

WCPA LEGAL UPDATE

2003 Annual Conference

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I. WATERSHED SUPREME COURT DECISIONS GOVERNING THE POWERS OF CHIEFS AND COMMISSIONS UNDER § 62.13 WIS. STATS.

- A. *Kraus v. City of Waukesha PFC*, 2003 WI 51, _____ Wis. 2d _____, 662 N.W. 2d 294 (2003) (Probationary promotions in a non-Union setting).
- B. *City of Madison v. WERC*, 2003 WI. 52, _____ Wis. 2d _____, 662 N.W. 2d 318 (2003) (Probationary promotions in a Union setting; availability of grievance arbitration).
- C. *City of Madison v. DWD*, 2003 WI. 76, _____ Wis. 2d _____, 664 N.W. 2d 584 (2003) (Collateral discrimination attacks on PFC decision).
- D. *Conway v. Madison PFC*, 2003 WI. 53, _____ Wis. 2d _____, 662, N.W. 2d 335 (2003) (Use of hearing examiners by the Commission).

II. WERC NEWS AND DEVELOPMENTS

- A. Scope of WERC Power Generally
- B. Budget/Staff Cuts
 - 1. Proposed loss of \$400,000 from budget
 - 2. Reduction of four staff positions (22.5 to 18.5)
 - 3. Added responsibilities
- C. Make up of the Commission:
 - 1. Out: Henry Hempe
Paul Hahn
Steve Sorenson
 - 2. In: Paul Gordon
Sue Bauman
Judy Neumann
- D. What Can We Expect?

III. DOWNSIZING ISSUES

- A. Job Security Covered by 62.13(5m), Wis. Stats.

(5m) Dismissals and reemployment.

(a) When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating.

(b) When it becomes necessary for such reasons to reduce the number of subordinates in the higher positions or offices, or to abolish any higher positions or offices in the department, the subordinate or subordinates affected thereby shall be placed in a position or office in the department less responsible according to the subordinate's efficiency and length of service in the department.

(c) The name of a subordinate dismissed for any just cause set forth in this section shall be left on an eligible reemployment list for a period of 2 years after the date of dismissal, except that if the dismissal was for disciplinary reasons the subordinate may not be left on an eligible reemployment list. If any vacancy occurs, or if the number of subordinates is increased, in the department, the vacancy or new positions shall be filled by persons on the eligible reemployment list in the inverse order of the dismissal of the persons on the list.

B. Benefits and Seniority Rights are Controlled by CBA

1. Benefit eligibility (vacation accruals, longevity, etc.)
2. "Seniority" based benefits (shift selection, vacation picks, OT call-ins, etc.)

IV. REASONABLE ACCOMMODATIONS: "WHO WILL CUT THE CHEESE?"

- A. The Facts of *Crystal Lake Cheese Factory v. LIRC*, 258 Wis. 2d 414 (Sup. Ct., 2003).
- B. Cost of Physical Accommodations.
- C. Redistribution of Job Duties.

V. COMMON QUESTIONS FROM MEMBERS

- A. Alcohol Abuse Agreements (See attached)
- B. FLSA Proposed Exemption Rules for Executives, Administrators and Professionals.
 1. Updated "duties" test

- 2. Increase the “salary” test levels.
- C. The Attack From the Weeds: Unsubstantiated Harassment Claims
- D. Stress Disability: Is the Milwaukee Case a Problem? *Bretl v. LIRC*

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