
FOR YOUR INFORMATION

January 2005
News For School Clients

Litigation Update: The Act 11 Case

In 1999, the Wisconsin Legislature enacted 1999 Wisconsin Act 11 (Act 11), which created a “credit” for all employers, employees, and retirees who were participants in the Wisconsin Retirement System (WRS). Under Act 11, the Department of Employee Trust Funds (DETF), the agency responsible for administering the WRS, was directed to provide these “credits” to participating employers. After a court challenge to the Act’s constitutionality, during which time an injunction prevented DETF from disbursing these “credits” to participants, on June 22, 2001, the Wisconsin Supreme Court held that Act 11 was constitutional. Therefore, DETF proceeded to provide appropriate sums to participating employers with the first sum issued on June 20, 2001, and the second sum issued on August 6, 2001; and then, if necessary, additional sums issued thereafter.

Subsequently, the Wisconsin Education Association Council (WEAC) challenged the QEOs implemented by three school districts for the 2001-2003 contract period and asserted that these QEOs violated the Municipal Employment Relations Act (MERA) because the school districts had failed to: (1) reduce the WRS fringe benefit costs in an amount equal to the Act 11 credits, and (2) assign teachers to steps on the salary schedule that reflected the teachers’ respective years of service with the school districts. The WERC heard these challenges in a hearing occurring in October 2002.

On December 23, 2004, the WERC issued the long-awaited decisions in cases entitled, *Prairie du Chien School District*, Case 17 No. 60600 INT/ARB-9459 Decision No. 30466; *Maple Dale-Indian Hill School District*, Dec. No. 31187; and *Big Foot Union High School*, Dec. No. 31500. Copies of these decisions are available on the WERC’s website, located at <http://werc.wi.gov/>.

With regard to the Act 11 Credit Issue, the WERC held that the school districts failed to implement a QEO in a manner consistent with MERA when they failed to reduce their fringe benefit costs by an amount equal to the Act 11 credits received by each school district. WEAC had argued that the reduction in fringe benefits occurred only in QEO year 1 (July 1, 2001, through June 30, 2002) or QEO year 2 (July 1, 2002, through June 30, 2003) when the school districts received the credits from DETF. However, the WERC rejected WEAC’s argument, and instead, concluded that the Act 11 credits automatically reduced the school districts’ WRS fringe benefit costs on a monthly basis for the period beginning February 2000 and extending until each school district’s share of the credits was exhausted. For most school districts, the WERC’s decisions result in a reduction of the school district’s fringe benefit costs prior to the base year (February 1, 2000, through June 30, 2000) and during the base year (July 1, 2000, through June 30, 2001), with little or no

reduction of the school district's fringe benefit costs occurring at any time following June 30, 2001.

As a result of the WERC's decisions in these cases, in order to have implemented a valid QEO for the 2001-2003 contract period, school districts must have reduced their base year costs by an amount equal to the Act 11 credits generated from July 1, 2000, through June 30, 2001. Moreover, if a school district agreed to use QEO-type costing for purposes of costing a voluntary settlement for any relevant contract period, the school district may also be able to reduce its fringe benefit by the amount of the district's Act 11 credits generated from July 1, 2000, through June 30, 2001. For purposes of the 2001-2003 contract period, such a reduction in the base year costs will ultimately result in lower salaries for QEO year 1 (July 1, 2001, through June 30, 2002) and QEO year 2 (July 1, 2002, through June 30, 2003).

As referenced above, in addition to the Act 11 Credit Issue, WEAC also asked the WERC to address the proper placement of teachers on the salary schedule when a school district has implemented a QEO and the school district cannot pay full or any portion of step movement to eligible teachers during one or more QEO years. The WERC held that a school district fails to implement a QEO in a manner consistent with MERA when, within the context of a QEO, the school district fails to assign teachers to steps on the salary schedule that reflects the teachers' years of service with the school district. Thus, if a school district implements consecutive QEOs and, in one or more of the QEO years, the school district is unable fund full step movement for

teachers, under certain circumstances, the school district will be required to restore any step movement or any portion thereof not paid. The circumstances under which a school district will be required to pay such restorative step movement are when (1) the school district is implementing a QEO in the contract year immediately following a year in which the QEO calculated did not allow actual step placement, (2) the school district can maintain current fringe benefits and pay full step movement for the current contract year, and (3) there is still money remaining within 3.8% total package increase. According to the WERC, only under these narrow circumstances will a school district be required to pay restorative step movement to teachers who did not receive full step movement in a prior QEO year, but then only to the extent possible within a 3.8% total package increase.

Presently, the parties are calculating the financial impact of the WERC's decisions. It is important to note that, within the decisions, the WERC directed the parties to attempt to reach agreement concerning the financial impact of both issues, but offered to hold hearings concerning the financial impact of the decisions, if the parties are unable to reach an agreement. To date, none of the parties have requested that the WERC hold any hearings related to the financial impact of the decisions.

If you have questions or comments about the WERC's decisions, questions about how such litigation might impact negotiations in your district, or questions about any related issues, including union grievances, we encourage you to contact the following Lathrop & Clark LLP attorneys.

If you have any questions regarding this topic, please call the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.

Michael J. Julka (608) 286-7238

Shana R. Lewis (608) 286-7202

Disclaimer: Lathrop & Clark LLP provides this material for information about legal issues and not to give legal advice. However, material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Lathrop & Clark LLP recommends the use of legal counsel on specific matters.