

March 12, 2009

Ms. Wil Mickelson  
Office of State Employment Relations  
East Wilson Street  
Madison, WI 53703

Dear Ms. Mickelson:

On behalf of the State Engineering Association I request that OSER respond, **in writing**, to all parts of the SEA information request of February 27, 2009. Please provide this at your earliest convenience.

Furthermore, in view of the status of the collective bargaining negotiations between the State Engineering Association (SEA) and the State of Wisconsin, SEA hereby proposes to attempt resolution of all outstanding issues through the mediation process pursuant to Section 111.87 Wis. Stats. SEA is also amenable to engaging in the fact finding process set forth in Section 111.88 Wis. Stats. These dispute resolution mechanisms are provided under the laws of the State of Wisconsin. It therefore seems appropriate to use these mechanisms when the parties are unable to reach agreement more than 1 ½ years after the expiration of the last Collective Bargaining Agreement. We request that OSER consider these options for proceeding in the collective bargaining process under the State Employment Labor Relations Act. If OSER has any other ideas for dispute resolution, please advise and we will certainly give those our full consideration. We would appreciate OSER's written response to this proposal.

Very truly yours,

**Haus, Roman and Banks, LLP**

Willie Haus

cc: State Engineering Association

The constitutional requirements of a union's collection of agency fees under a fair-share agreement include: 1) an adequate explanation of the basis of the fee; 2) a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker; and 3) an escrow for the amounts reasonably in dispute. *Browne v. WERC*, 169 Wis. 2d 79, 485 N.W.2d 376 (1992).

To be chargeable to nonunion, public sector employees under a fair share agreement, union activities must: 1) be germane to collective bargaining activity; 2) be justified by the government's vital policy interest in labor peace and avoiding "free riders;" and 3) not significantly add to the burdening of free speech that is inherent in an agency or union shop. *Browne v. WERC*, 169 Wis. 2d 79, 485 N.W.2d 376 (1992).

**111.86 Grievance arbitration.** (1) Parties to the dispute pertaining to the interpretation of a collective bargaining agreement may agree in writing to have the commission or any other appointing state agency serve as arbitrator or may designate any other competent, impartial and disinterested persons to so serve. Such arbitration proceedings shall be governed by ch. 788.

(2) The office shall charge a state department or agency the employer's share of the cost related to grievance arbitration under sub. (1) for any arbitration that involves one or more employees of the state department or agency. Each state department or agency so charged shall pay the amount that the office charges from the appropriation account or accounts used to pay the salary of the grievant. Funds received under this subsection shall be credited to the appropriation account under s. 20.545 (1) (km).

History: 1971 c. 270; 1979 c. 32 s. 92 (15); 1985 a. 42; 1995 a. 27; 2003 a. 33.  
 Cross Reference: See also ch. ERC 23, Wis. adm. code.

**111.87 Mediation.** The commission may appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon its own initiative or upon the request of one of the parties to the dispute. It is the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the commission shall have any power of compulsion in mediation proceedings.

History: 1971 c. 270.  
 Cross Reference: See also ch. ERC 24, Wis. adm. code.

**111.88 Fact-finding.** (1) If a dispute has not been settled after a reasonable period of negotiation and after the settlement procedures, if any, established by the parties have been exhausted, the representative which has been certified by the commission after an election, or, in the case of a representative of employees specified in s. 111.81 (7) (a), has been duly recognized by the employer, as the exclusive representative of employees in an appropriate collective bargaining unit, and the employer, its officers and agents, after a reasonable period of negotiation, are deadlocked with respect to any dispute between them arising in the collective bargaining process, the parties jointly, may petition the commission, in writing, to initiate fact-finding under this section, and to make recommendations to resolve the deadlock.

(2) Upon receipt of a petition to initiate fact-finding, the commission shall make an investigation with or without a formal hearing, to determine whether a deadlock in fact exists. After its investigation, the commission shall certify the results thereof. If the commission decides that fact-finding should be initiated, it shall appoint a qualified, disinterested person or 3-member panel, when jointly requested by the parties, to function as a fact finder.

(3) The fact finder may establish dates and place of hearings and shall conduct the hearings under rules established by the commission. Upon request, the commission shall issue subpoenas for hearings conducted by the fact finder. The fact finder may administer oaths. Upon completion of the hearing, the fact finder shall make written findings of fact and recommendations for solution of the dispute and shall cause the same to be served on the parties and the commission. In making findings and recommendations, the fact finder shall take into consideration among other pertinent factors the principles vital to the public interest in efficient and economical governmental administration. Cost of fact-finding proceedings shall be divided equally between the parties. At the time the fact finder submits a statement of his or her costs to the

parties, the fact finder shall submit a copy thereof to the commission at its Madison office.

(4) Nothing herein shall be construed as prohibiting any fact finder from endeavoring to mediate the dispute at any time prior to the issuance of the fact finder's recommendations.

(5) Within 30 days of the receipt of the fact finder's recommendations or within such time period mutually agreed upon by the parties, each party shall advise the other, in writing, as to the party's acceptance or rejection, in whole or in part, of the fact finder's recommendations and, at the same time, send a copy of such notification to the commission at its Madison office. Failure to comply with this subsection, by the state employer or employee representative, constitutes a violation of s. 111.84 (1) (d) or (2) (c).

History: 1971 c. 270; 1985 a. 42; 1993 a. 492; 1995 a. 225.  
 Cross Reference: See also chs. ERC 25 and 40, Wis. adm. code.

**111.89 Strike prohibited.** (1) Upon establishing that a strike is in progress, the employer may either seek an injunction or file an unfair labor practice charge with the commission under s. 111.84 (2) (e) or both. It is the responsibility of the office to decide whether to seek an injunction or file an unfair labor practice charge. The existence of an administrative remedy does not constitute grounds for denial of injunctive relief.

(2) The occurrence of a strike and the participation therein by an employee do not affect the rights of the employer, in law or in equity, to deal with the strike, including:

(a) The right to impose discipline, including discharge, or suspension without pay, of any employee participating therein;

(b) The right to cancel the reinstatement eligibility of any employee engaging therein; and

(c) The right of the employer to request the imposition of fines, either against the labor organization or the employee engaging therein, or to sue for damages because of such strike activity.

History: 1971 c. 270; 1977 c. 196 s. 130 (9); 1977 c. 273; 1985 a. 42; 1989 a. 336; 1995 a. 27; 2003 a. 33.

**111.90 Management rights.** Nothing in this subchapter shall interfere with the right of the employer, in accordance with this subchapter to:

(1) Carry out the statutory mandate and goals assigned to a state agency by the most appropriate and efficient methods and means and utilize personnel in the most appropriate and efficient manner possible.

(2) Subject to s. 111.91 (1) (am), manage the employees of a state agency; hire, promote, transfer, assign or retain employees in positions within the agency; and in that regard establish reasonable work rules.

(3) Suspend, demote, discharge or take other appropriate disciplinary action against the employee for just cause; or to lay off employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive.

History: 1971 c. 270; 1995 a. 27.

**111.91 Subjects of bargaining.** (1) (a) Except as provided in pars. (b) to (e), matters subject to collective bargaining to the point of impasse are wage rates, consistent with sub. (2), the assignment and reassignment of classifications to pay ranges, determination of an incumbent's pay status resulting from position reallocation or reclassification, and pay adjustments upon temporary assignment of classified employees to duties of a higher classification or downward reallocations of a classified employee's position; fringe benefits consistent with sub. (2); hours and conditions of employment.

(am) In collective bargaining units specified in s. 111.825 (1m), the right of the employer to transfer employees from one position to another position and the right of employees to be transferred from one position to another position is a subject of bargaining.