



September 25, 2012

Legislative Update

- *Wisconsin Technical Colleges Awarded Significant New Federal Grants!*
- *Ruling Puts Parts of Act 10 in Question; Decision Pending on Motion to Stay Ruling.*

Wisconsin Technical Colleges Awarded More Than \$18 Million in New Federal Training Grants!

Wisconsin's sixteen technical colleges will share in more than \$18 million in federal grants, according to an announcement by U. S. Secretary of Labor Hilda Solis. The grants are part of the second annual round of Trade Adjustment Assistance Community College and Career Training Grants (CCCTG). These grants are made to technical and community colleges and total \$500 million nationally for each of 4 years. The CCCTG program was created by the 2009 "stimulus" bill, the American Recovery and Reinvestment Act, and was funded through language in the 2010 Health Care and Education Reconciliation Act.

CCCTG are awarded competitively for collaborative projects to train disadvantaged and dislocated workers seeking to change careers. The grants support college-employer partnerships to provide pathways to well-paid jobs, and can be used to design and implement instruction and training that meets specific industry needs. While each state is guaranteed ½ percent of the annual awards (\$2.5 million per state), the competition is extremely tough.

Here are the new 2012 Wisconsin awards as summarized by the Department of Labor (project description quotes are directly from the Department of Labor website):

I. “Making the Future” – Northeast Wisconsin Technical College, Consortium Leader, for a grant to be shared by all 16 Wisconsin technical colleges (total award \$14,938,903):

“Making the Future is a state-wide project with participation from all 16 colleges in the Wisconsin Technical College System to develop, improve, and expand adult educational training pathways to careers in advanced manufacturing.

II. “Advanced Manufacturing Pathways PLUS” – Fox Valley Technical College (total award \$2,999,750):

“The Advanced Manufacturing Pathways PLUS project addresses strategic gaps in manufacturing educational and services infrastructure in order to effectively prepare job seekers for current job opportunities through an accelerated credentialing framework. The AMP PLUS strategies build capacity for expanded flexible learning options in four advanced manufacturing pathways through a combination of class schedule enhancement and the infusion of technology-enabled learning in courses that stack or lattice to credentials aligned with the skills needed by regional employers. These credentials/certificates along with targeted supportive services are designed to reduce typical barriers experienced by recent dislocated workers attempting to navigate college, particularly in the area of attaining required math skills.”

III. Biosciences Competencies Project -- Madison Area Technical College, a member of a consortium led by Forsyth Technical Community College (total Consortium award \$14,998,474 with approximately \$413,000 to Madison College):

Forsyth, of North Carolina, leads a national consortium including our own Madison College (receiving approximately \$413,000), plus Alamance Community College, Austin Community College, Bucks County Community College, City College of San Francisco, Ivy Tech Community College, Los Angeles Valley College, Montgomery County Community College, Rowan Cabarrus Community College, St. Petersburg College, and Salt Lake Community College.

“The project will harmonize core biosciences competencies in laboratory skills, bio-manufacturing and medical devices, and introduce stackable and latticed credentials to help trade-impacted workers get new jobs. New credentials will include certificates in core biosciences skills, core laboratory skills, core medical devices skills, biomedical plastics and environmental monitoring.”

The total awards of \$18.3 million represent more than twice the amount that would be awarded to Wisconsin if the grants had been divided proportionally by population. The new awards comprise 3.7% of this year’s grants while Wisconsin comprises approximately 1.8% of the U.S. population.

In 2011's first round of grants, three WTCS Districts - Western, Southwest Wisconsin and Chippewa Valley Technical College - shared in a grant as part of a multi-state consortium. The WTCS redoubled efforts for the 2012 competition with strong collaboration across all districts to produce the successful \$15 million statewide award. This effort included grant writing staff at each college led by grant team chair Rande Daykin, manager of developmental services at Western Technical College, along with Elizabeth Schaff and Kelly Ball-Stahl of the Northeast Wisconsin grant writing team. The project was guided by a subcommittee of presidents led by Northcentral President Lori Weyers (for 2011) and by Northeast Wisconsin President Jeff Rafn (for 2012), and included Sue Budjac (Mid-State), Duane Ford (Southwest Wisconsin), Lee Rasch (Western) and Sheila Ruhland (Moraine Park).

Congratulations to all of our technical colleges on these important awards to support deserving Wisconsinites and the needs of our employers.

MTI v Walker Ruling Throws Parts of Act 10 into Jeopardy; Motion Made to Stay Decision Pending Appeal

On September 14th, Dane County Judge Juan Colas issued a final decision in Madison Teachers Inc. (MTI), et. al. v. Scott Walker, et. al. The Colas decision declared portions of Act 10, which changed the state's collective bargaining law, unconstitutional. Wisconsin Attorney General J. B. Van Hollen has appealed the decision on the state's behalf and moved for a "stay" to keep the decision from being implemented until the appeal is concluded. The state argued that implementing the decision immediately would cause chaos and irreparable harm to the parties, and that the state is likely to win a full reversal on appeal.

Judge Colas' decision on the stay motion is pending at this time. It is not clear when he will rule on the motion. Should Judge Colas deny the stay, it is widely believed that the state would seek a stay in the state Court of Appeals or, if necessary, the Wisconsin Supreme Court.

Importantly, the Colas decision did not declare the entirety of Act 10 unconstitutional. Based on a close but unofficial reading (not to be taken as legal advice), the judge's ruling strikes down only the following aspects of the sprawling Act 10:

First, the ruling affects Act 10's treatment of employee base wages as a subject of bargaining and requiring a referendum to exceed the CPI in increasing union employee base wages. The judge found that these provisions violate constitutional rights to association and equal protection because wages and the approval of wage increases are treated differently for union members and non-union employees in similar positions. In other words, the ruling holds that Act 10 creates two classes of employees and limits wages for one class only because of union membership.

If the *MTI v. Walker* ruling is upheld on appeal, it is not yet clear how bargaining on base wages would be affected, and how any changes to bargaining on base wages would, in turn, affect other aspects of bargaining or the employer-employee relationship.

Second, the ruling found Act 10 unconstitutional to the extent it limits “Fair Share” agreements (union dues collection by employers) only to public safety and transit employee unions and forbids employers from fair share agreements with other public union employees. The judge further found the portion of Act 10 unconstitutional that requires annual union recertification elections (requiring 51% of all eligible workers to vote annually to keep/recertify the union).

The above portions of the ruling, if upheld, would apply to all local governments including technical college districts.

Finally, the judge ruled that requiring City Of Milwaukee pension plan members to contribute to the plan violates the “home rule” authority granted Milwaukee in state law. This provision does not apply to technical colleges.

If *MTI v. Walker* is upheld on appeal and is fully implemented, it is important to note that many parts of Act 10 appear to remain in force. The ruling does not restore interest arbitration. Upon reaching an impasse in bargaining, the parties would no longer be obligated to give decisionmaking authority to a third party arbitrator. Instead, after reaching an impasse in good faith, an employer may generally implement its last and best final offer. Of course, this is subject to many complexities including, for example, agreeing as to what actually constitutes an impasse.

The ruling also does not appear to reinstate formerly mandatory subjects of bargaining or bargaining on any topic other than wages. In other words, it appears that portions of Act 10 prohibiting bargaining on issues other than wages remain in place. This would suggest that new employee handbooks covering many aspects of employment remain valid except to the extent they are in direct conflict with the ruling *and* that the ruling has not been stayed. Again, these are general assessments subject to specific circumstances, many complexities, and legal interpretation. Employers and employees, for example, may not always agree about what constitutes base wages relative to all of the other issues surrounding the terms of employment.

Statewide, several bargaining units of municipal governments, K-12 districts and technical colleges have already requested new bargaining based on the ruling. At this time, most employers are taking reasonable time to assess the ruling and to assure that whatever decision made is lawful and consistent with both employer and employee rights under the law. At least a few local governments have decided to bargain with the MTI decision being interpreted as creating, at minimum, a window of time for new agreements.

Of course, any employer receiving a request to bargain under the MTI v. Walker decision prior to any stay being granted will need to assess the situation carefully with the assistance of its legal counsel.

The MTI v. Walker decision is just one case of at least three winding through state and federal courts. Earlier this year, the U.S. District Court ruled in WEAC v. Walker - often referred to as the (Judge) "Conley" decision - that most of Act 10 is constitutional under the U.S. Constitution. The Conley ruling did strike as unconstitutional Act 10 provisions requiring annual union recertification elections and its provision prohibiting employer collection of union dues. However, the decision upheld the remainder of Act 10. Accordingly, the MTI and WEAC rulings appear to be at least partially in conflict with each other.

The Conley/WEAC decision was appealed to the 7th Circuit Court of Appeals where oral arguments were heard earlier this week in Chicago. The 7th Circuit often rules on cases within 4 to 6 weeks following oral argument.

Finally, an additional case, AFL-CIO and AFSCME v. Walker, is also pending in Dane County courts. That case argues that Act 10 violates union members' constitutional rights to assembly, free speech and equal protection. The state has made a motion to dismiss the case and a ruling on that motion is pending.

Any update on rulings concerning a stay in MTI v. Walker, the appeal of WEAC v. Walker, or a ruling on motion to dismiss in AFL-CIO v. Walker will be sent out as soon as possible.

This report was prepared for the Wisconsin Technical College District Boards Association by Paul Gabriel. Any analysis or opinion in the report is exclusively the author's. Nothing in this report is intended as legal advice.