



Wisconsin Employment Relations Commission

LEGAL ISSUES FACING WISCONSIN TECHNICAL COLLEGES

November 4, 2009

WERC UPDATE

By Peter G. Davis- WERC General Counsel **

I. Agency Update

Chairperson Judy Neumann-confirmed for a term expiring March 2013.
Commissioner Paul Gordon-confirmed for a term expired March 2009.
Commissioner Sue Bauman-confirmed for a term expiring March 2011.
Fifteen attorneys (10 in Madison and 5 out state) and 4.5 support staff.

Filing fees rose January 2, 2008 to fund five attorney positions.

- \$100 unfair labor practice/prohibited practice complaint cases.
- \$800 (split equally between union and employer) for mediation, interest arbitration and fact-finding cases.
- \$800 (split equally between union and employer) for grievance arbitration cases where WERC staff or commissioners serve as arbitrators.
- Still no fee for election, unit clarification, referendum and declaratory ruling cases and no fee for requesting a panel of arbitrators who are not WERC staff or commissioners.

Hiring of John Carlson
Retirement of Sharon Gallagher.
Stuart Levitan- Part-time until 1/1/2010.

April 29, 2010 WERC Conference

Office Closures due to Furloughs (See Appendix A)
Budget cuts and caseload drop may prevent WERC from filling a current fee funded attorney vacancy.
WERC receives two new tax funded attorney positions 7/1/2010.

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

II. Recent Statutory Changes

2009 Wisconsin Act 21 (Appendix B)-effective June 23, 2009-makes it illegal for: (1) a municipal employer to fail to follow a contractual fair-share provision during a contract hiatus; and (2) a municipal employer or union to fail to follow a contractual grievance arbitration provision during a contract hiatus.

III. Recent WERC/Court Decisions

WINNEBAGO COUNTY, DEC. NO. 32468-C (WERC, 10/09)

Employer must bargain with the Union over a "last chance agreement" and Employer violated its duty to bargain by dealing directly with employee over such an agreement.

MADISON SCHOOLS, DEC. NO. 32419-B (WERC, 8/09)

The impact of the Employer's purported end of contract renunciation of a past practice which was pivotal to the result in a prior grievance arbitration award was not a matter resolved by the prior award and thus the Employer's subsequent conduct (which would have violated the arbitrator's award had it occurred during the term of the agreement the arbitrator was interpreting) was not a refusal to accept a grievance arbitration award in violation of Sec. 111.70 (3) (a) 5, Stats. WERC notes that the practice in question was "contractual" unlike the "non-contractual" practice at issue in DODGELAND, DEC. NO. 31098-C which the WERC concluded could be repudiated upon proper notice effective with a successor agreement.

STATE OF WISCONSIN, DEC. NO. 32239-B (WERC, 8/09)-appeal filed.

Where the Employer has decided there is enough evidence to require the employee to attend a pre-disciplinary due process Loudermill hearing, WERC concludes that Employer violated its duty to bargain obligation to provide information relevant and reasonably necessary to administration of the collective bargaining agreement by its blanket denial of the Union's pre-hearing request for the Employer's investigative file. Employer could have redacted or otherwise limited the required disclosure if it had demonstrated confidentiality concerns specific to the particular situation.

STATE OF WISCONSIN, DEC. NO. 32392-B (WERC, 5/09)

In the factual context of the disciplinary investigation in question, the Employer violated the employee's statutory right to engage in concerted activity by issuing (and enforcing) a directive to employee being investigated that she not talk to fellow employees until investigation is completed. WERC balanced the interests of employer in the integrity of the investigation against right to engage in concerted activity and concluded the employer's interest was not strong enough to excuse the interference with the employee's statutory rights. WERC noted that such a prohibition may be appropriate in other fact situations.

**MILWAUKEE BOARD OF SCHOOL DIRECTORS, DEC. NO. 30980-B
(WERC, 3/09)**

Where a bargaining unit employee has requested an opportunity to present a grievance pursuant to Sec. 111.70 (4)(d) 1, Stats., it is not unlawful for the municipal employer to condition the meeting upon the presence of the employee's collective bargaining representative.

**MADISON SCHOOLS V WERC, Appeal No. 2007AP2557 CT APP. District IV
(2/09)**

Court of Appeals concludes a party cannot file a petition for judicial review unless the party has exhausted WERC remedies by filing a petition for review as to an Examiner decision with WERC and obtaining a Commission decision.

CITY OF MILWAUKEE, DEC. NO. 32661 (WERC, 2/09)

WERC rejects union claim that City of Milwaukee Housing Authority employees should be clarified into a City of Milwaukee bargaining unit because said employees are actually City of Milwaukee employees or the Housing Authority and the City are a "joint employer" Evidence establishes that the Housing Authority is the employer because it controls the decisions as to employees' wages, hours and conditions of employment.

WASHINGTON COUNTY, DEC. NO. 32185-B (WERC, 1/09)-Appeal filed

While bargaining a successor agreement, the County engaged in bad faith bargaining by failing to tell Union that it was seriously considering subcontracting certain unit work during the term of the successor agreement. Outcome very fact specific. Remedy does not provide retroactive back pay for the employees whose work was subcontracted but does require offer of reinstatement and bargaining over decision and impact of subcontracting in the context of successor contract bargaining=impasse is subject to statutory interest arbitration.

STATE OF WISCONSIN, DEC. NO. 32019-B (WERC, 1/09)

Employer did not refuse to accept grievance arbitration award because the award in question did not conclusively determine issues (factual or language) that were present in a subsequent grievance. Party arguing there has been a refusal to accept an award (typically the union) has a relatively heavy burden of persuasion in such cases. Even where grievance arbitration award did conclusively determine the issues present in the subsequent grievance, if circumstances that affected the prior outcome to have changed, then there is no obligation to follow the prior award.

MILWAUKEE COUNTY, DEC. NO. 32257-C (WERC, 12/08)

County violated Sec. 111.70(3) (a) 3, Stats. when Sheriff and other managers transferred two employees at least in part out of hostility toward the employees' lawful concerted activity.

Commission rejects argument that the transfer of employees is a constitutional power of the Sheriff and thus that Commission lacks authority to remedy the illegal transfers.

IV. PENDING ISSUES

Election/unit clarification issues at Chippewa Valley Technical College.

Unit clarification issues at Madison Area Technical College.



Wisconsin Employment Relations Commission

Agency News Archive

September 24, 2009

WERC OFFICE CLOSURES ANNOUNCED

WERC Chair Judy Neumann announced today that the WERC Madison office will be closed to the public on the following eight dates as part of the WERC's plan for implementing State service-wide furloughs during the two year period ending June 30, 2011:

Columbus Day in 2009 and 2010 (10-12-09 and 10-11-10)
the Friday after Thanksgiving in 2009 and 2010 (11-27-09 and 11-26-10)
President's Day in 2010 and 2011 (2-15-10 and 2-21-11)
the Friday before Memorial Day in 2010 and 2011 (5-28-10 and 5-27-11)

Because the WERC's Madison office will be closed on those days, there will be no mail delivery on those dates and no one will be present in the office to accept physical delivery of any materials. If the last date for filing any document with WERC or its staff falls on one of these dates, the deadline for filing will be extended to the next business day the WERC's Madison office is open. Any material received by fax or email in the WERC's Madison office on the closure dates will be treated as having been filed on the next business day the WERC's offices are open.

Questions on this subject should be directed to Peter Davis.

August 5, 2009

NEW WEBSITE PAGE LISTS LATEST AWARDS AND DECISIONS

The WERC has added a new page to its website, consisting of linked lists of the latest two months of each type of decision and award posted on the site. A link to it appears in the Updates section in the middle of the opening page of the site. The lists on the new page will be updated monthly at the same time as the four single category pages listed in that Updates section.

Besides offering a single page for a user to get a quick update as to what has been issued recently, the new page is small enough in size that it refreshes more quickly than our single category linked lists when the user returns to it after following a link to a decision or award file.

Users with questions about the new page or the website generally are welcome to contact Marshall Gratz.

July 30, 2009

STAFF ATTORNEY HIRED

WERC Chair Judy Neumann has announced that John Carlson, Jr. has been offered and has accepted employment as a WERC attorney to replace Sharon Gallagher.

Since earning his JD degree at the University of Wisconsin Law School in 1998, Carlson has been

engaged in the private practice of law with Lawton & Cates in Madison, concentrating on civil trials and appeals in employment, contract and personal injury disputes.

Carlson's first day of work will be September 14, 2009. He will be stationed at the WERC Madison office.

July 27, 2009

AFTER WORK SOCIAL GATHERING PLANNED FOR AUGUST 19, 2009

In the spirit of the goodwill generated at the Spring Conference and to give the WERC and staff an opportunity to solicit any input you have regarding next year's Conference, please join us for a social gathering!

Wednesday, August 19, 2009

5:00 p.m. – 8:00 p.m.

University of Wisconsin Memorial Union, Tripp Commons Room
Madison

Hors d'oeuvres will be served, and a cash bar will be available

Please share this invitation with others in your organization, and if you or they are not able to attend, please forward your Conference-related ideas to Conference Coordinator [Dan Nielsen](#).

If you have questions about the August 19 event, please contact [Danielle Carne](#).

June 29, 2008

CLE HOURS APPROVED FOR FIFTH ANNUAL SPRING CONFERENCE

The Fifth Annual Wisconsin Public Sector Labor Relations Conference held at the Alliant Energy Center in Madison on April 30, 2009 **has now been approved for up to 8.0 hours of Wisconsin Continuing Legal Education (CLE) credit, including up to 1.0 hour of Wisconsin ethics (EPR) credit.** To view the program, [\[click here\]](#)

May 20, 2009

SAVE THE DATE -- **THURSDAY, APRIL 29, 2010** --

SIXTH ANNUAL WISCONSIN PUBLIC SECTOR LABOR RELATIONS CONFERENCE

WERC Chair Judy Neumann announced today that the WERC will again be co-sponsoring a day-long conference on a variety of public sector labor relations topics at the Alliant Energy Center in Madison on Thursday, April 29, 2010. The conference is again being coordinated by [Dan Nielsen](#) of WERC.

Program and registration information will be posted on this website and otherwise distributed when finalized.

All members of the labor-management community are cordially encouraged to save the date for the conference.

B

State of Wisconsin



2009 Senate Bill 46

Date of enactment: June 8, 2009
Date of publication*: June 22, 2009

2009 WISCONSIN ACT 21

AN ACT to create 111.70 (3) (a) 8. and 9. and 111.70 (3) (b) 7. of the statutes; relating to: arbitration and fair-share agreements during collective bargaining negotiations under the Municipal Employment Relations Act.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 111.70 (3) (a) 8. and 9. of the statutes are created to read:

111.70 (3) (a) 8. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement in the expired collective bargaining agreement.

9. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any fair-share agreement in the expired collective bargaining agreement.

SECTION 2. 111.70 (3) (b) 7. of the statutes is created to read:

111.70 (3) (b) 7. After a collective bargaining agreement expires and before another collective bargaining agreement takes effect, to fail to follow any grievance arbitration agreement in the expired collective bargaining agreement.

* Section 991.11, WISCONSIN STATUTES 2007-08: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].