Investigating Employee Misconduct

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Why Investigate and Who will Investigate?

Laws, policies, and rules effecting the investigation

Outside Parties and Off-Duty Conduct

Interim Action and Investigation

Due Process

Why investigate?

Impact on student achievement

Workplace environment

Liability concerns
What should you do with a complaint?

- Board policy complaint procedures
- Employee handbook complaint procedures
- Contractual complaint procedures
- Do not discount it and throw it away.

Who will investigate?

- Policy requirements
- Competency of investigator
- Impartiality of investigator to all parties involved
- Investigator as a witness in a potential future proceeding [impartial hearing officer, board, court, etc.]
Who will investigate?

- Cost/productivity concerns
- Political aspects of who conducts the investigation
- Legal complexities of the investigation

Do the answers change if . . .

- Complaint was not in writing?
- Complainant requested that he/she remain anonymous?
- Complaint is withdrawn?
- Complainant requested that the complaint remain confidential?
Board Policies/Administrative Rules

- Complaint policy - general
- Complaint procedures - employee handbook
- Board policy on extracurricular activities
- Board policy on corporal punishment

Board Policies/Administrative Rules

- Board policy on pupil nondiscrimination
- Board policies and handbook provisions on employee conduct
- Board policy on nondiscrimination
Contract and/or Employee Handbook Language

- Employee discipline & nonrenewal procedure
- Association/Employee representation rights
- Complaint and/or grievance procedure
- Personnel file language
- Extracurricular contracts or Letters of Assignment

Statutory Grievance Procedure

- Grievance Procedure
  - Any grievance procedure created to satisfy the requirements of [Wis. Stats. §66.0509](https://laws.legis.wisconsin.gov/statutes/title66/chapter66.05) must cover at least all of the following:
    - a grievance procedure that addresses employee terminations;
    - employee discipline; and
    - workplace safety.
Statutory Grievance Procedure

- Grievance Procedure
  - If a local governmental unit creates a grievance procedure under these provisions, it must include the following:
    - a written document specifying the process that a grievant and an employer must follow;
    - a hearing before an impartial hearing officer; and
    - an appeal process in which the highest level of appeal is the governing body of the local governmental unit. Wis. Stats. §66.0509

Grievance Procedure - Wis. Stats. §66.0509 – Recent Court Decision

- A county employee terminated for failing to have a driver’s license following conviction for operating a motor vehicle while intoxicated (first offense) was denied an opportunity to grieve the termination.
  - County grievance process excluded terminations for lack of qualification or license.
  - Circuit court granted summary judgment for the county, finding that the county could exclude terminations of lack of qualification or license from the grievance process.
Grievance Procedure - §66.0509 (1m) – Recent Court Decision

- The court of appeals overturned the decision.
  - The statute does not define “terminations,” and the County presents no reason to suppose that the term has a technical meaning. When a statutory term is not defined, we may consult a dictionary to ascertain the term’s common meaning. The word “termination” is a form of the verb “to terminate.” The AMERICAN HERITAGE COLLEGE DICTIONARY 1399 (3rd ed. 1993) provides definitions of “terminate” as “[t]o discontinue the employment of; dismiss.”
  - In rejecting the County’s arguments, the court stated that, while it will not always be clear whether a “termination” within the meaning of the statute occurred, in this case, the action taken against the employee was a termination “within the plain meaning of the statute.”
  - [Link to the case]

Contract and/or Employee Handbook Language

- Individual teacher contracts, etc., as applicable
- Probationary period (if applicable)
- Transfer/reassignment language
- Just cause/Good and Sufficient Reasons protection or other job security provisions (if applicable)
Discipline & Discharge Standard

- Determined by:
  - Employee Handbooks, Board Policy, Individual Contracts and Non-renewal statutes
  - Just Cause
  - Arbitrary and Capricious
  - Employment at Will
  - No statutory standard for support staff.
  - Employee may file an Act 10 grievance as previously noted over discipline or termination/discharge.

Discipline & Discharge Standard

- **Just cause**: Most administrator and teacher’s individual contracts include provisions requiring that the employer have cause or just cause for termination of the contract during its term.
  - “Just cause” is a standard that focuses on the conduct, qualifications and performance of the employee. A school district does not have just cause to terminate an administrator when it has budgetary problems and terminates an administrator to reduce costs. Ploederer v. Osseo-Fairchild School District, Eau Claire County Cir. Ct., 2008.

- **Non-Arbitrary or Non-Capricious Reasons**: Brown County Circuit Court Judge in Schneider held that a teacher contract could be terminated during the contract term for non-arbitrary and non-capricious reasons.
Discipline & Discharge Standard– Just Cause

- Various definitions of “just cause”
  - Two essential elements:
    - Factual basis for discipline
    - Reasonableness of the penalty


Discipline & Discharge Standard - Teachers

**Wisconsin Case Law:** A school board has the authority to dismiss a teacher before the expiration of the teacher’s contract for *good and sufficient cause*. See Curkeet v. Joint School District (1914), 159 Wis. 149, 152, 153, 149 N. W. 708. and Millar v. Jt. School District No. 2, 2 Wis. 2d 303 (1957).
Wisconsin Case Law: "Any inexcusable substantial violation by an employee of instructions, or neglect of duty of a substantial character, or any misconduct inconsistent with the relations of master and servant and which might injuriously affect the former's business, regardless of any express agreement on the subject, constitutes good ground for discharging the employee."


Teachers: 118.22(2) . . . No teacher may be employed or dismissed except by a majority vote of the full membership of the board.

Nothing in this section prevents the modification or termination of a contract by mutual agreement of the teacher and the board.

Administrators: No administrator may be employed or dismissed except by a majority vote of the full membership of the school board. § 118.24 (6).
State and Federal Statutory Provisions

- Title VII, ADA
- Wisconsin Fair Employment Act
  See Wis. Stat. §§ 111.31-.395.
- Wisconsin criminal code
  See Sections 939 et seq.
- Nonrenewal processes
  See Wis. Stat. § 118.22.
- License revocation - Wis. Stat. § 115.31 (described in further detail herein).
- U.S. Constitution (1st, 4th, 5th, 14th Amendments)

Examples of Wisconsin Protective Labor Provisions with Anti-Retaliation Protections

- Wisconsin Fair Employment Act
  See Wis. Stat. §§ 111.31-.395.
  http://docs.legis.wisconsin.gov/statutes/statutes/111/II/322
- Wage Claims
- Family and Medical Leave Act
  - http://docs.legis.wisconsin.gov/statutes/statutes/103/10/11
- Public Employee Safety and Health
  - http://docs.legis.wisconsin.gov/statutes/statutes/101/I/055
- Knowledge of toxic chemicals
  - http://dwd.wisconsin.gov/er/discrimination_civil_rights/employee_right_to_know_law.htm
Consultation with Legal Counsel

• Provide counsel with the complaint/factual background.
• Counsel is available to guide you through the process.

Consultation with Legal Counsel

• Discuss steps to ensure a neutral, thorough investigation.
• Counsel can provide estimated timeline for the investigation.
Involve Law Enforcement?

Do the alleged actions of the employee necessitate that the district administrator contact law enforcement before commencing his/her investigation?

Investigation Coordination With Law Enforcement

If alleged misconduct potentially constituted criminal conduct, you will want to work with law enforcement and the district attorney’s office on coordinating your investigation.
Investigation Coordination With Law Enforcement

- An investigation or recommendations resulting there from need not be postponed until criminal proceedings are completed. Courts have routinely recognized the need for school districts to proceed with dispatch in these situations despite the pending criminal charges. *Shell Lake Sch. Dist.*, WERC Dec. No. 20024-A/B (5/26/1983), aff’d case no. 84-CV-238 (Barron County Cir. Ct., 2/6/1985).

Investigation Coordination With Law Enforcement

- However, if board ignores grievant’s union representative and criminal counsel pleas to delay evidentiary hearing until after criminal trial, the timing of the hearing may be unfairly prejudicial to the grievant. *Arbitration Award (Houlihan, 3/1983)* reversed on other grounds, 136 Wis.2d 263 (1987).
Interim Action

- What action do you wish to take during the investigation?

Interim Action - Administrative Paid Leave

Administrative paid leave

- Involuntary paid leave may be deemed a form of discipline if it substantially impacts upon the employee’s future employment opportunities. See *Swick v. City of Chicago*, 11 F.3d 85 (7th Cir. 1993).
Interim Action – Administrative Unpaid Leave

- Administrative unpaid leave
  - Creates issues with respect to back pay with interest if the employee is reinstated. This must be balanced with the political realities of paying an employee who has been accused of a violent crime. See WASB Legal Comment, June 1999. http://wasb.org/websites/legal/File/legal-comments/C199906.PDF

Interim Action - Administrative Reassignment/Demotion

Change in the accused employee’s assignment/work location to remove him/her from the individuals involved in the dispute. Reassignment/demotion may also be a form of discipline. (Head v. Chicago Sch. Reform Bd. of Trustees, 225 F.3d 794 (7th Cir. 2000)). WASB Legal Note Fall 2001.

Note: This may also be covered by the statutory grievance procedure. Wis. Stats. 66.0509
**Interim Action - Leave**

Factors weighing *in favor of* a leave

- Student/employee safety
- Ability to obtain untainted evidence

**Interim Action - Leave**

Factors weighing *against* a leave

- Cost of leave
- Loss of regular teacher in the classroom and loss of regular employee
Off-Duty Conduct

Does the alleged off-duty conduct **substantially relate** to the employee’s job requirements?

If the alleged misconduct occurred off-duty, analyze whether the off-duty conduct substantially relates to the employee’s job requirements. *Review the Wisconsin Fair Employment Act (sections 111.321 and 111.335 of the Wisconsin statutes). See also WASB Legal Comment, October 2001.*

### Off-Duty Conduct

- Teacher/union president letter addressing working conditions is protected speech under 1st Amendment:
  - Teacher wrote letter to community group complaining about compensation and working conditions for adjunct teaching staff.
  - Community college discharged teacher, citing letter as misconduct supporting discharge.
  - Teacher filed suit in federal court, claiming discharge was retaliation for her protected speech and denial of her property interest in completing her employment contract without due process; district court dismissed.
Teacher/union president letter addressing working conditions is protected speech under 1st Amendment:
• 7th Circuit Court reversed and remanded the case to district court.
• The letter related to a matter of public concern rather than a purely personal grievance and was protected speech.
  o The teacher had an employment contract for the semester, creating the property interest that may not be taken without due process.
  o Meade v. Moraine Valley Community College, 7th Cir. Ct. App., 10/30/2014
  o Meade v. Moraine Valley Community College

Notice of no interference interplay with concerted activity: Wis. Law Enforcement Assn. Local 2 v. University of Wisconsin System, No. 32239-A, (Levitan 10/31/2008), aff’d No. 32239-B (WERC 8/10/2009)

Expectation of cooperation: State that the district expects the employee to cooperate in full with the investigation. (See Garrity discussion below and see WASB Legal Comment from June 2008).
Notice of due process rights

Notify the accused

Timing issues

Investigation - Statements About Investigation

- Determine whether you wish to disseminate a notice to pertinent staff involved in the investigation.
- Notice of no interference
- Notice of person(s) who may contact the recipient of the notice
- Public/media contact: Inform the employee/staff witness who in the organization should receive any public/media inquiries regarding the employee.
Investigation - Interviewing Witnesses

Identify persons to be interviewed:
- Complainant/alleged victim
- Witnesses
- Accused employee

Investigation - Interviewing Witnesses

- Opportunity to meet
- Witnesses to meeting
- Notes will be taken
- Confidentiality vs. discrete
- Meeting is fact-finding in nature; no conclusions will be reached at the meeting.
Investigation - Interviewing Witnesses

- Good faith testimony will be protected from retaliation.
- Disclose defamation issues
- Write down several questions in advance: Ask the same core questions of each witness/victim/offender. Allow the flexibility to ask follow-up questions.

Investigation - Interviewing Witnesses

- Written statement: Have the complainant submit a written statement detailing the incident(s) giving rise to the complaint. Statement should be factual rather than conclusive.
Investigation - Questions Asked of Complainant/ Alleged Victim—Minor or Adult

- What did the complainant witness? Does video exist?
- What, where, when, how?
- Will the complainant testify at a later hearing?
- Is there a personal relationship between the complainant and the accused?

Investigation - Post-Meeting

- **Summary memorandum on complainant’s testimony:** Prepare summary memorandum on third-party complaint whether or not complaint is put in writing. This document is a working document for administrative purposes only at this time. Do not draw conclusions on the guilt of the accused. Do assess the credibility of the complainant and his/her testimony.
Investigation - Post-Meeting

Current investigation:

- Notify complainant that since this is an ongoing investigation, you will not be discussing this matter with the complainant in the short term. (*Public records issues re: current investigations. See Wis. Stat. § 19.36(10)(b)).
- "Investigation" in section 19.36(10)(b) includes only that conducted by the public authority itself as a prelude to possible employee disciplinary action.

Investigation - Post-Meeting

Current investigation:

- An investigation achieves its "disposition" when the authority acts to impose discipline on an employee as a result of the investigation, regardless of whether the employee elects to pursue grievance arbitration or another review mechanism that may be available.

*Local 2489 v. Rock County,* 2004 WI App 210, 277 Wis. 2d 208, 689 N.W.2d 644. See also *Zellner v. Cedarburg Sch. Dist.*, 2007 WI 53, 300 Wis. 2d 290, 731 N.W.2d 240.
Investigation - Post-Meeting

- Reporting Requirements:
  - Public authorities/agencies will be informed if required by law or otherwise appropriate.
  - Child abuse: Wis. Stat. § 48.981;
  - Corporal punishment: Wis. Stat. § 118.31; applicable criminal statutes; etc.

Investigation - Questions Asked of Complainant/ Alleged Victim—Minor

- Parental permission?
- Parental participation?
- Conduct interview during a non-course period.
- Do questions change if Police Liaison officer is involved?
Investigation - Other Witnesses

- Other possible witnesses (students, administrators, etc.)
- Determine if witness is potential subject of the investigation and subject to union/employee representation rights or witness is not a potential subject of the investigation.

Investigation - Meet with the Accused

- Representation—*Weingarten* rights— if applicable.
- It is the WASB’s belief that representation rights still exist based upon prior case law.
Investigation - Meet with the Accused


Investigation - Meet with the Accused

- Weingarten rights are based in Section 7 of the National Labor Relations Act (NLRA). Even though the NLRA does not apply to public employees, the WERC referenced it in interpreting Wisconsin’s similar statutory protections for municipal employees under Wis. Stats. §111.70(2). The aforementioned statutory provision, Wis. Stats. §111.70(2), was not substantively affected by 2011 Wisconsin Act 10.
Investigation - Meet with the Accused

- Due to this fact, we believe that Weingarten rights are still in effect and employees have the right to a representative in discipline or termination proceedings.
- Fifth/Fourteenth Amendment concerns (Garrity Warning)
- Representation offered under statutory grievance procedure or internal employee handbook procedures

Investigation- Meet with the Accused

- Witnesses to meeting
- Notes/recordings
- Confidentiality
- Fact-finding in nature - no conclusions will be made at the meeting.
In *Garrity v. New Jersey*, 385 U.S. 493 (1967) the U.S. Supreme Court held the following:

- **Statements obtained after Garrity warning has been provided:**
  Statements obtained in the course of an investigatory interview under threat of termination from public employment could not be used as evidence against the employee in a subsequent criminal proceeding(s). However, while the statements the employee makes may not be used against him/her in a subsequent criminal proceeding, they can still form the basis for discipline on the underlying work-related charge.

- **Refusal to answer after Garrity warning has been provided:**
  If, however, the employee refuses to answer questions after he/she been assured that his/her statements cannot be used against him/her in a subsequent criminal proceeding, the refusal to answer questions thereafter may lead to the imposition of discipline for insubordination.
Investigation - Garrity Warning

- As detailed below from the WASB Legal Comment, *An Employee’s Duty to Cooperate in Internal Investigations*, from June 2008, the *Garrity* warning requires the employer to advise the employee as follows:
  - You are entitled to the rights guaranteed by the U.S. Constitution, including the right not to be compelled to incriminate yourself;
  - If you refuse to answer questions relating to the performance of your official duties, you will be subject to discipline, which may include your dismissal; and

Investigation - Garrity Warning

- The *Garrity* warning requires the employer to advise the employee as follows:
  - If you do answer, neither your statements nor any information obtained as a result of your statements can be used against you in any subsequent criminal proceeding, although your statements may be used against you for discipline purposes. Marvin F. Hill Jr. & James A. Wright, *Employee Refusals to Cooperate in Internal Investigations: “Into the Woods” with Employers, Courts and Labor Arbitrators*, 58 MISSOURI L.R. 869, 903 (1991).
Investigation - Garrity Warning

- Provide the employee with a written form advising him or her of the Garrity warning.
- Witnesses to the offering and signing of the Garrity warning form.

Other Evidence

- Attendance records/timesheets
- Computer files
- Drug/alcohol testing
- Electronic mail
- Mental/psychological testing, physical testing
Other Evidence

- Other eyewitnesses
- Photographs
- Video files/surveillance tapes
- Telephone logs
- Physical search of facilities/electronic mail/computer files

Other Considerations

- Investigation summary report
  - Decide whether you are going to draft an investigation summary report.
  - Investigation summary report is a public record which may be accessed under Wisconsin's public records law.
Other Items to Consider

- Investigation summary report
  - Press/Media Coverage
  - Open Meetings Law
    - Section 19.85(1)(b) of the Wisconsin statutes sets forth the right of the accused employee to receive actual notice of any evidentiary hearing which may be held prior to final action being taken and any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This section does not apply where the employee requests that an open session be held.

Public Records Requests

- Current investigations

- Employees’ emails
  (See Schill v. Wis. Rapids Sch. Dist. 2010 WI 86)

- Employees’ internet search history
  (See Zellner v. Cedarburg Sch. Dist.)
Other Considerations

- License revocation: Section 115.31 of the Wisconsin statutes
- Unemployment compensation
- Loss of continued health care coverage due to gross misconduct

Other Considerations – License Revocation

- License revocation: Section 115.31 of the Wisconsin statutes delineates reporting requirements if the teacher is:
  - charged with a crime under Chapter 948;
  - convicted of a crime under Section 940.225(3m).
Other Considerations–License Revocation

- The teacher is dismissed or has contract non-renewed by the employer based in whole or in part on evidence that the person engaged in immoral conduct. WIS. STAT. § 115.31(1)(c) (“Immoral conduct” means conduct or behavior that is contrary to commonly accepted moral or ethical standards and that endangers the health, safety, welfare or education of any pupil.”); See Cedarburg Educ. Ass’n. v. Cedarburg Bd. of Educ., 2007AP852 Wis. Ct. App. 2008. (In an unpublished decision, the Wisconsin Court of Appeals ruled that a teacher who viewed adult images on his school computer when no students were present had engaged in immoral conduct).

- The teacher resigns and the administrator has a reasonable suspicion that the resignation relates to the person’s having engaged in immoral conduct.
Due Process

When due process is required:

- 14th Amendment
- Liberty interest
- Property interest

Due Process

What due process requires:

- Procedural due process
- Due process hearing
- Substantive due process
The 14th Amendment to the U.S. Constitution prohibits the government (school boards included) from depriving any person of **liberty or property** without due process of law.

Due process issues may arise when a board decision to nonrenew or terminate an administrator’s or teacher’s contract raise property or liberty interests.

Administrators and teachers have a **property interest** in completing the term of their contracts.
- Termination of employment before the end of a contract raises a property interest.
- Nonrenewal of a contract does not in itself raise a property interest, unless the contract requires just cause for nonrenewal.
- A suspension without pay probably raises a property interest, although “the Supreme Court has not had occasion to decide whether due process protections extend to discipline short of termination, Gilbert v. Homar, 520 U.S. 924, 929.” Klaus v. Eau Claire Area School District, Federal District Court, Western District of Wisconsin, 7/13/10.
Due Process – Liberty Interest

- Administrators and teachers have a **liberty interest** in their good name and reputation. A liberty interest arises where an allegedly false charge is made against an administrator that:
  - Damages the administrator’s standing in the community (charges of dishonesty, treason or immorality); or
  - Limits the administrator’s freedom to take advantage of present or future employment opportunities.

Due Process – Property Interest

- Due process requirements when **property** interests are involved:
  - Notice of charges.
  - Hearing prior to termination or nonrenewal.
  - An explanation of evidence used to support charges.
  - The administrator must be given an opportunity to state his or her case.
  - The board’s decision must not be arbitrary or capricious, biased or discriminatory.

- If a liberty interest is at state, due process requires that the administrator be given an opportunity prior to discharge or nonrenewal to clear his or her name.
Due Process

- **Due process is a flexible concept** – the process that is due varies with the significances of the individual and governmental rights involved.

   ![Balance Scale]

- **Impartial Decision Maker**: Due process requires that the decision maker be impartial.

   ![Decision Meeting]

Due Process

- Administrators and school boards may contract for less than what due process may otherwise be required.
  - In Klaus v. Eau Claire Area School District, Federal District Court, Western District of Wisconsin, 7/13/10, the contract specified that, before being disciplined, the administrator would receive a meeting before the full Board on the merits of the proposed discipline and that the discipline would be neither arbitrary nor capricious.

Court Cases

  - Beischel was nonrenewed and argued that the public hearing given to her was unfair based on the claim that board members were biased, in part because she had provoked them.
  - The court rejected this claim.
    - The U.S. Supreme Court ruled in Hortonville School District v. Hortonville Education Association, (1976) that school board members enjoyed a presumption of honesty and integrity when conducting a hearing regarding the continued employment of public employees (in that case teachers on strike).
The employee has the burden to prove a risk of actual bias on the part of the school board or its members.

“. . . actual bias might arise if an adjudicator has a pecuniary interest in the outcome or has been a target of personal abuse from the party before him.”

The court found that Beischel had not met that burden of proof and dismissed her claim.

**Court Cases**

  - A change in the administrator’s job duties, with no change in job title, salary and benefits did not violate Ulichny’s contract, Wisconsin law or federal due process requirements.
    - The contract did not specify particular administrator job duties so the change in duties did not violate the contract.
    - The change in job duties was not sufficient to support Ulichny’s claim that she was constructively discharged.
    - The court found that the Superintendent’s expression of concerns regarding Ulichny’s relationship with teachers and parents did not damage her reputation to the degree that would support a charge of deprivation of a liberty interest.
Court Cases

- **Kabes v. River Falls School District, Wis. Ct. Appeals, 2004.**
  - Kabes was the high school principal and Buchholz the assistant high school principal at River Falls. Each had a contract with the school board specifying their respective positions as being the high school principal and assistant principal. The school board reassigned Kabes to an elementary school principal position and Buchholz to a middle school assistant principal position in 2002. Both brought suit, claiming that the reassignment constituted a breach of their contracts. The circuit court agreed and the district appealed.
  - The Court of Appeals noted that both Kabes’ and Buchholz’s contracts specified their positions as being at the high school. It rejected the school board argument that section 118.24(3) Wis. Stat. supersedes the individual contract to allow a reassignment in conflict with that contract. It noted that the individual contracts did not include a provision allowing the board to reassign employees.

- **Atterberry v. Sherman, et al. 7th Circuit U.S. Court of Appeals, 2006.**
  - Atterberry was an administrator in the Illinois Department of Professional Regulation. In that position, he supervised 10 employees and had an office, car and parking space. Following accusations of misconduct, he was reassigned to an investigator position. He had to share an office and lost his car and parking space. He retained his salary and job classification.
  - Atterberry brought suit in federal court claiming that he was demoted without due process. The court rejected that claim. The due process claim was dependent upon Atterberry showing that the change in his job duties and working conditions deprived him of a property interest. The property interest must be based upon either contract or state law. Atterberry had no right under contract or law to not be subjected to the change in job duties or working conditions.
Court Cases

  - Batagiannis, the Superintendent of the West Lafayette School District, was suspended with pay and later terminated by the Board after losing confidence in her leadership.
  - The court determined that Batagiannis had no property interest in continuing to be Superintendent (as opposed to a property interest in the compensation):
    - *Every appellate decision that has addressed the subject accordingly has held that a contractual right to be a superintendent of schools creates a property interest in the salary of that office but not the ability to make decisions on behalf of the public. . . A superintendent of schools is in this respect like a football coach or a corporate CEO: the office may be withdrawn if the agreed upon compensation is paid.*

Court Cases

66.0509(1m) grievance process

- A county employee terminated for failing to have a driver’s license following conviction for operating a motor vehicle while intoxicated (first offense) was denied an opportunity to grieve the termination.
  - County grievance process excluded terminations for lack of qualification or license.
  - Circuit court granted summary judgment for the county, finding that the county could exclude terminations of lack of qualification or license from the grievance process.
The court of appeals overturned the decision.

The statute does not define “terminations,” and the County presents no reason to suppose that the term has a technical meaning. When a statutory term is not defined, we may consult a dictionary to ascertain the term’s common meaning. The word “termination” is a form of the verb “to terminate.” The AMERICAN HERITAGE COLLEGE DICTIONARY 1399 (3rd ed. 1993) provides definitions of “terminate” as “[t]o discontinue the employment of; dismiss.”

In rejecting the County’s arguments, the court stated that, while it will not always be clear whether a “termination” within the meaning of the statute occurred, in this case, the action taken against the employee was a termination “within the plain meaning of the statute.” Dodge County Professional Employees, et al. v. Dodge County 2013 AP 535 (Ct. App. 2013).

The Brown County Circuit Court Judge reviewed an individual teacher contract provision that excluded non-renewals from the statutory grievance procedure and held that a contract provision excluding nonrenewals from the statutory grievance procedure was a violation of the law. The judge further stated that because some nonrenewals may constitute “punishment/discipline” (those based upon performance) that all nonrenewals could not be categorically excluded from the ability to file a grievance.

WERC Decision – Post Act 10

- A school district’s seeking to make a union a signatory party to an employee’s resignation agreement constituted bargaining over a prohibited subject of bargaining which is a prohibited practice under section 111.70(3)(a)4 Wis. Stat.
- WERC Dec. No. 34685-A

Presenter Bio

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