



Individual Teacher Contracts

Wisconsin law requires school boards to have written contracts with qualified teachers. 2011 Wisconsin Act 10 (Act 10) (which made many changes with respect to collective bargaining for Wisconsin school districts) did not change this requirement, but Act 10 impacted the content of these contracts and the manner in which boards make changes to them. Indeed, as a result of Act 10, many districts made changes, or are currently in the process of considering changes, to individual teacher contracts. These decisions should be addressed now, considering the deadlines for renewal and nonrenewal of such contracts are approaching soon. Recent legislation and court decisions also are relevant to these decisions. This FYI addresses some of the considerations related to individual teacher contracts.

Content of Contracts

Wisconsin statutes set forth the minimum requirements for individual teacher contracts.

- Wis. Stat. § 118.21 requires that school boards contract in writing with qualified teachers, that the contracts be filed with the school district clerk, and that a copy of the teacher's authority to teach is attached.
- The contract, in addition to fixing the teacher's wage, may provide for compensating the teacher for necessary travel expense. The statutes do not mandate that all forms of compensation be included in the individual contract; the contract only must set forth the teacher's wage.
- To avoid a prohibited practice charge under Wis. Stat. § 111.70(3)(a)4, a school board is required to include language stating that the contract is subject to amendment by a subsequent collective bargaining agreement. The requirement to include this language exists in school districts in which the teacher union was recently recertified as the exclusive bargaining representative.

The other contents of an individual contract are largely a matter of school board discretion. For example:

- Many existing individual contracts include a provision stating that the contract will be subject to state and federal law and to the rules, regulations, handbook, and policies of the school board and administration.
- Boards may also include a provision concerning liquidated damages, which identifies a specific dollar amount that will be paid by a teacher in the event that the teacher is released or breaches the contract. A court probably will not enforce a liquidated damages provision unless the teacher and school board have expressly agreed by contract on the terms and amount of the liquidated damages. Handbook provisions may not be sufficient. Given the potential for increased movement of teachers since the adoption of Act 10, school boards may also want to consider setting higher amounts for some teachers who may be more difficult to replace than other teachers.



- The contract may also contain a provision related to written authorization to pay a teacher over a twelve-month period. State law requires a written agreement with any teacher who is not paid all wages earned at least monthly. Before Act 10, collective bargaining agreements were able to include such an agreement on twelve-month payrolls for school year employees. Such agreements are no longer allowed under Act 10. As a result, boards will need to obtain individual written authorizations annually before paying teachers over a twelve-month period. This could be included in the contract or in a separate authorization.
- School boards may also want to consider revising any language in the contract related to the number of contracted days. Currently, some contracts contain requirements that teachers work a certain number of days (e.g., 189 contracted days). 2013 Senate Bill 589, which is currently on the Governor's desk to be signed, eliminates the state law 180-day pupil attendance requirement. School boards may want to consider whether and how to incorporate this legislation into their individual contracts.
- School boards should not issue contracts that are inconsistent with state or federal law or inconsistent with board policies or handbook provisions. School boards should also consider excluding provisions that may hinder their ability to manage the district's business, such any requirement to follow certain standards concerning evaluation of teachers. Districts should also review their policies and handbooks to make sure they are consistent with each other and with the terms of the individual contracts.
- Boards may also want to avoid including any reference to the teacher nonrenewal statute (Wis. Stat. § 118.22) for teachers who are part-time teachers, considering that the statute only applies to full-time teachers.
- There is no requirement that each individual teacher contract in the district contain the exact same contents. A contract may vary from one teacher to another, as long as the different terms are not based on some protected category (e.g., religion, race, etc.).

Changing the Content of the Contract

There are a number of ways to make changes to the individual teacher contract. However, school boards should keep in mind that a handbook, board policy, or applicable bargaining agreement may affect the board's ability to obtain changes to the individual teacher contract. Therefore, district officials should review these documents before making any changes.

- One means of changing the terms of the contract is for the board to mutually agree with the teacher to make the change. For example, if the board and the teacher agree that the contract will include a liquidated damages clause, the board can add the provision and will have a new contract with the clause for the 2014-2015 school year.
- Another means of changing the terms of the contract is through nonrenewal. Boards can likely nonrenew the existing contract for the purpose of offering a modified contract. However, boards should consult with legal counsel on this issue.

Renewal or Nonrenewal of the Contract

In Wisconsin, individual teacher contracts automatically renew pursuant to statute, unless the school board takes action to prevent the renewal. If a school board elects to change the terms of the contract through the nonrenewal process, the board must be careful to meet all statutory, contractual, handbook, and policy requirements (timelines for renewal and nonrenewal can sometimes even be contained in contract, policy, or handbook).

- Under Wis. Stat. § 118.22, in order to prevent contract renewal, the board must provide preliminary notice of nonrenewal of the contract by April 30, 2014, and provide the teacher with written notice of renewal or refusal to renew the contract for the ensuing school year on or before May 15, 2014. The actual contract, however, does not have to be issued or sent at this time.

- The parties will likely not be able to delay these deadlines. The teacher nonrenewal statute formerly authorized districts and unions to agree to modify or waive any of the provisions of the statute. However, Act 10 repealed the language authorizing the modification or waiver of nonrenewal provisions. Thus, boards must avoid agreeing to any change in the deadlines.
- The board must also be aware of other procedures (such as the private conference) and standards (such as just cause) that may affect any nonrenewal for purposes of modifying the contract. Again, boards should confer with legal counsel on these issues.

If no preliminary notice of nonrenewal is issued to the teacher, the statute requires that the board provide written notice of renewal to the teacher. Boards should review the language of any notice of renewal to ensure that it reflects changes under Act 10. A teacher who receives a notice of renewal of contract, or a teacher who does not receive a notice of renewal or refusal to renew the teacher's contract, on or before May 15, must accept or reject in writing such contract not later than the following June 15.

It is important to note that nothing in the law requires the board to issue the actual individual teacher contract to the teacher before the start of the 2014-2015 school year. However, the above procedure certainly contemplates that the terms of the contract will be determined during the spring of the 2013-2014 school year.

Reduction of Staff

In general, school boards must meet the nonrenewal deadlines of Wis. Stat. § 118.22 for any full-time teacher that it believes may be subject to reduction for economic reasons. Of course, school boards should review their individual contract, handbook, policy, and any applicable bargaining agreement and consult legal counsel to determine whether the nonrenewal procedure should be used for any economic-based reductions in staff. Boards must also take any actions with enough lead time so that the preliminary notice of nonrenewal can be in the teacher's hand by April 30.

Status of Review by the Wisconsin Supreme Court

On June 14, 2013, the Wisconsin Supreme Court agreed to review the September 14, 2012, decision issued by Dane County Judge Juan Colas in *MTI v. Walker*. In that decision, Judge Colas found parts of Acts 10 and 32 to be unconstitutional. On November 11, 2013, the Wisconsin Supreme Court heard oral argument on this September 14, 2012, decision.

At this time, the parties are still waiting for a decision from the Wisconsin Supreme Court on *MTI v. Walker*. This decision should be released on or before the beginning of July 2014. It is expected that the Supreme Court will definitively address the constitutionality of Acts 10 and 32. This decision will have an impact not only on whether school districts will need to collectively bargain in the future, but also the certification status of labor organizations.

Recent Brown County Circuit Court Decision.

In a recently issued (January 22, 2014) opinion, *Schneider v. Howard Suamico School District*, Case No. 2013-CV-397, Brown County Circuit Court Judge Kendall Kelley addressed a number of claims by teachers in the Howard Suamico School District related to provisions in their individual contracts. Although this decision is not binding on other circuit courts in Wisconsin, it may be reflective of how a court may rule on these issues if presented in another jurisdiction.

In *Schneider*, the court was asked to determine the legality of various provisions of the 2012-2013 individual teacher contract between the Board and the teachers. The contract represented a departure from the Board's previous contracts due to the enactment of Act 10. Previously, these contracts had been one-page documents. However, the 2012-2013 contract was a four-page document, which included various new provisions. The teachers filed a lawsuit to contest these new provisions in addition to other issues. Below is a brief summary of the court's decision on these issues.

- The teachers first argued that the contracts failed to fix the teachers' wages in the contract in violation of Wis. Stat. § 118.21. The teachers asserted that the Board violated the law by including only a base wage amount in the contract, but then stating that any supplemental compensation was subject to adjustment in the Superintendent's sole discretion. The court concluded that the Board's inclusion of only a base wage amount of a given salary for the number of days to be worked during the school year was sufficient to meet the legislative mandate in Wis. Stat. § 118.21. Any contract provision that allowed the superintendent to provide teachers with discretionary supplemental compensation did not violate the law.
- The teachers also objected to a term in the contract that stated: "Employee's employment may be terminated by the Board during the term of this contract for non-arbitrary and non-capricious reasons." The teachers argued that the Board cannot terminate a teacher contract during its term without cause. The court concluded, however, that it is acceptable for the contract to include an agreed upon standard for termination and that standard need not be for cause.
- The teachers also argued that a term in the contract permitting layoffs during the term of the contract was impermissible and that the district had to follow Wisconsin's nonrenewal statute for layoffs. The court disagreed, concluding that layoffs may be appropriately addressed in individual teacher contracts. According to the court, by choosing to enter the contract, each individual teacher agreed to have the individual contract terminated through layoff outside of the nonrenewal process.
- The teachers also argued that the provision in the contract excluding nonrenewals from the grievance procedure was a violation of Wisconsin statute. Act 10 requires the districts to establish a procedure for discipline, termination, and workplace safety issues. In addressing this question, the court was guided by a recent Wisconsin Court of Appeals case involving Dodge County (which was discussed in last month's FYI newsletter). The court reviewed the dictionary definition of "discipline" and concluded "discipline" encompasses "punishment." The court then concluded that, because some nonrenewals may constitute "punishment" (e.g., those based on poor performance), nonrenewals could not categorically be excluded from the grievance procedure. The court did not consider whether nonrenewals are also "terminations," but the Dodge County case suggests that certain nonrenewals may fall within this definition. The Brown County court's opinion suggests that an Act 10 grievance procedure could exclude from its scope nonrenewals based upon non-disciplinary reasons.
- The teachers also argued that a contract provision providing specific performance as a potential remedy for a teacher seeking to resign during the contract period was contrary to law. Specific performance is a legal remedy for breach of contract that would compel a teacher to continue working for the district. The court concluded that a provision allowing the board to seek specific performance if liquidated damages were not paid was contrary to law. The court held that, although specific performance may be permitted in certain circumstances, it cannot be used in a situation involving a teacher's failure to pay liquidated damages.

- Finally, the teachers objected to the process by which the district sought to obtain changes to the contract. The contract was presented to the teachers with a letter. The letter asked the teachers to return their signed contracts no later than April 11, 2012, and explained that early receipt of the contract would allow replacement of the old contract before it automatically renewed. Otherwise, the board would need to place the old contract on the agenda for nonrenewal. The teachers believed this process was contrary to law because the board could simply present the teachers with the contract indicating renewal, and the nonrenewal process would be unnecessary. The court ultimately decided that this issue was moot, considering that it was now irrelevant and was likely a one-time issue that occurred because of uncertainty regarding Act 10.

Although not binding, this Brown County case includes findings and analysis that may be persuasive to boards in making changes to their own individual contracts. However, before making any changes consistent with the findings of the Brown County case, boards should consult legal counsel.

Conclusion

School boards should plan now to address individual teacher contracts. Boards need to base any decision in light of provisions contained in handbooks, policy, bargaining agreements, and practices in the district and should seek legal counsel as necessary.

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