance of “strike” definition (see Sec. 111.70 (1)(nm), Stats.) as to “lawful”

Do provisions in employee handbook restrict or chill exercise of such rights.

Does the internet use policy restrict or chill exercise of such rights.

## **II. WERC Decisions**

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

As to information other than that related to base wages, a union has the burden to show the “relevance and necessity of said information to its duty to represent unit employees.” Where the Employer offered alternatives, the Union did not meet its burden as to “necessity” of receiving employee home addresses when communicating with employees over terms of tentative agreement/timing of ratification vote.

**City of Cudahy**, Dec. No. 34698 (WERC, 2/14)

A union is not a “party in interest” for purposes of filing a prohibited practice complaint alleging interference with employee rights if it is not the current collective bargaining representative or actively attempting to obtain that status.

**LaCrosse Schools**, Dec. No. 34685-A (Davis, 3/14) aff’d by operation of law Dec. No. 34685-B (WERC, 4/14)

By seeking to make the Union a party to an employee resignation agreement, Employer bargained over a prohibited subject of bargaining and thereby committed a prohibited practice within the meaning of Sec. 111.70(3)(a) 4, Stats.

Union had no duty of fair representation as to the employee in the context of her discharge or resignation. Union had no claim or right (independent of employee's) to settle by way of being a signatory to the agreement. Union can choose to offer advice (upon employee request) and union/employer interaction on that basis (as long as union is not made a party to any agreement) is permissible.

**Madison Schools**, Dec. No. 34973 (WERC, 4/14)

Employees are not "professional" within the meaning of Sec. 111.70(1)(L), Stats.

**Langlade County**, Dec. No. 34600 (WERC, 11/13)

Employees are not "supervisors" within the meaning of Sec. 111.70(1)(o) 1, Stats. or "managerial" employees within the meaning of Sec. 111.70(1)(i), Stats.

### **III. Little Known (??)Matters**

1. The length of "initial" collective bargaining agreements is unregulated (see Sec. 111.70 (4) (cm) 8m. Stats) and presumably a mandatory subject of bargaining.
2. Because certification elections provide an annual opportunity for union representation to end or change, unlikely that employee decertification or rival union "raid" election petitions will be processed. But see Sec. 111.70 (3)(a)4, Stats. as to employer filed "good faith doubt" petitions.