

LEGAL UPDATE:
WISCONSIN CHIEFS OF POLICE ASSOCIATION

Janesville, Wisconsin

March 14, 2003

James R. Korom
von Briesen & Roper, s.c.
411 East Wisconsin Avenue, Suite 700
Milwaukee, Wisconsin 53020

(414) 276-1122
(800) 622-0607

(414) 287-1231 (Mr. Korom's direct line)
jkorom@vonbriesen.com

I. INTRODUCTION

With the exception of the ADA cases in Section VII, the following cases are 2002 decisions by the Wisconsin courts, the U.S. Supreme Court, the Seventh Circuit Court of Appeals and the Wisconsin Employment Relations Commission, involving public sector employers. It is not a complete list of every such case, nor is each case on this list of equal importance. I want to recognize the exceptional efforts of UW law student, Rachel Schepp, in the research and development of these materials.

II. POWERS OF THE POLICE AND FIRE COMMISSION (Note: Kraus still pending)

- A. *City of Madison v. State Dep't. of Workforce Dev.*, 651 N.W.2d 292 (Wis. Ct. App. 2002): Firefighter Charles Wagner was discharged from service by the Police and Fire Commission ("PFC") for committing rule violations so as to bring disrepute on the department, and for violating department rules against theft and dishonesty. He failed to file a timely appeal, and so the circuit court upheld the discharge on appeal as "final and conclusive." Wagner filed a discrimination complaint with the Department of Workforce Development ("DWD") arguing that his discharge was unlawful because it was based on his arrest and conviction record in violation of Wis. Stat. §§ 111.321 and 111.335. The City petitioned the circuit court for a writ of prohibition to terminate DWD's investigation and the court granted the writ. The Court of Appeals reversed, holding that DWD had statutory authority to receive and investigate WFEA complaints against the city and Fire Chief Amesqua. Furthermore, claim preclusion was not a bar to DWD's jurisdiction over WFEA claims because the PFC does not have authority to hear such claims. However, DWD did not have authority to investigate WFEA complaints against the PFC because when the PFC performs disciplinary functions as required by statute, it is not a "person engaged in an act of employment discrimination" within the scope of WFEA.
- B. *Conway v. Bd. of the Police and Fire Comm'n of the City of Madison*, 647 N.W.2d 291 (Wis. Ct. App. 2002): The court upheld Commission rule 7.20 permitting hearing examiners who are not members of the board to conduct initial and evidentiary hearings in cases involving the suspension, reduction in rank, or removal of a subordinate police officer or firefighter. The board has the authority to adopt such a rule under Wis. Stat. § 62.13(5)(g).
- C. *Heil v. Green Bay Police and Fire Comm'n*, 652 N.W.2d 118 (Wis. Ct. App. 2002): The Police chief brought numerous charges against Officer Heil before the PFC. Anthony Theisen, the mayor-appointed liaison between the PFC and the common council, was present throughout the hearing and sat in on the PFC's deliberations. Theisen fully participated in the hearing but did not vote for, or sign, the decision. Heil sought review of the PFC's termination decision through two avenues; writ of certiorari and statutory appeal. The court held that matters

raised in the petition for writ of cert could be considered before those raised on statutory appeal because a defect in process “obstructs the last word by the trial court.” Before the court determines whether just cause supports charges against Heil, he is entitled to an untainted process. The court held that the proceedings were tainted by the presence of the commission’s liaison because at the very least it materially diminished the appearance of the board’s independence.

- D. ***Gold v. City of Adams***, 641 N.W.2d 446 (Wis. Ct. App. 2002): A city employee sued the city for reducing his longevity bonus without first obtaining a recommendation from the board of police and fire commissioners. The circuit court found for the employee but awarded less damages than the employee claimed. The employee appealed and the court found that the employee was “aggrieved” by the decision because the circuit court’s award of less damages directly injured the employee’s alleged interests in an appreciable manner.

III. FIRST AMENDMENT/WHISTLEBLOWER CASES

- A. ***Hutson v. State of Wisconsin Personnel Comm’n***, 2002 WI App 249 (Wis. Ct. App. 2002): The court reversed a Personnel Commission decision and held that a probation agent’s memo to her supervisor regarding her excessive caseload was a protected disclosure under the state Whistleblower Law. Pursuant to Wis. Stat. § 230.80(7), the memo demonstrated “a pattern of incompetent management actions which are wrongful, negligent or arbitrary and capricious and which adversely affect the efficient accomplishment of an agency function” and was therefore protected.
- B. ***Gustafson v. Jones***, 290 F.3d 895 (7th Cir. 2002): Police Officers’ statements in response to an order to cease a follow-up investigation involved matters of public concern and were protected by the First Amendment. In addition, Police Chief Arreola and Inspector Jones failed to show that the police departments’ interest in promoting effective public service outweighed the officers’ interest in making the statements. Finally, at the time that the chief and inspector took an adverse employment action against the officers, it was clearly established that such an action would violate the First Amendment, thus they were not protected by qualified immunity.
- C. ***Delgado v. Jones***, 282 F.3d 511 (7th Cir. 2002): A police officer’s speech relating to an investigation into alleged criminal activities involving an elected official’s close relative involved matters of public concern.
- D. ***Vargas-Harrison v. Racine Unified Sch. Dist.***, 272 F.3d 964 (7th Cir. 2002): Elementary school principal Juana Vargas-Harrison brought suit alleging violations of her First Amendment rights when she was demoted for publicly opposing one of the school district’s policies. The court held that as principal, Vargas-Harrison was a policy-making employee and therefore owed her superiors

a duty of loyalty with respect to school district policies. As a result, her speech on this topic was not protected.

See Also *Garcia v. Kankakee County Hous. Auth.*, 18 IER Cases 470 (7th Cir. 2002) (City Housing Authority did not violate First or Fourteenth Amendment when it discharged an interim executive director for insubordination since policy-making employees may be discharged for refusing to give public and private support to political agenda of elected officials.)

E. Revenge is a dish best served cold

1. *Horwitz v. Bd. of Educ. of Avoca Sch. Dist. No. 37*, 260 F.3d 602 (7th Cir. 2001): Karen Horwitz, a teacher in the Avoca School District, brought numerous causes of action against her employer including a § 1983 First Amendment retaliation claim. Horwitz claimed that she was fired as a result of an essay she submitted to a magazine eighteen months earlier. The court held that the constitutionally protected speech was too remote in time to infer that the defendants acted in retaliation for the speech. Therefore the court upheld the district court's dismissal as to the school officials in their individual capacities. The court next addressed the § 1983 claim as it related to the defendants in their official capacity and found that Horwitz had not provided any evidence that the individuals (superintendent of schools, a principal, and the president of the school board) had final policymaking authority. Because there was no proof that the Board maintained a policy or custom directed at suppressing Horwitz's right to free speech, the claim against the officials was also dismissed.
2. *Wallscetti v. Fox*, 258 F.3d 662 (7th Cir. 2001): The court upheld the district court's grant of summary judgement in a § 1983 action brought by a county employee against her employers in both their individual and official capacities. The employee claimed she was discharged in retaliation for making harassment complaints. The court first held that all but one of the employee's harassment complaints were not protected speech because they did not involve a matter of public concern. Second, even if the speech was protected, there was insufficient proof that the employee was fired as a result of the speech because the statements provided did not support such an inference and the statements were made at least four months prior to the employee's termination.

See Also *Nieves v. Bd. of Educ. of the City of Chicago*, 297 F.3d 690 (7th Cir. 2002) (The timing of employee's termination, one month after protected speech, without more was insufficient to prove that her speech was a substantial or motivating factor in the decision to terminate her position.)

3. *Albrechtsen v. Bd. of Regents of the Univ. of Wisconsin Sys.*, 309 F.3d 433 (7th Cir. 2002): A male professor claimed that the university retaliated against him for statements he made against sex discrimination. The court held that absent any evidence of such statements, there was no basis to find retaliation. Sex-discrimination protests lodged years earlier were too far removed to support a retaliation claim.

IV. DUE PROCESS

- A. *United States Postal Service v. Gregory*, 534 U.S. 1 (2001): A terminated United States Postal Service employee petitioned for review of a decision by the Merit Systems Protection Board (MSPB) upholding her termination. The Supreme Court held that MSPB could independently review prior disciplinary actions which were still the subject of pending grievance procedures when determining the reasonableness of the penalties imposed upon an employee.
- B. *Milwaukee Dist. Council 48 v. Milwaukee County*, 627 N.W.2d 866 (Wis. 2001): Milwaukee County's Code of General Ordinances provides in part that a county worker shall be eligible for a deferred vested pension after ten years of service even if his employment is terminated for any cause, other than fault or delinquency on his part. Several employees were terminated for cause after their pensions had vested, but they were denied pension benefits by the county without a hearing to determine whether their termination "for cause" was for reasons "other than fault or delinquency." The court held that because termination for cause was not in itself enough for the county to deny an employee pension benefits, employees terminated for cause had a right to a hearing to determine whether they were terminated for fault or delinquency.
- C. *Hedrich v. Bd. of Regents of the Univ. of Wisconsin Sys.*, 274 F.3d 1174 (7th Cir. 2001): A former professor at a state university brought suit against the university after she was denied tenure. The professor claimed that she was retaliated against due to her association with a male professor that had filed a discrimination claim in the past. The professor claimed that denial of tenure violated Title VII, violated her rights under the equal protection clause, and violated her liberty interests. The court upheld dismissal of all the claims. With regards to the equal protection claim, the court held that the professor did not present evidence on several necessary elements. The professor has no evidence that the university treated her differently from other similarly situated individuals, or that she was intentionally treated differently because of her membership in a particular class. With regards to the due process claim, the court held that the denial of tenure is not, by itself, stigmatizing conduct such that an individual's liberty interest is violated. Denial of tenure would only be stigmatizing if it was accompanied by a publicly announced reason that "impugns the employees moral character."

V. MISCELLANEOUS

- A. ***Jensen v. Sch. Dist. of Rhinelander***, 251 Wis.2d 676 (Ct. App. 2002): The school district's superintendent was placed on administrative leave following the nonrenewal of his contract. When a local newspaper attempted to obtain a copy of his performance evaluation, the superintendent brought suit to prevent disclosure. The court of appeals held that the employee's diminished reputational interest was insufficient to overcome the strong presumption favoring disclosure. The public needed to have access to the evaluation in order to evaluate the board's judgment.
- B. ***Moore v. Muncie Police and Fire Merit Comm'n***, 312 F.3d 322 (7th Cir. 2002): The court held that an applicant for a firefighter position who received a conditional offer of employment after he was past the maximum age for becoming a member of the pension fund, and after the cutoff date under a temporary transition plan, did not have a constitutionally protected property interest in prospective employment.
- C. ***Lodl v. Progressive N. Ins. Co.***, 253 Wis. 2d 323 (2002): A passenger in a vehicle struck in an intersection without operative traffic control signals during a storm brought an action against the town, the police officer who was present at the time of the accident, and the town's insurer. The Wisconsin Supreme Court held that the police officer's duty to control traffic allowed for an exercise of discretion and was therefore not ministerial. Because the officer exercised discretion, the "known present danger" exception to official immunity did not apply. The court held that the known present danger exception only applies when the "circumstances posed by the [situation] . . . compel a particularized, non-discretionary action on the part of the responding officer."

See Also ***Raquel v. Necedah Area Sch. Dist.***, 2002 Wisc. App. LEXIS 1396 (Ct. App. 2002): Plaintiffs claimed that the district was negligent because it knew of a bus driver's sexual contact with students and permitted him to continue in his employment and failed to adequately supervise him or investigate the incidents. The court held that mandatory reporting requirements under Wis. Stat. § 48.981(2) (1999-00) did not transform the school district's employees' duty to report the abuse into a ministerial duty that exempted the school district from immunity. Although the employees had a ministerial duty to report, beyond their mandatory reporting requirement the district had discretion in how to handle the situation. Following *Lodl*, the court also held that the known present danger exception did not apply because it is not enough that a situation requires a public employee to "do something"; rather, the danger must be such that it required the employee to act in a particular way-the act upon which liability is based. Knowledge of the bus driver's actions may have been a known danger, but that knowledge did not require the school district to act in one particular way.

- D. ***Schroeder v. Hamilton Sch. Dist.***, 282 F.3d 946 (7th Cir. 2002): A former teacher brought a § 1983 action against the school district for failure to take effective steps to prevent harassment based on his sexual orientation. The court held that the school district's response to the teacher's complaints did not demonstrate deliberate indifference to the complaints such that the teacher was denied equal protection of the law.
- E. ***State of Wisconsin v. Venema***, 650 N.W.2d 898 (Wis. Ct. App. 2002): Venema, town board supervisor for the town of Delavan, submitted a letter of interest for a park manager position in January of 1999. While still in office, Venema interviewed for the position and was hired as the independent contractor for the park. Venema left office and three days later was officially presented with a contract for the position which he subsequently signed. Venema was convicted of having a private interest in a public contract in violation of Wis. Stat. § 946.13(1)(a) and (b). The Court of Appeals rejected Venema's argument that there was no statutory violation because he did not sign the contract until he left office. However, the court reversed the judgment and remanded for a new trial because the prosecutor improperly relied on evidence of Venema's actions prior to January, 1999. While evidence of actions prior to January of 1999 was relevant for background information, such evidence could not be used by the prosecutor to prove elements of the crime.
- F. ***Heder v. City of Two Rivers***, 295 F.3d 777 (7th Cir. 2002): The city and the firefighters agreed to terms in a collective bargaining agreement (CBA) so that the firefighters would be trained and certified as paramedics. When a firefighter quit his job two-and-one-half years after beginning the training, he challenged the reimbursement provision of the CBA requiring that he pay the city in full for the training because he did not stay for three years. The court held that the firefighter was entitled to be paid time-and-a-half wages for each hour over 204 hours in a 27 day period that the firefighter worked during the training period. The court held that the city was entitled to full reimbursement for the training as agreed to in the CBA. Finally, the reimbursement agreement did not violate Wis. Stat. § 103.465, prohibiting covenants not to compete.

VI. DISCIPLINARY INVESTIGATION ISSUES

- A. ***Driebel v. City of Milwaukee***, 298 F.3d 622 (7th Cir. 2002): The court held that a police department has the authority to direct its officers to remain on duty or to accompany detectives to headquarters and answer questions (or invoke their fifth amendment rights) as part of a criminal investigation regarding alleged misconduct. The Court rejected the officer's argument that a police officer is seized at the time that he is ordered to report for questioning. However, although police department's have the right to require officer's to accompany detectives to headquarters or remain on their shift, the department's options are limited when dealing with an officer who has disobeyed such an order. The department may investigate the incident and discipline the officer, briefly stop, frisk, and question

the officer consistent with the law, or, when supported by probable cause, seize, arrest, and detain the officer.

- B. ***Atwell v. Lisle Park Dist.***, 286 F.3d 987 (7th Cir. 2002): Former employee of a public park district brought suit against the district under § 1983, alleging that her Fifth Amendment and due process rights had been violated when she was terminated following an investigation into her alleged wrongdoing. The court upheld the district court's dismissal, holding that the employee's Fifth Amendment right against self-incrimination was not violated when, after the attorney retained by the district to perform an investigation told the employee that her attorney would probably inform her to exercise her right to remain silent, the employee was terminated for insubordination based on her failure to cooperate with the investigation. The court further held that the employee failed to show that the district had disseminated false information that rendered her unemployable, in violation of the due process clause.

VII. KEY ADA/FMLA CASES

- A. ***Toyota v. Williams***. Supreme Court defines "major life activities" as those which have "central importance" to most people's daily lives.
- B. ***U.S. Airways v. Barnett***. Seniority system normally trumps reasonable accommodation; "special circumstances," including past practice or contractual exceptions may apply.
- C. ***Chevron v. Eshazabal***. "Direct threat" to others includes direct threat to the employee himself.
- D. ***EEOC v. Waffle House, Inc.*** EEOC not necessarily bound by individual arbitration agreements between the employer and the employee.
- E. ***Watson v. Lithonia Lighting***. (7th Cir.) Supports earlier "light duty" cases saying temporary light duty for recovering employee is not automatically permanent when the injury becomes permanent.
- F. ***Ragsdale v. Wolverine Worldwide, Inc.*** Failure to designate FMLA sick leave as such is not fatal; DOL regulation struck down.

VIII. KEY WERC DEVELOPMENTS

- A. ***Milwaukee County***, Dec. No. 30431 (WERC, 07/02): The Commission analyzed whether three clauses of a collective bargaining agreement contained permissive or prohibited subjects of bargaining. First, the Commission held that a savings clause, stating that the current agreement would remain effective until replaced by a subsequent agreement, was a prohibited subject of bargaining because it potentially created a contract duration in excess of the three year limit established

by Wis. Stat. § 111.70(3)(a)4. Second, a clause subjecting the County's layoff decisions to a "necessary" standard was permissive because the municipality is not required to bargain over layoff decisions. Finally, the proposed management rights clause was a prohibited subject of bargaining because it infringed on the sheriff's constitutionally protected right to make assignments which give "character and distinction" to the office.

- B. *City of Milwaukee*, Dec. No. 30427 (WERC, 07/02): A transfer policy which allowed employees to grieve any transfer or assignment made in whole or in part for disciplinary purposes was a mandatory subject of bargaining despite the fact that it limited management prerogatives. An employer's concern that such a contract provision would inhibit management decision making is relevant at the bargaining table but not to the mandatory/permissive status of the proposal.
- C. *City of Green Bay*, Dec. No. 30130-A (WERC, 01/22): The City's denial of overlapping consecutive shifts and one-half and double shift trades was primarily related to wages, hours and conditions of employment. Thus, the decision to discontinue the past practice of granting overlapping shift trades without requiring officers to use comp time, vacation or personal days was a mandatory subject of bargaining. The City's unilateral implementation of a change in this mandatory subject of bargaining constituted an unfair labor practice.
- D. **Lawyers Beware!**

1. Only Believe the Lawyer if He/She Signs an Affidavit.

Waterford Sewage District, Dec. No. 30214-B (WERC, 6/02): A majority of the Commission held that a sworn affidavit alleging a change in circumstances must accompany a unit clarification petition that seeks to litigate an issue already decided by the Commission in an earlier case. In dissent, Commissioner Hahn concluded that counsel's assertions of specific changed circumstances were sufficient.

2. When We Say "Amend," we Mean it.

AFSCME Council 24, Dec. No. 30215-B (WERC, 1/02): The Commission upheld an examiner's decision to require complainant to amend complaint to comply with requirements of administrative rules, and appropriately dismissed the complaint when the complainant did not do so despite multiple opportunities to amend and warnings of dismissal.

3. "But We Have it On Tape" is Not Good Enough

City of Park Falls, Dec. No. 30207-A (WERC, 4/02): At the conclusion of a negotiation session, the Union and City representatives believed they had reached a tentative agreement. A summary of the agreement was

dictated into a tape recorder without objection, in the presence of the Union's representative and the six remaining bargaining unit members. The City claimed that the Union engaged in an unfair labor practice when the Union later failed to ratify the agreement prepared at the meeting. The Commission held that the bargaining unit members present at the meeting did not have a *statutory* duty to support, or vote in favor of, the ratification of the CBA prepared at the meeting because there was not a "clear and satisfactory preponderance of the evidence" that the City and the union had a "meeting of the minds" with respect to the terms and conditions to be included in the new CBA.

4. "Close Enough" Applies to Horseshoes, Hand Grenades, and ...

Milwaukee Police Ass'n. v City of Milwaukee, 250 Wis.2d 676 (Ct. App. 2002): Police officers filed grievances alleging that they were transferred in retaliation for complaining about misconduct in connection with the City's interference with the officers' investigation of suspected criminal activity. The trial court held that the grievances filed by the officers did not comply with the collective bargaining agreement because they did not set forth the provision of the CBA and/or the rule or regulation of the Chief of Police under which the grievance was filed. The Court of Appeals held that the CBA did not require that grievants specify either a provision of the agreement or a department rule or regulation that they contend was violated; by the clear language of the CBA, a grievance was specific enough if it identified the provision under which it was filed. The grievances filed by the police officers did just that, therefore the city had fair notice of the issues to be arbitrated.

Blackhawk Technical College, Dec. No. 30221-A (07/02): A newly hired instructor at Blackhawk Technical College filed a grievance regarding his starting pay. Blackhawk College argued that the instructor's experience consisted of two years of part-time teaching, equivalent to one year of full time teaching. The instructor argued that he had two years of full time experience because although he was classified as "part-time," he actually taught a full course load. Blackhawk refused to participate in arbitration claiming that the Management Rights clause gave them the sole right to "hire" and that right included the right to determine initial placement of teachers on the salary schedule. The union argued that the grievance actually dealt with the interpretation of the pay scale and the term "step" as used in the CBA. The Commission held that Blackhawk must arbitrate because "it cannot be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers this dispute."

E. **Miscellaneous**

1. Here are the Keys ... Please Lock Up on Your Way Out!

University of Wisconsin Hospitals and Clinics Authority, Dec. No. 30202-B (WERC, 07/02): Management blocked the Union's ability to communicate with members of the Union through their office e-mail system. The Commission held that blocking e-mail access was an act of interference and thus an unfair labor practice. The Commission concluded this for three reasons. First, although employers have a right to bar non-employees from trespass or use of their property, "the burdening of the employer's property rights is much slighter in the case of e-mail than in the case of physical entry onto the premises or physical use of equipment." Second, business concerns relating to overburdening the system or infecting the system with a virus are not compelling. Third, management's blocking of e-mail was not carried out in a non-discriminatory manner. Management may block all outside e-mail, but it may not apply a different rule for the union than for other non-employees. The Commission also found that e-mail communication is more akin to verbal solicitation and thus may only be regulated as to the time of the activity rather than time and location. Finally, the Commission held that to the extent e-mail communication was the status quo, by unilaterally blocking e-mail, management committed an unfair labor practice.

Manitowoc Public School District, Dec. No. 30276-A (WERC, 02/07): The Union alleged three unfair labor practice. First, the Union alleged that the District failed to respond to a request for information. The Commission held that the District's denial of receipt of, and refusal to comply with, a request for information constituted an unfair labor practice in violation of Wis. Stat. § 111.70(3)(a)4. Second, the District denied union members time off to attend a hearing relating to the District's refusal to provide information. The Commission held that the District's denial of legitimate leave requests was based on hostility to the Union's protected activity rather than any legitimate concerns about workloads or procedures and thus constituted a violation of Wis. Stat. § 111.70(3)(a)3. Third, while negotiating the collective bargaining agreement the District discontinued use of the base rates and raise provisions in the 1999 Wage Plan. The Commission held that unilateral discontinuance of the Wage Plan constituted a failure to maintain the status quo during the bargaining of an initial contract, and was thus a refusal to bargain in good faith in violation of Wis. Stat. § 111.70(3)(a)4.

2. I Love it When They Fight With Each Other

VanOuse v. City of Wausau, Dec. No. 30272-B (WERC, 10/02): The Union breached its duty of fair representation when it refused to arbitrate

Van Ouse's claim that his seniority was unfairly altered. When deciding whether to arbitrate a grievance, a union must take into account "at least the monetary value of [the] claim, the effect of the breach on the employee and the likelihood of success in arbitration." Had the union investigated the validity of Van Ouse's claim, it would have been clear that his claim had merit and that the alteration of his seniority was a clear violation of the collective bargaining agreement. By failing to conduct any factual investigation, the union breached its duty of fair representation when it entered into an adverse settlement agreement.

State of Wisconsin, Department of Corrections, Dec. No. 30166-B (WERC, 10/02): In a previous decision, the Commission rejected a DOC rule refusing to allow employees to wear pins signifying support of rival unions based on business necessity and security concerns. In its' previous decision the Commission noted that a rule leveling the playing field and banning all pins based on business necessity and security concerns, may have been upheld. In the present case, the DOC implemented just such a rule. Following its' dicta from the previous case, the Commission upheld the rule, finding that "leveling down" offered a prudent course of action during a particular organizing campaign.

Springen v. Teamsters Local Union No. 695, Dec. No. 30288-A (WERC, 03/02): Springen, a Madison Metro Transit System employee, sued the Union for failing to seat her as a steward within the union. The Commission held that they did not have jurisdiction over the case for three reasons. First, Springen's conduct did not constitute concerted action under Wis. Stat. § 111.70(3)(b)1, because Springen's employment relationship with Madison Metro was not involved in the dispute. The Commission held that protection of concerted activities does not apply to intra-union activities, also known as internal union politics. Second, the Commission did not have jurisdiction to hear the case based on federal labor law, namely the Labor Management Reporting and disclosure Act (LMRDA). Finally, the Commission did not have jurisdiction to hear this case due to any violation of the Union's Constitution and Bylaws. Since the employment relationship between Springen and Madison Metro was not involved, the Commission could not use the union's Constitution and Bylaws as a basis for asserting jurisdiction over the case.

3. Do Not "Discipline," Just Tell Them to Change

Northland Pines Education Ass'n, Dec. No. 30267-A (WERC, 07/02): The Commission held that a letter of reprimand did not constitute discipline within the meaning of the collective bargaining agreement. The letter placed the teacher on notice that his conduct was inappropriate, but was not itself a form of discipline, therefore it did not count as a step in the disciplinary process. As a result, the district did not commit a prohibited

practice by placing the letter in the employee's file without giving the teacher notice and an opportunity to comment.

658254_1.DOC