

I. INTRODUCTION AND GENERAL BACKGROUND.

The Wisconsin Statutes give various state employees the right to engage in collective bargaining by organizing into statutorily defined Collective Bargaining Units for the purpose of engaging in collective bargaining with the State of Wisconsin (the Employer) and selecting an exclusive collective bargaining agent (a labor organization or Union/Association) to represent the members of the bargaining unit. The law requires that the collective bargaining units be structured on a statewide basis and that each bargaining unit consist of defined occupational groups. One of the professional occupational groups is engineering. The engineering occupational group is currently represented by the State Engineering Association.

The State Engineering Association, as the exclusive bargaining agent of the engineer occupational group, engages in collective bargaining with the State to reach a Collective Bargaining Agreement which, together with applicable state laws, establishes the wages, hours and conditions of employment for the employees in the bargaining unit.

The Collective Bargaining Agreement SEA has with the State of Wisconsin is an unusual document: the State executive branch of government, through the Office of State Employee Relations negotiates a tentative collective bargaining agreement which is supposed to cover the period of a biennium; the State Engineering Association membership votes on whether to ratify the tentative agreement; if it is ratified it is then presented to the legislature's Joint Committee on Employment Relations (JOCER) for approval and then forwarded to the Legislature for approval and when approved is presented to the Governor for signature so that the collective bargaining agreement, in effect becomes "law" in terms of governing the collective bargaining relationship between the State Engineering Association bargaining unit and the State of Wisconsin.

II. ROLE OF THE COLLECTIVE BARGAINING AND THE COLLECTIVE BARGAINING AGREEMENT (CONTRACT).

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There are limits as to what subjects a labor organization can bargain about with the State. Generally, SEA can bargain about wages, hours and conditions of employment. However, there are subjects about which the Employer (the state) may bargain, but is not required to bargain about and there are subjects about which the state is not permitted to bargain as a matter of law.

The terms of the contract should be assumed to include both mandatory and permissive subjects of bargaining. These are complicated legal distinctions, but even if a subject is permissive in nature, if it is agreed to be the parties, it is enforceable just like a mandatory subject of contract during the term of the contract.

The employer is generally not permitted to unilaterally make changes to the contract. All changes with regard to mandatory subjects of bargaining must be negotiated and all changes regarding permissive subjects of bargaining must be honored during the term of the relevant agreement. If there is a claim that a provision of the Collective Bargaining Agreement has been violated by the employer, the correct way to deal with such a claim is to file a Grievance. The purpose of a grievance is to force the employer to comply with the terms and conditions of the Collective Bargaining Agreement. Sometimes the purpose of a grievance is to resolve disagreements about the correct interpretation or application of a provision(s) of the Collective Bargaining Agreement.

What happens if a grievance is not filed when there is a violation of the Collective Bargaining Agreement or when a disputed interpretation or application of the Collective Bargaining Agreement is ignored? For employees who fail to file a grievance on time, their right to a remedy in the particular circumstance of the violation may be lost. If the provision at issue is clear, such as the right to receive the contractual reimbursement for safety shoes, the affected may lose the reimbursement for the time he was wrongfully denied but failed to timely grieve. If the provision at issue is ambiguous, and there is disagreement with the way the Employer is interpreting or applying the provision, a failure to grieve together with a consistent interpretation of the provision by the employer (with the knowledge of the union) over a substantial period of time will result in the employer's interpretation being treated as the interpretation accepted by the parties. This binds the employer as well, because if the employer interprets and applies the provision consistently one way and then tries to change its position and tighten up on the provision, it will be stuck with its prior interpretation despite the ambiguity.

There are many rules and principles that arbitrators use to analyze, interpret and apply the terms of a Collective Bargaining Agreement. Those are too numerous and complex in general to try to deal with them in this presentation. It is very useful to consider these rules and principles when bargaining so that you are able to enjoy the full gains achieved through the bargaining process. There are times when there are disagreements about the results of the collective bargaining process and the disagreements will be resolved by arbitrators in the context of a grievance arbitration. A selected Arbitrator has the power to make a final and binding decision on the dispute.

There are only very limited grounds available for appeal. It is quite unusual to have an arbitration decision overturned.

Arbitrators are selected by requesting a panel of seven arbitrators from the Wisconsin Employment Relations Commission. The parties flip a coin to determine who strikes a name from the panel first. The parties then alternatively strike arbitrators until one is left and that arbitrator serves as the arbitrator in the case.

III. WHAT IS A GRIEVANCE?

A grievance is a claim by a member(s) of the bargaining unit that the Employer (supervisors or management) have violated a provision/term of the Collective Bargaining Agreement.

1. The violation might be very clear and concrete, such as the Employer refusing or failing to pay for or provide some benefit to which the employee is entitled under the Collective Bargaining Agreement — vacation; expense reimbursement; sick leave; allowance for safety shoes, etc.
2. The violation might be a dispute about the correct interpretation or application of a term in the Collective Bargaining Agreement. For example, the Leave for Professional Development provision resulted in a grievance because the Employer interpreted the provision as only being available for use by employees to obtain or participate in Employer approved job related training, education, or similar activity. The Association took the position that the provision permitted employees to take time off for any purpose at the employee's discretion. Another example was the availability of the add-on and the applicable credentials that would entitle an employee to the add-on.
3. All disciplinary actions are grievable. The Collective Bargaining Agreement provides in Article IV, Section 12 as follows:

4/12/1 Disciplinary Actions and Appeals:

The parties recognize the authority of the Employer to suspend, demote, discharge or take other appropriate disciplinary action against employees for just cause. . . .

If the Employer disciplines an employee and the employee/Association believe(s) that the discipline was without "just cause" a grievance may be filed to challenge the discipline. The grievance may involve a dispute about whether the action taken against the employee is, in fact, disciplinary. We will discuss this issue in greater detail further on.

IV. WHO MAY FILE A GRIEVANCE AND WHO "OWNS" THE GRIEVANCE?

1. Any employee or group of employees and/or the State Engineering Association may choose to file a grievance.
2. The Employer might raise an issue as to whether the grievance is "arbitrable." This translates to whether the Collective Bargaining Agreement is a source of authority for the Arbitrator to deal with the particular dispute. The Employer might argue that the grievance is not timely and therefore not subject to the grievance procedure; or that the subject matter of the grievance is not covered by the terms of the Collective Bargaining Agreement; or that there is a specific exclusion of the subject. For example, Par. 4/13/1 of the Collective Bargaining Agreement provides that ". . . the retention or release of probationary employees shall not be subject to the grievance procedure."
3. Only the State Engineering Association decides and controls whether to process the grievance to arbitration because the Association is responsible for and has exclusive statutory authority for negotiating and enforcing the terms of the Collective Bargaining Agreement.

V. THE GRIEVANCE PROCEDURE.

X The Grievance Procedure is set forth in Article IV of the Collective Bargaining Agreement. Those are the rules. It is advisable that you read this Article of the Collective Bargaining Agreement so that you have an overall sense of the process and don't operate on assumptions.

Grievances are generated by Bargaining unit employees who believe their contractual rights are being violated by some action of the Employer or because they believe they have been disciplined unfairly (without just cause) or by Association leaders because a policy announced or adopted by the Employer appears to be inconsistent with the terms of the Collective Bargaining Agreement. When a grievance is identified and if it is going to be pursued, the contractual grievance procedure must be followed.

Under the terms of the SEA contract grievances are presented in writing on standard grievance forms developed for that purpose. Grievances must be filed with the Employer within Thirty (30) calendar days of the date the grievant became aware of the violation or within thirty (30) calendar days of the time the grievant should have reasonably become aware of the violation. The first three steps of the grievance procedure allows the grievant to voice their disagreement and management to reconsider its action. The fourth step of the grievance procedure allows for review of the employer's action by a third party neutral with binding authority to resolve the grievance. The grievance process consists of the following four (4) steps:

STEP ONE: The written grievance is submitted and a meeting is held with the supervisor where the grievance is presented and the supervisor then has Ten (10) calendar days to respond in writing. If the supervisor does not respond within the 10 day limit, the answer is automatically considered to be a denial of the grievance and the time for filing the next step starts to run.

STEP TWO: To appeal a grievance to Step Two another grievance form is filled out for Step Two and presented to "the designated agency representative". This is often the Bureau head or division head or it can be handed to the step one supervisor for appropriate transmittal. You must do this within TEN CALENDAR DAYS of the answer in STEP ONE which means ten (10) days from actual receipt of the answer or if a timely answer is not received, within ten (10) days of the deadline for such answer. The Employer is supposed to meet with the grievant and the SEA representative to discuss the grievance, but the employer's response is due Ten Calendar Days, **from the time of the appeal**, to respond. If that does not happen, then the non response is treated an automatic denial of the grievance.

STEP THREE: If the grievance is not resolved at Step Two and the Grievant (Association) wishes to appeal, a Step Three grievance form must be filed with the designee of the Employer (Division administrator, Bureau Director or personnel office) within TEN CALENDAR DAYS of the answer or deadline for answer in Step Two. The grievance as stated in Step three is the final form of the grievance to be considered going forward. A Step Three meeting is then held which includes the grievant, the SEA representative and may include a statewide SEA officer. If the statewide officer works in the grievant's assigned headquarters, he may participate without loss of pay. The Employer has Twenty-One Calendar Days from the filing of the Step Three appeal to provide a written response. If no written response is received, then the answer is treated as a denial of the grievance and the Thirty (30) Days for moving to Step Four begins to run. **IF YOU ARE DEALING WITH A DISCHARGE GRIEVANCE OR A GRIEVANCE INVOLVING HAZARDOUS DUTY PAY THE DEADLINE FOR APPEAL TO STEP FOUR IS REDUCED TO FIFTEEN (15) CALENDAR DAYS.**

STEP FOUR: Grievances unresolved at Step Three may be appealed to arbitration by written notice to the Employer (a letter to OSER). When in doubt always file the appeal to protect the timeliness of the appeal. An appeal can be withdrawn, but it cannot be late. The SEA Board decides whether to process an appeal through the arbitration step. Once arbitration is invoked, the matter will be handled by SEA's attorney and OSER selecting an arbitrator to make a final and binding decision.

The timelines for processing a grievance may be extended by mutual agreement of the parties. It is recommended that this be documented. A confirmation of the extension by e-mail is sufficient, but it is risky to not do it in writing and it can always lead to a misunderstanding or disagreement.

