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The Wisconsin Employment Relations Commission will reinstitute annual certification elections for collective bargaining representatives who want to continue representing school district employees. On July 9, 2013, Governor Walker approved WERC's Draft Rules for conducting annual certification elections. According to the Rules, the existing collective bargaining representative of school district employees must file a petition for election on or before August 30, 2013 requesting WERC to conduct a secret ballot election.

If a collective bargaining representative does not receive at least 51% of the votes from bargaining unit employees eligible to vote in the election, then the collective bargaining representative is decertified, unless a runoff election is necessary, and no collective bargaining representative will represent that group of employees for collective bargaining purposes. If a timely petition is not filed by a collective bargaining representative, then the collective bargaining representative is decertified and no collective bargaining representative will represent that group of employees for collective bargaining purposes.

The Rules establish the consequences of a collective bargaining representative's failure to timely file a petition by August 30. According to ERC 70.03(7)(b)1-2, if a timely petition is not filed by August 30, then the following consequences shall apply:

- If no collective bargaining agreement is in effect, then the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of August 30, 2013.
- If a collective bargaining agreement is in effect, then the existing representative shall no longer be entitled to exclusive representative status for purposes of collective bargaining as of the expiration of the agreement.
- The employees in the bargaining unit shall not be included in a substantially similar collective bargaining unit for at least a period of one year following August 30 or the expiration of the collective bargaining agreement.

A School District may request that WERC issue notice to a collective bargaining representative of these consequences.

We believe WERC will use the same telephonic voting process previously used by WERC during the first round of certification elections involving School Districts. We believe elections should occur during October and November and results should be available around December 1, 2013.

School Districts must fulfill specific obligations when a petition for election is filed. If a labor organization files a petition for election with WERC, then the School District should anticipate receiving from WERC an electronic notice of the petition for election. The School District must create an eligible voter list. Within ten days of WERC's receipt of the petition, the School District must give WERC and the petitioning labor organization an electronically sortable alphabetical list of the names of the personnel and the last four digits of said personnel's social security numbers who were employed in the collective bargaining unit involved as of the pay period in which the first timely petition was filed or based on another date specified by the WERC. WERC may request a list of the employees' mailing addresses including the zip code and the employee's work unit and location, as well as two sets of mailing labels containing the employee's name and mailing address suitable for use in a mail ballot procedure. The School District must also post notices of the election.

School Districts should carefully avoid several potential election pitfalls. The School District must be mindful of their obligation to only share voter information of those employees who the employer believes must be included in the bargaining unit. Employers should carefully assess whether an employee is a supervisor, a confidential employee, or a manager before determining whether to include that employee in the bargaining unit. Employers should also work closely with legal counsel to ensure the School District has not waived its rights to challenge the eligibility of voters and other aspects of the election. The Rules establish specific timeframes during the election process where specific challenges must be raised by the employer and bargaining representative.

School District administrators and Board members should also be mindful of their conduct after a petition for election is filed. Administrators and Board members may advocate against unionization during the election process. Administrators and Board members, however, should avoid engaging in unlawful conduct during an election, which could include engaging in promises of benefits or threats of consequences based on the outcome of an election, as well as engaging in surveillance or interrogation of employees. School Districts should consider election conduct training for administrators and Board members to minimize potential challenges by disgruntled individuals in the event a labor organization's petition for election is unsuccessful.

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