



# Wisconsin Employment Relations Commission

## WISCONSIN SCHOOL ATTORNEYS ASSOCIATION

October 13, 2016

### WERC UPDATE

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

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#### **I. Agency Update**

##### **Commissioners (2/3's time) and Staff (all full-time)**

Chairman James Scott-confirmed for a term expiring March 1, 2021.  
Phone #= 608 243-2431

Commissioner Rodney Pasch-confirmed for a term expiring March 1, 2017.  
Phone #= 608 243-2430

Commissioner James Daley- confirmed for a term expiring March 1, 2019.  
Phone #=608 243-2432

Four attorneys and one attorney vacancy and two support staff.

Peter Davis 608 243-2421  
Raleigh Jones 608 243-2426  
Karl Hanson 608 243-2436  
Danielle Carne 608 243-2422

Dawn Clark (Paralegal) 608 243-2434  
Carol Lynch (Office Manager) 608 243-2427

Retirements-Bill Houlihan  
Departures-Lauri Millot

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

## **II. Current Caseload Mix (7/1/15-6/30/16 cases received excluding recertification election petitions)**

136 State Employee Civil Service Appeals (mainly discipline)  
152 “Traditional” Labor Relations Cases

48 Grievance Arbitration  
41 Election  
40 Mediation  
17 Unfair Labor Practice  
15 Independent Hearing Officer  
5 Declaratory Ruling

## **III. Annual School District Employee Certification Elections**

School district employee elections set for Noon October 27 thru Noon November 16.

Dane County Circuit Court Judge Peter Anderson concludes the public records law required WERC to provide the names of those who had already voted while voting was ongoing.

During pendency of appeal of a 7/31/15 Milwaukee County Circuit Court decision (Judge John DiMotto Case No. 2014CV9307) ruling that WERC was obligated to conduct annual certification elections even if no election petition was filed (plaintiffs filed one day late with WERC=bad facts make bad law), WERC advised all unions/employers that a petition need not be filed but that filing fees still needed to be timely received and that WERC still needed to receive the information contained on the petition form.

By phone and online 24/7-conducted with the assistance of the American Arbitration Association

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).

Commission rejects an election objection when voter on leave did not open email from the Employer advising how a recertification election vote could be cast. Voters have responsibility to seek readily available election information. Union loses election having received 50.79% of the votes. **Montello Schools**, Dec. No. 35957-A (WERC, 2/16)

Commission strictly applies ERC 70.09 requirement that “the facts upon which the objections are based” be raised in timely manner and thus does not consider the disputed eligibility of an employee whose name was o already filed objections after the eight days objection period had expired. **Milwaukee Public Schools**, Dec. No. 35948-A (WERC, 1/16).

Commission rejects claim that substitute teachers lost voter eligibility by verbally telling Employer that they would not be working anymore as substitute teachers. A written resignation was required. Union loses the election having received 50.93% of the votes. **Milwaukee Public Schools**, Dec. No. 35948-A (WERC, 1/16).

Objections to election dismissed because alleged misconduct, if proven, would not be sufficient to impact the outcome of the election. **Racine Schools**, Dec. No. 35149-A (WERC, 3/15)

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)

#### **IV. Base Wage Issues**

No administrative rules planned.

Initial contracts.

New positions.

Classification studies.

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

Employer decision to pay non-represented employees more \$\$ potentially influenced by Union's pre-Act 10 unwillingness to reopen pre-Act 10 contract did not violate Secs. 111.70(3)(a) 1 or 3, Stats. **Moraine Park Technical College**, Dec. No. 35461-B (Houlihan with final authority-1/16)

State interfered with employees' rights to engage in lawful concerted activity for mutual aid or protection when supervisor called employees "silly ass hos" for filing civil service appeals regarding employer's practices when filling vacancies. **State of Wisconsin**, Dec. No. 35730-B (Davis, 6/16) aff'd by operation of law.

Employer did not discharge union steward because of hostility toward her lawful concerted activity. **Clark County**, Dec. No. 35793-B (WERC, 8/16; appeal pending Clark County Circuit Court.