

It's Called A "Workplace Safety" Grievance, But What Is This Really About?

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School districts continue to navigate the challenges associated with delivering educational instruction during a pandemic. Wisconsin's status as a COVID-19 "hot spot" continues, leaving districts in the position of having to closely monitor local data and make difficult decisions, oftentimes pivoting between instructional delivery models. Many school districts have seen a rash of workplace safety grievances filed pursuant to Wis. Stat. § 66.0509(1m) by district employees or union leadership raising workplace safety concerns and, in many instances, seeking relief demanding that districts move exclusively to a virtual instruction environment. This development is disappointing, considering the extensive time, effort, expense, and concern of school districts across the State in assuring safe environments for students and staff for face-to-face learning in school.

These grievances seek remedies that are a direct affront to the broad powers and authority of school boards. School districts should thoroughly review the allegations in the grievance in the context of a board of education's authority and responsibilities under applicable law. We recommend that school districts take a firm stance on the concept of grievability of these issues. While Wis. Stat. § 66.0509(1m) and local grievance procedures may allow for a grievance involving a specific workplace safety issue, that does not translate into differences staff may have over the method or delivery of instruction. In many instances, the remedy the grievants seek would usurp the power and authority of that local board of education to determine how to best deliver instruction, whether it be virtual, hybrid, or in-person for students in their community. In such a case, we believe there is conflict between a grievance procedure and the statutes governing school districts that would otherwise empower district administration or an impartial hearing officer to override a decision of the board of education relating to how instruction is delivered. Relying on the broad powers of the school board and as a matter of law, a district should consider refusing to process the grievance because the requested remedy is incapable of implementation and instead pursue alternative measures to address any legitimate concerns of employees outside of the statutory grievance process.

Similarly, school districts must also consider whether the relief requested through the grievance is prohibited by virtue of Wis. Stat. § 111.70 or any other statutory provision. Many of the grievances that have been filed demand that the union have a "seat at the table" when decisions concerning virtual or in-person instruction are made. While employee input is certainly important, providing a formal role to a union or group of employees raises concerns surrounding the statutory prohibitions on collective bargaining involving matters other than total base wages.

Based on a review of the workplace safety grievances filed thus far, it appears the allegations and remedies are a coordinated effort. Therefore, school districts should, to the extent possible, recognize that effort and recognize the potential impact of their district's response on other districts across the state as school districts make tough decisions in light of the pandemic.

Additionally, armed with the knowledge that workplace safety grievances are on the rise, school districts should act now to review their grievance procedures to ensure appropriate procedures are in place to address workplace safety grievances, as well as to ensure compliance with Wis. Stat. § 66.0509(1m). Proactively reviewing grievance procedures can help ensure a school district is able to address any workplace safety grievance that may be filed in an effective and legally compliant manner.

Above all else, we encourage school districts to engage legal counsel early to ensure their district is best positioned to address grievances while proactively putting the district in a solid legal and strategic position moving forward.

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