

Last week I attended the annual conference of the Wisconsin Public Employers Labor Relations Association (WPELRA). As its name implies, WPELRA is a professional organization representing public sector employers in labor relations. Members of WPELRA are primarily county and city officials. WPELRA is affiliated with a similar national association.

WPELRA conducts a number of workshops, webinars, and other training throughout the year. Its supervisor seminar every fall is one of the best training programs I've attended, bar none. And WPELRA has proven to be an especially valuable resource over the past couple years with Acts 10 and 32 drastically changing the laws for labor relations and bargaining in the public sector. Among the more informative sessions of this annual conference were a series of updates.

Legislative Update

Mark O'Connell of the Wisconsin Counties Association and Dan Thompson of the League of Wisconsin Municipalities provided commentary on recent and upcoming legislation at the federal and state levels. At times throughout the year, I will hear the city perspective from Dan, so I appreciated the chance to hear a slightly different view from the counties.

Although both organizations focus on state legislation in their day-to-day operations, much of their presentation was about the federal deficit and federal tax reform. They also talked about the improving economy, a reduction in the unemployment rates, and increasing household wages.

But they explained that Wisconsin's increasing households wages is a function of greater workforce participation and working more hours. On average, we've actually seen a decline in per hour wages. In these terms we're more comparable to Arkansas than Minnesota.

WERC Update

James Scott of the Wisconsin Employment Relations Commission (WERC) provided an overview of the commission, recent decisions by WERC, and noted the impact of several ongoing lawsuits.

While recent changes in the state law regarding public sector unions have been tried and appealed in court, the litigation has delayed WERC's role in rule making for base wages and in recertification elections for public sector unions. He also noted that Circuit Court decisions have interpreted Acts 10 and 32 in both directions, finding both for and against the plaintiff unions, leading to additional uncertainty during the process.

Among his most important comments was that a temporary hiatus in bargaining is not a refusal to bargain. An employer would not violate its legal duty to bargain by

temporarily suspending bargaining due to the uncertainty of law as to the status of Acts 10 and 32.

I've heard this before, but I appreciated hearing it again. The city's collective bargaining agreements expire at the end of 2013. And with the current state of the law, we'd likely begin negotiations with the police unions this summer. But with multiple lawsuits and appeals, many issues are unresolved. We do not need to feel pressured to bargain this summer. We could choose to wait out the uncertainty and bargain some or all of the agreement after the litigation has played out.

Legal Update

Attorney Robert Mulcahy of Michael Best & Friedrich discussed over a dozen lawsuits related to Acts 10 and 32. As I've mentioned already, there have been a variety of lawsuits, countersuits, and appeals the last couple years. It was immensely helpful to have an expert in the field give a detailed overview of the issues, history, decision, and current status on each of these cases.

A suit brought by the Madison Teachers Inc was decided in Dane County Circuit Court in September 2012. The news headlines immediately following the court's decision trumpeted this as a huge win for the unions. With reflection and a careful reading of the decision, it was a win for the union but not huge.

The decision holds that wages are the only mandatory subject of bargaining; hours and conditions of employment are permissive subjects of bargaining. Similarly, the employer may negotiate fair share wage deductions but cannot be required to make such a withholding. These aspects of the decision did loosen the impact of Act 10 on general employees.

But the decision did not overturn the elimination of interest arbitration. This means that if the employer and union become deadlocked in negotiations, then the employer can implement its final offer. The process may have changed, but not the final results. This might hurt workplace morale. But from a practical standpoint, whatever the employer may have implemented as policy it still can.

The other key issue in this case is that the decision has been appealed, and there has been a motion to stay the circuit court's decision pending the appeal. In considering the stay, the Court of Appeals has requested additional briefings on a series of questions. Central in these questions is the inference that the Circuit Court's decision does not apply outside of Dane County.

The decision whether or not to granting the stay is expected within the next month. If the decision about granting the stay also makes clear whether or not the Circuit Court decision applies outside Dane County, then it will go a long way toward clearing the current uncertainty about the status of Act 10.

Round Tables

We had a series of round table discussions around the topics of wage studies, policies, and grievances. Evansville has collective bargaining agreements in place through December 2013, so most of the impacts of Acts 10 and 32 have not yet taken effect here. It was informative to hear about the experiences of other communities which are already in the post-Acts 10 and 32 environment.

A number of counties and larger cities have conducted (or are presently conducting) wage studies to look at job skills and duties in comparison to jobs in the broader public and private labor market. The studies have had mixed results, with some positions being found paid above the market and some below the market. In most cases, the trend has been to “red-circle” those above the market rate and freeze their wages. Several municipalities commented on the value in having an appeals process in case an employee felt mis-ranked.

Even if there was an immediate cost to implement the wage study by raising the wages of employees from below the market rate, these municipalities felt it would save money over the longer term. It also made wages more consistent and fair within the municipality and in comparison to the broader labor market.

Cities and counties which have updated their personnel policies to reflect the post-Acts 10 and 32 world have found benefit in taking an approach to hearing input and ideas from employees prior to implementing changes.

Providing flexible scheduling has been viewed positively by employees where it has been implemented. In general, overtime has been reduced and saved money for the employer, but they have needed to consider provisions for on-call positions such as snowplowing. Residency requirements have also been a major change for some larger cities.

Overall they seemed pleased with their new and updated policies; although, one noted that it will always be a work in progress, subject to revisions and future updates. And the counties and cities which have already gone through these updates agreed on the importance of making sure that department heads and supervisors understand the new policies.

Concluding Comments

Acts 10 and 32 changed the landscape of public employment. And there is still uncertainty with various lawsuits and appeals. But whatever the final court decisions, it is extremely unlikely to go back to how it was before. We will need to adjust to new procedures and parameters under the law.

I expect Evansville and other public employers will want to be in a position to keep and attract quality employees. Over time, a labor market will emerge to determine

appropriate and fair wages and benefits. But where a city can really stand out is in its culture, in its communications systems, and in its approach to policy and management.

Like most everything, it starts with the basics: trust and relationships. When you have those, you can achieve an abundance of success.