



The Newsletter of  
The Wisconsin  
Public Employers  
Labor Relations  
Association

# NEWSLETTER

WISCONSIN PUBLIC EMPLOYER LABOR RELATIONS ASSOCIATION

Spring, 2004

## Highlights

- **Temporary Employees and WRS Benefits**
- **Healthcare Cost Cycles**
- **Picture Phones - New Liability**

## Inside

- **May Conference**
- **Human Resource Assistant Training**

## Presidents' Letter

Signs of Spring's coming are appearing throughout the state, as well as within WPELRA. Our Annual Conference is behind us, the NPELRA conference is fast approaching, and plans have been made for our Spring conference. Here's more of what's going on:

### Annual Conference

We recently enjoyed another excellent Annual Conference in Middleton on January 22 and 23, 2004. We cannot express enough our appreciation to those who worked to put the program together and to the contributions of time and talent from our speakers. If you have not done so already, we encourage you to share your comments about the conference with one of the members of our Board of Directors.

### Bravo Award

One of the highlights of the conference was the inaugural presentation of the WPELRA Bravo Award. The award is presented to a WPELRA member for exhibiting outstanding leadership through a special achievement or accomplishment. Dale Peters, Director of Human Resources for the City of Eau Claire, was chosen from among the outstanding field of candidates as the first recipient of the Bravo Award. Congratulations Dale on a well deserved honor!

### Legislative

Dale has worked closely with State Senator Brown and State Representative Gottlieb to fashion legislation effecting employment relations under the Muni-

pal Employment Relations Act. Assembly Bill 598, which would make issues of privatization a permissive subject of bargaining, passed the Assembly on March 4. As of this writing the companion bill, Senate Bill 286, is available for scheduling. Thank you Dale for all of your hard work on behalf of our membership. Thanks also go to Sue Brees, Immediate Past WPELRA President, for her efforts in garnering support for this initiative.

### Recognition

On behalf of our membership I would like to say that we are very grateful for the all of the hard work and creative influence that Sue Brees has brought to our organization over the years. Sue found it necessary to resign her position as WPELRA President effective February 1 due to personal reasons. It is an understatement to say that she will be greatly missed on our Board of Directors. We do look forward to her continuing contributions and participation in our organization.

### Board of Directors/

### Officers

At a recent meeting of Board on February 20, Dale Peters was selected to fill the vacant Board seat, and he has graciously accepted. The Board also took action to elect Mike Dieters to the position of vice-president, and to elect Barb Blumenberg, Ph.D. to the position of Secretary.

### NPELRA

The national conference in Washington, D.C. is fast approaching. It promises to meet the high standards that our NPELRA

Board has set in the past for this conference, with prominent speakers sharing their expertise and insights. Remember to access [www.npelra.org](http://www.npelra.org) to obtain more information and to review conference materials. Also consider a donation to the NPELRA Foundation, which provides scholarship support to students of public sector labor relations.

### May Conference

Another sign that spring is on the horizon is the announcement of the agenda for our May conference and round table. We have joined forces with WACPD, Wisconsin Association of County Personnel Directors, to plan this conference. Thanks go out to WACPD member Terri Palm and to Jim Richter for their efforts in putting together what promises to be another very productive conference. It will be held at the Kalahari Resort in Wisconsin Dells on Wednesday, May 19 through Friday, May 21. Take time to make your reservations now. Please feel free to contact either Terri, Jim or myself if you need further information about the conference.

### Personal Note

I am very honored to have the opportunity to serve as the President of this truly great organization. You are served by a very dedicated Board that looks forward to your input on how we might continue to best serve your needs. We look forward to your active and enthusiastic involvement, which in turn greatly enhances the benefit we all derive from our membership.

*Joe Rains*

## Temporary Help Agency Employees and WRS Benefits

By Nancy Pirkey, Davis & Kuelthau, s.c. / 111 E. Kilbourn Avenue, Suite 1400 / Milwaukee, WI 53202

As municipal employers continue to face tighter budgets, more and more of those employers have begun to use (or at least to consider using) contract employees and temporary help agencies on both a long-term and a short-term basis. Municipal employers need to know, however, that there is no clear-cut standard that determines how they should regard these “workers” for purposes of employee benefits, state and federal discrimination laws, collective bargaining laws, etc. Municipal employers need to be prepared for the possibility that these “workers” will be eligible to receive many employee benefits that the municipal employer regularly provides unless the employer takes several simple steps to protect itself on the front end.

Wisconsin Retirement System (“WRS”) benefits are controlled by state statute and employers have very little ability to modify or amend the terms of that arrangement. Wisconsin Statute Section 40.22 requires that every “employee” be enrolled in the WRS if the individual is expected to work at least one-third of full-time employment per year (600 hours for a non-teaching employee) and the employee is expected to work for at least one year from the date of hire. This



requirement should not generally be a problem when dealing with temporary help agency employees. Wisconsin Statute Section 40.22 also provides, however, that an individual who does not meet these requirements on the date that he or she is hired must be enrolled in the WRS immediately if the individual actually does work 600 hours over the course of any 12-month period. The problem, therefore, arises in trying to define who is an “employee” for purposes of WRS eligibility.

Both the WRS Administration Manual and numerous board decisions from the Department of Employee Trust Funds (“DETF”) clearly state that an individual will be considered an “employee” under the WRS if the individual is a “common-law employee,” as defined by the Internal Revenue Service. Within the last few years, our office alone has handled cases involving part-time municipal judges, building inspectors who had always been treated as independent contractors, and “volunteer” fire fighters and paramedics. In each case, DETF took the position that these individuals were eligible to participate in the WRS. The only

time that the DETF Board has examined a situation involving an outside temporary help agency (e.g., Kelly Staffing Services), the Board found that the individuals who were hired through that agency were, in fact, employees who were entitled to participate in the WRS.

Within the last month, the California Employees’ Retirement System (“CALPERS”) lost a court decision regarding temporary help agency employees in the California Supreme Court. This decision held that third-party agency employees were eligible to participate in CALPERS. (One hundred forty-eight local governments in California filed briefs in opposition to that decision.) Microsoft Corporation recently settled a similar case for \$96.5 million because it tried to exclude temporary help agency employees from its benefit plan. There are a number of class action law firms around the country that specialize in bringing just these types of actions against large employers who extensively use staffing agency employees. Public sector employers are at more risk that private sector employers because their benefits are often regulated by state statute (as in Wisconsin) and those employers do not have the ability to modify the terms of the plan to directly and explicitly exclude these individuals.

Municipal employers do not need to be afraid to use temporary help agency employees. Similarly, they should not think that all temporary help agency

employees are automatically entitled to participate in the WRS. Instead, those employers should be prepared for the possibility that some of those workers will make a claim for these benefits.

Municipal employers who want to utilize independent contractors or temporary help agency employees should carefully assess the services that those individuals provide. Section 300 of the WRS Administration Manual specifically provides (and underlines) that every employer must evaluate all

. . . individuals who are hired as seasonal, project, temporary and part-time employees . . .

Municipal employers should make sure that they clearly advise temporary help agency employees that they are not entitled to any benefits, including WRS. Municipal employers should also try to make sure that they have indemnification language from their staffing agency which provides that the staffing agency will indemnify the municipal employer in the event that the individuals are deemed eligible for WRS benefits. Finally, municipal employers should strongly consider having a policy (and making it part of their written agreement with any staffing agency) which provides that a staffing agency: (1) may not provide the same

worker at any time after the one year anniversary of the date when the individual first provided one hour of service to the municipal employer; (2) may not provide any worker for more than six hundred hours in a single twelve-month period; and (3) must provide the municipal employer with a specific listing of the actual hours worked by each worker, on a rolling 12-month basis, with each billing statement.

By taking these simple steps, municipal employers can utilize temporary staffing agencies and they will minimize the possibility that any individual could be eligible for WRS benefits even if they are later reclassified as an "employee." The use of independent contractors, temporary employees and other non-traditional workers is a natural and expected trend in our economy. Municipal employers must, as a matter of practice, consider these arrangements in order to alleviate some of their budget concerns. Those municipal employers should, however, take several simple steps to insure that they are not caught off guard and faced with an



exceedingly large health care or pension liability for individuals for whom they never intended to provide those benefits.

## Cycles - Healthcare Costs

*By Andrew J. Serio, President/Consultant /  
Health Care System Consultants, Inc. / Phone  
(414) 771-1860 / Fax (414) 771-1870*

My elderly Economics Professor at UWM, in 1970, in a course entitled " Business Cycles" constantly said to his then young students, "Remember, business, like life, cycles every 3 to 7 years."

So, after 3 years of double digit Healthcare Budget increases (2002, 2003, and 2004), and 2 years of no tax increase mandates from the citizens, Fiscal Year 2005 will be the year that Costs (Price x Utilization) will be returning to single digit increases. How will this happen? Either through employer cost-shifting to employees or, like in 1992, 1993, and 1994, it will occur through a lot of time and effort spent by the Human Resource and Labor Relations personnel of the public sector entities because they will have to interface with the Provider Systems, perhaps with their labor leaders, to find a solution.

Labor has "dug in" against cost-shifting (increased co-pays, deductibles, co-insurance, premium contributions), using a dual approach of hiring their own Consultants to question the validity of management data and pushing Wellness/Catastrophic (Care) Cost Carve-Outs. So unless a public sector group desires to be caught in a quagmire, I recommend

discussing both approaches with the local Healthcare System(s). Here are two hints, based on my experience since 1987 on dealing with Providers and Unions in the Public Sector:

1. It is important to use Healthcare Data that is really similar. Do not compare public sector data to private sector data or Greater Milwaukee data to LaCrosse-Eau Claire data. Obtaining and analyzing demographics and loss data to project future costs, with and without potential Plan Changes, is a must.
2. Wellness (including prevention with Health Risk Assessments) Chronic Care Management (including large case and disease management) is effective when all three parties promote it (Management, Labor, and Provider) because communication is the key to success. Keep in mind that 80% of all healthcare decisions are made by women (Barbara Lehman, CEO, Alpern Lehman "Hitting the Right Nerve"), so logic dictates management may need unions' help in getting both employees and spouses to attend the necessary meetings to kick off these efforts. Incidentally, the good news is that data is now available which demonstrates the success (ROI) of CCM/DzM programs. By implementing a Wellness/Catastrophic Cost Program, fi-

nancial risk levels (specific and aggregate) and insurance premiums can be reduced as a result of Predictive Modeling.



While 2004 will be a hectic time for HR and LR managers, it is a necessity for a public sector group to know its healthcare data (demographics and claims experience) and work with providers over the next 5 years. Management, Labor, and Healthcare Providers are facing a major problem which cannot be solved by cost-shifting.

The U.S. population is growing older. People 65 years of age and older are the fastest growing segment of the Population. Their number will increase from 35 million in 1999 to 40 million in 2010. The average life expectancy has increased by more than 30 years in the last century and will be 81 for women and 76 for men who are 65 in the year 2010 (ITFF; U.S. Census Bureau). Unlike private sector, public sector does not have significant turnover and does cover

employees and their spouses longer. Unfortunately, we Baby Boomers are demanding; we drive Costs by driving Utilization. Between 1987 and 1997, when we were 31-50, we accounted for the largest growth in hospital spending of all groups except for the newborns. Boomers total hospital spending rose 2.47% as opposed to the 0.37% more for those age 51 to 64 and the .56% more consumed by those over 65 (Stu Altman, PhD Economics, Brandeis University).

For those of you who are fully insured (not in a Trust), the percentage (%) of increase for 3<sup>rd</sup> and 4<sup>th</sup> quarter of 2004 and throughout 2005, in your annual insurance Renewals, should be less than the previous Renewal. Favorable profits as a result of overcautious underwriting and more favorable contracts with Medical and Pharmaceutical Providers will result in a downward health insurance premium cycle; particularly if you are able to negotiate even some "minor" Plan Changes. There will be more competition in 2004 and 2005 among Insurers, Third Party Administrators and Stop-Loss Insurers to secure the business of Public Sector entities.

Healthcare Economics cycles, like Life cycles, are better faced when all parties are healthy and cooperative. I wish you success in your 2004 Bargaining and 2005 Budget efforts.

## Registration

Name: \_\_\_\_\_

Employer: \_\_\_\_\_

I will attend the conference on:

\_\_\_\_\_ May 19<sup>th</sup>

\_\_\_\_\_ May 20<sup>th</sup>

\_\_\_\_\_ May 21<sup>st</sup>

\_\_\_\_\_ I will attend Breakfast on May 21<sup>st</sup>



Registration Fee:

5

\_\_\_\_\_

Member \$45.00  
(WPELRA/WACPD)

Non-Member Fee is \$75.00

\_\_\_\_\_



Make check payable to WACPD and  
mail registration to:

Terri Palm  
Jefferson County Human Resources  
320 S. Main Street, Room 111  
Jefferson, WI 53549

**Registration Deadline: April 18<sup>th</sup>**

## ACCOMMODATIONS

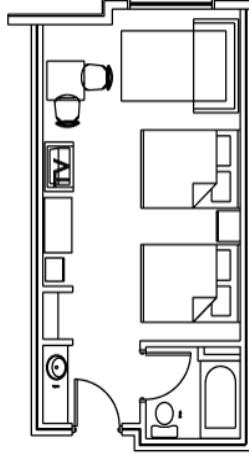
Reservations have been made for  
Desert Rooms at the Kalahari Resort.

Desert Rooms include two queen beds  
w/ full size sofa sleeper, hair dryer,  
microwave, refrigerator, ironing board  
and iron, coffee maker, water park  
wrist band for each registered guest,  
access to fitness center and internet  
availability.

Cost is \$55 for single occupancy and  
\$99 for double, triple or quad rate.

**A BLOCK OF ROOMS WILL BE HELD  
UNTIL APRIL 18<sup>TH</sup>.**

Make your reservations by calling  
**1-877-253-LION (5466)**



Desert Room

Check in 4:00 p.m  
Check out 11:00 am

Wisconsin Public  
Employers Labor Relations  
Association

Wisconsin Association of  
County Personnel  
Directors

WPELRA/WACPD  
Conference



May 19-21, 2004



Kalahari Resort  
Wisconsin Dells



## WPELRA/WACPD Conference Agenda

### Wednesday, May 19th

- 8:00 am Registration & Continental Breakfast
- 9:00 am Opening Remarks  
Ken Kittleson, WACPD President  
Joe Rains, WPELRA President
- 9:15 am Interest Arbitration Update  
Rob Mulcahy, Michael, Best & Friedrich
- 10:15 am Break
- 10:30 am Health Insurance Survey  
Pam Ghouse, City of LaCrosse
- 10:45 am **Roundtable #1**  
Negotiating Health Insurance Changes  
Carey Jackson, Oneida County
- 11:00 am Lunch
- 11:30 am "Do I Have to Bargain?"  
Bill Bracken, Davis & Kuelthau, S.C.
- 12:30 pm Break
- 12:45 pm **Roundtable #2**  
Other Bargaining Issues  
John Fitzpatrick, City of Oshkosh
- 4:30 pm Hospitality Room

## WPELRA/WACPD Conference Agenda

### Thursday, May 20th

- 7:30 am Continental Breakfast
- 8:00 am "Alphabet Soup: HSA's, HRA's, MSA's"  
Scott Wertz, Milliman USA
- 9:00 am Consumerism & Other Trends:  
"Transforming the Healthcare Market"  
Bruce Peterson, Marsh USA
- 10:00 am Break
- 10:15 am **Roundtable #3**  
Benefits Administration:  
HIPAA, COBRA and Other Benefits  
Peter Hans, Waukesha County
- 11:30 am Lunch
- 12:30 pm "He Said/She Heard, She Said/He Heard"  
Tracey Weigel, M.A.,  
United Communication Experts, LLD
- 3:30 pm WACPD Business Meeting
- 4:30 pm Hospitality Room

## WPELRA/WACPD Conference Agenda

### Friday, May 21st

- 7:30 am Breakfast Buffet
- Fresh fruit display, muffins, bagels with cream cheese, Danish, scrambled eggs with cheese, country sausage links, crispy bacon strips, breakfast potatoes, assorted juices, coffee and tea.
- 8:30 am "A Day in the Life of an HR Professional"  
Susan Love, Davis & Kuelthau, S.C.
- 9:30 am "Personal Presence:  
Advanced Interpersonal Skills for  
HR Professionals"  
Phillip S. Chard, President & CEO, NEAS, Inc.
- 10:30 am Break
- 10:45 am The Wage Trend Report  
Wendy Oestreich, City of LaCrosse
- 11:00 am WACPD Roundtable  
WPELRA Roundtable
- 12:00 pm Committee Meetings

Just a few quick reminders. Appropriate attire for the spring conference is business casual. Included with your registration are breakfasts, breaks and lunches as indicated on the agenda.

**Finally, please remember to make your reservations no later than April 18<sup>th</sup> and do not forget your tax-exempt certificate when checking in.**

Feel free to copy additional forms for other members attending from your staff.

[www.kalahairesort.com](http://www.kalahairesort.com)  
[www.dells.com](http://www.dells.com)

## Picture Phones - The New Wave and The New Liability

By Mark F. Yokom, Davis & Kuelthau, s.c. / 111  
E. Kilbourn Avenue, Suite 1400 / Milwaukee, WI  
53202

Picture this: you're on vacation with one of those new, fancy picture phones and you take some photos. Almost instantaneously, you are able to post them on the Web. Pretty cool stuff; but in the wrong hands, this technology can be one camera click away from disaster.

Now think of a scenario with pictures taken in workplace restrooms or locker rooms being placed on the Web. Or, equally disconcerting, photos of your confidential information turning up online. The use of camera phones in this way is cause for concern, but what can an employer do about it?

The use of picture phones in the workplace may violate the privacy rights of coworkers, vendors and customers, and may also be used to convey confidential information or undermine the city's operations. In fact, in an ironic twist, Samsung Corporation, a manufacturer of picture phones, bans them from the workplace.

To combat this problem, it is recommended that public sector employers adopt a policy prohibiting the use of picture phones or any other camera or device that may capture visual images without the prior written permission from the employer. At a minimum, the use of picture phones or other recording of visual images should be prohibited in locker rooms, restrooms, any other area where members of the public or coworkers would enjoy a reasonable expectation of privacy, and in any areas in

which sensitive or closely guarded corporate or business materials are used or housed. Finally, the policy



should state that any employee found in violation of the policy will be subjected to discipline up to and including termination of employment, and may otherwise be subject to prosecution to the fullest extent permitted under the law. Prior to doing this, however, make sure any applicable collective bargaining agreements allow for the creation of such a policy through the management rights clause or elsewhere.

For more information, please contact Mark F. Yokom, (920) 233-6050, or [myokom@dkattorneys.com](mailto:myokom@dkattorneys.com).

## Human Resources Assistant Certification Program

### MODULE I: The Human Resource Office and the Employment Function

<u>Dates</u>	<u>Location</u>
04/13/04	Stevens Point
04/22/04	Madison
04/27/04	Waukesha

### MODULE II: Classification, Wage and Salary, Policies and Procedures, Worker's Compensation, and Safety

<u>Dates</u>	<u>Location</u>
09/14/04	Stevens Point
09/21/04	Madison
09/28/04	Waukesha

### MODULE III: Employment Law – Family Medical Leave, COBRA, HIPPA, Labor Relations, and Unemployment Compensation

<u>Dates</u>	<u>Location</u>
10/07/04	Stevens Point
10/14/04	Madison
10/21/04	Waukesha

Please contact Jim Richter at (262) 548-7052 / [jrichter@waukeshacounty.gov](mailto:jrichter@waukeshacounty.gov) or Virginia Ramos at (262) 548-7045 / [vramos@waukeshacounty.gov](mailto:vramos@waukeshacounty.gov) to request a brochure.

**WPELRA Partnership Program**  
**Together, we can make a difference**

**Davis & Kuelthau, s.c.**

111 E Kilbourn Avenue, Suite  
1400  
Milwaukee, WI 53202  
(414) 276-0200  
(414) 276-9369 fax  
Contact: Nancy Pirkey, Attorney

**Health Care System  
Consultants, Inc.**

2323 N Mayfair Road, #130  
Milwaukee, WI 53226  
(414) 771-1860  
(888) 929-9129  
(414) 771-1870 fax  
[hcs@execpc.com](mailto:hcs@execpc.com)  
Contact: Andrew Serio

**von Briesen & Roper, s.c.**

411 East Wisconsin Ave., Suite 700  
P.O. Box 3262  
Milwaukee, WI 53201-3262  
(414) 276-1122  
(414) 276-6281 fax  
Contact: James Korom, Attorney

**Wis. Public Employer Labor Relations Assn.**

Waukesha County Human Resources  
1320 Pewaukee Road  
Waukesha, WI 53188