

NEW DISTRICT DYNAMICS: LIFE WITHOUT LABOR CONTRACTS

LIVING WITH 2011 ACT 10 AND ACT 32

Presented by:

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LIFE WITHOUT LABOR CONTRACTS

- Act 10 was big news and a shock to many, completely changing the landscape of labor relations in school districts.
- §118.223 Wis. Stats. Collective bargaining. Except as provided under subch. IV of ch. 111, no school board may collectively bargain with its employees. History: 2011 a. 10.

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- So what does Subchapter IV of Chapter 111 allow?
- §111.70(4)(mb) Wis. Stats., Prohibited subjects of bargaining; general municipal employees. The municipal employer is prohibited from bargaining collectively with a collective bargaining unit containing a general municipal employee with respect to any of the following:
 - 1. Any factor or condition of employment except wages, which includes only total base wages and excludes any other compensation, which includes, but is not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.
 - 2. Except as provided in s. 66.0506 or 118.245, whichever is applicable, any proposal that does any of the following:
 - a. If there is an increase in the consumer price index change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the consumer price index change.
 - b. If there is a decrease or no change in the consumer price index change, provides for any change in total base wages for authorized positions in the proposed collective bargaining agreement from the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement.

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- Labor relations in school districts following Act 10:
 - The ONLY issue that can be included in a collective bargaining agreement is an increase in total base wages.
 - An increase can only occur if there has been an increase in the CPI.
 - If the CPI has decreased or stayed the same, no increase is allowed.
 - Contracts can only be for a one year period of time:
 - §111.70 (4)(mg)8m Wis. Stats., `Except for the initial collective bargaining agreement between the parties, every collective bargaining agreement covering general municipal employees shall be for a term of one year and may not be extended. No collective bargaining agreement covering general municipal employees may be reopened for negotiations unless both parties agree to reopen the collective bargaining agreement. The requirement for agreement by both parties does not apply to a provision for reopening of negotiations with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation.

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- Labor relations in school districts following Act 10:
 - If the CPI allows for an increase in total base wages and the parties cannot agree on what that increase should be in their next one year contract, mediation is available:
- §111.70 (4)(cm) 3 Wis. Stats. 'Mediation.' The commission or its designee shall function as mediator in labor disputes involving general municipal employees upon request of one or both of the parties, or upon initiation of the commission. The function of the mediator shall be to encourage voluntary settlement by the parties. No mediator has the power of compulsion.
 - Allows mediation, but there is NO arbitration.

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- If that is all there is, how does it affect school districts?
 - Grievances:
 - No more contractual rights and obligations, so there is are no contractual violations to grieve.
 - Grievance procedure was a contractually-created right, so it too is gone.
 - Legislature did create some ability for employees to challenge discipline:
 - Required to have a grievance procedure available for employees by October 1, 2011.

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- If that is all there is, how does it affect school districts?
 - Grievance Procedure:
 - May establish either a civil service system under any provision authorized by law, or establish a grievance procedure.
 - The procedure must contain at least all of the following provisions:
 - A grievance procedure that addresses employee terminations.
 - Employee discipline.
 - Workplace safety.
 - Must have the following elements:
 - A written document specifying the process that a grievant and an employer must follow.
 - A hearing before an impartial hearing officer.
 - An appeal process in which the highest level of appeal is the governing body of the local governmental unit.

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- If that is all there is, how does it affect school districts?
 - No more contractual restrictions on the school calendar.
 - No more contractual restrictions on hours.
 - No more contractual restrictions on work loads.
 - No more contractual requirements on overtime.

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- If that is all there is, how does it affect school districts?
 - No more contractual restrictions or requirements on insurance:
 - Health insurance. But do not forget about §120.12 (24) Wis. Stats., (prior to the selection of any group health care benefits provider for school district employees school board must solicit sealed bids for the provision of such benefits.)
 - No more contractual restrictions or requirements on prescription drug coverage.
 - No more contractual restrictions or requirements on life insurance.
 - No more contractual restrictions or requirements on LTD/STD
 - No more contractual restrictions or requirements on dental insurance.

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- If that is all there is, how does it affect school districts?
 - Leaves of absence:
 - No more contractual requirements on sick leave;
 - No more contractual requirements on sick leave banks;
 - No more contractual requirements on personal days;
 - No more contractual requirements on professional leaves;
 - No more contractual requirements on unpaid leaves;
 - No more contractual requirements on FMLA issues.

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- If that is all there is, how does it affect school districts?
 - Other impacts:
 - No more contractual requirements on professional improvement but do not forget about §121.02 (1)(q) Wis. Stats., (districts must evaluate, in writing, the performance of all certified school personnel at the end of their first year and at least every 3rd year thereafter.)
 - Duty free lunch: Wisconsin law does not require that employees receive a lunch break, but do not forget about §118.235 (districts shall grant daily a duty-free lunch period to each of its teachers, not less than 30 minutes and shall be provided at or near the time of the regular school lunch period)

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- If that is all there is, how does it affect school districts?
 - Other impacts:
 - No more contractual restrictions or requirements on extracurricular assignments.
 - No more contractual restrictions or requirements on summer school assignments.
 - No more contractual restrictions or requirements on extra assignments like curriculum writing.
 - No more contractual restrictions or requirements on promotions or vacancies.

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- If that is all there is, how does it affect school districts?
 - Compensation is affected too:
 - The teachers' salary schedule was a creation of collective bargaining, and it too is or will be gone, affecting:
 - Starting rates;
 - Lanes;
 - Steps;
 - No more contractual requirements on tuition reimbursement.
 - No more contractual requirements on retirement benefits:
 - WRS is still set by state law
 - No more contractual requirements on early retirement;
 - No more contractual requirements on post retirement health insurance;

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- If that is all there is, how does it affect school districts?
 - No more contractual requirements on discipline and discharge.
 - “Just Cause” was a creature of contract, so no longer does your discipline or discharge have to meet that standard.
 - No more contractual restrictions on Layoffs:
 - No more contractual requirements on who will be laid off;
 - No more contractual requirements on who will be recalled;
 - No more contractual requirements on seniority.

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- If all your old collective bargaining agreement is gone, life should be simple, right?
 - No rules;
 - No regulations;
 - No hoops;
 - Who can complain?

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- Reason to be concerned:
 - Without rules and regulations there can be *chaos*:
 - How are your employees going to know what to expect?
 - How do you know how to respond to any particular situation?

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- General problems created by the absence of collective bargaining agreements:
 - Without rules and regulations in place you may not have consistency in how you treat employees.
 - What is another word for inconsistency?

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- What is another word for inconsistency?
- D-I-S-C-R-I-M-I-N-A-T-I-O-N
 - If my leave request was denied but Jill's was allowed, it must be because of my:
 - Age?
 - Gender?
 - Religion?
 - National origin?
 - Disability?
 - Sexual orientation?

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- If I am your employee and I disagree with your decision on my discipline, or discharge, or denial of benefits, what am I going to do?
 - Will I file a grievance under your new grievance procedure?
 - What other options do I have?

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- If I am your employee and I disagree with your decision on my discipline, or discharge, or denial of benefits, what am I going to do?
 - Rather than grieve your decision, I am going to file a discrimination complaint!
 - It's free
 - It's easy
 - It's going to cost you a lot to defend it
 - It's a decision by a neutral, not your Board
 - Be aware of the latest trend: retaliation!

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- You need to avoid uncertainty & inconsistency.
 - Starting Point:
 - Issue a memo to employees assuring them that your district is taking the steps necessary to address the immediate changes mandated by the new laws.
 - Reaffirm your district's dedication to providing employees with a fair and equitable workplace.

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- You need to avoid uncertainty & inconsistency.
- Starting Point:
 - Establish work rules and policies which will apply to all employees.
 - Work rules and policies can provide your employees with certainty and consistency.

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- You need to avoid uncertainty & inconsistency.
- Things to be aware of in creating work rules and policies:
 - Do not create situations where you lose your employment at will status;
 - Give yourself flexibility to deviate from your rules and policies when necessary.
 - But remember that deviation from rules and policies can create claims.
 - Make sure that your policies and rules meet the needs of every department or classification.
 - Train your supervisors and managers on how to implement and live with the new rules and policies.

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- Particular problems created by the loss of collective bargaining agreements.
 - Discharge
 - Layoff
 - Sick leave banks/payouts
 - Early retirement
 - Salaries/Wages

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○ Discharge.

- Under your collective bargaining agreement you could terminate a teacher or non-renew them if you had just cause.
- You longer need just cause; the new standard under your grievance procedure will be arbitrary and capricious.
- But see §118.22(2) Wis. Stats.: On or before March 15 of the school year during which a teacher holds a contract, the board by which the teacher is employed or an employee at the direction of the board shall give the teacher written notice of renewal or refusal to renew the teacher's contract for the ensuing school year. If no such notice is given on or before March 15, the contract then in force shall continue for the ensuing school year.

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○ Discharge.

- §118.22(4) Wis. Stats.

(4) A collective bargaining agreement may modify, waive or replace any of the provisions of this section as they apply to teachers in the collective bargaining unit, but neither the employer nor the bargaining agent for the employees is required to bargain such modification, waiver or replacement.

Deleted by 2011 Act 10

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○ Discharge.

- Without §118.22(4) Wis. Stats. you no longer have the ability to “modify, waive or replace any of the provisions” of §118.22. So your options are:
 - Non-renew by March 15; or
 - “The contract then in force shall continue for the ensuing school year.”
 - The statute does not contemplate a mid-year discharge.
 - Can districts seek to void the contract on breach of contract principals?

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- Without §118.22(4) Wis. Stats., there are also layoff implications:
 - Layoff provisions were created by your collective bargaining agreements, and were authorized by §118.22(4) Wis. Stats.
 - Without §118.22(4) Wis. Stats., and without a collective bargaining agreement, there is no such thing as a layoff!
 - We have seen this under §118.24 Wis. Stats., in regard to administrators.

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- Without §118.22(4) Wis. Stats., there are also layoff implications:
 - Your options are to decide by March 15 that you will not recall a teacher for the subsequent school year or you are stuck with that position for the next year.
 - Court decisions have held that the procedures in §118.22 Wis. Stats., cannot be waived by teachers.

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- Sick leave banks, sick leave payouts and early retirement.
 - Clearly these issues can no longer be the subject of bargaining between districts and unions.
 - But what about those employees who have:
 - An existing sick leave bank?
 - Operated for years with a sick leave payout policy?
 - Operated for years with an early retirement policy in place?
 - There are vesting issues for all of these.

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- Wages and Salaries.
 - Without a collective bargaining agreement, you have no structure for establishing wage or salary increases.
 - What are you going to do?
 - Across the board increases?
 - Merit pay?
 - Performance bonuses?
 - There is no right or wrong answer, but you need to have an answer.

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Questions?

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