

Legal Notes: April 2018

As I write this note, teachers in Oklahoma are walking out of their classrooms for a second day. Last month, West Virginia teachers went on a strike that led to modest pay and benefit increases from the State. Kentucky teachers are protesting in mass the changes to their pensions.

So, why don't Wisconsin teachers go on strike?

First, some history. While the 1930's saw a wave of legalization in labor, with the passage of the Wagner Act and other laws that formalized unions, much of this occurred only in the private sector, manufacturing plants and such. There was not a similar wave for public sector unions, those employees working for state and local governments.

In 1959, Wisconsin passed one of the first laws recognizing public sector unions (federal labor laws largely did not apply to public sector unions). The incredible Gaylord Nelson was governor. With revisions in 1963, the law known as MERA (Municipal Employment Relations Act) went into place. Like on the federal side, state employee unions could organize, elect, file grievances and prohibited practice complaints, and have grievances heard by impartial arbitrators (found in the Wisconsin Employment Relations Commission, a now largely defunct agency after Act 10).

Initially, the law allowed strikes, as with the private sector unions. Between 1969 and 1974, there were some 50 teacher strikes in Wisconsin. For those of us old enough to remember, the 1974 teacher's strike in Hortonville was especially divisive not only in that small town but across the state. The strike resulted in a Supreme Court case after the District fired all the striking teachers. By 1977, after other municipal employee strikes, the Wisconsin legislature changed the law to prohibit job actions. Thereafter, it would be illegal for public sector employees to strike. There are monetary penalties and the potential for contempt of court and jail time.

Not surprisingly, with Act 10's gutting of public sector unions, the prohibition against strikes is still in place, and that may be a big reason why we don't see strikes on the order of Oklahoma or West Virginia.