

Legal Updates

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WASBO Accounting Conference
March 20, 2024, 3:00-3:50 p.m.



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OVERVIEW OF PRESENTATION



- Are the unions really coming back?
- Reductions, Layoffs, and Rightsizing.
- What should I look for in vendor contracts?
- Are school districts required to engage in competitive bidding?
- Electioneering
- Q&A

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Act 10 and the Return of the Unions?



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Current Landcape

- Act 10 remains in full force and effect
- Lawsuit filed November 30, 2023, by seven WI unions, in Dane County, challenging the constitutionality of Act 10
 - Unions allege Act 10's exemption of police, fire, and some public safety workers from Act 10's bargaining restrictions violates the WI Constitution guarantee of equal protection
- Rationale
 - "[D]ire situation that exists in our workplaces."
 - "Low pay, staffing shortages and worsening working conditions are hurting our ability to deliver public services to the communities that count on us every day."
- Case will work its way through state courts
- Some anticipate fast track status prior to November 2024 presidential election, but....

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Act 10 History Lesson

- Effective June 29, 2011
- Notable Act 10 Challenges Early On
 - 2013 – Seventh Circuit upheld constitutionality of the law; WI was free to draw a line between public safety and other unions; Act 10 does not violate equal protection under the United States Constitution
 - 2014 – SCOWIS upheld Act 10 as constitutional
 - 2019 – Federal judge found Act 10 does not violate free speech and freedom of association under the First Amendment

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Our Crystal Ball

- What Would Be The Implications of A Finding that Act 10 is Unconstitutional?
 - Could the Supreme Court of WI strike down parts of the law while preserving others?
 - Would the Supreme Court engage in legislating and write new law
 - Would the MERA (Wis. Stat. 111.70, *et seq.*) revert back to pre-Act 10 status?
- How would this impact school districts?
 - Retention of staff?
 - More robust applicant pools?
 - Higher level of services offered to students?
 - Higher quality instruction?
- Show me the money!
 - [Spoiler alert: there is none!]

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Reductions, Layoffs, and Rightsizing



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Reductions, Layoffs, and Rightsizing

Considerations for Cutting Staff

- Nature of the employment relationship
 - At-will
 - Contractual
- Contractual Language
 - Nonrenewal required?
- Policy
 - Is there Board policy on point?
 - Is there a Handbook policy on point?
- If nothing, what will be your process and how will it be communicated?



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Board Policy – NEOLA Example #1

4131 - REDUCTION IN STAFF

It is the responsibility of the Board of Education to provide the staff necessary for the implementation of the educational program of the district and the operation of the schools and to do so efficiently and economically.

The **board reserves the right to abolish positions in the district and to reduce the staff whenever reasons warrant.**

The **superintendent shall develop any plan for the reduction of staff based on the best educational interests of the district and consistent with the terms of any applicable interdistrict agreements, and applicable law.**

Any staff member selected for reduction shall be informed with **as much advance notice as practicable.** Where appropriate, attrition may be used to achieve the necessary number of position reductions.

The superintendent **shall determine the appropriate employees for reduction considering all factors that s/he deems important and in the best educational interests of the district.**

No employee whose position has been eliminated shall have any right to be contacted by the district in the event that a vacancy opens in the future for which the laid off employee may be qualified. Likewise, no such employee is entitled to a future position or is provided any preference over other applicants. Staff whose employment ended with the district due to a reduction in force, shall not be prevented from applying for future positions with the district.

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Board Policy – NEOLA Example #2

4131 - REDUCTION IN STAFF

It is the responsibility of the Board of Education to provide the staff necessary for the implementation of the educational program of the District and the operation of the schools and to do so efficiently and economically.

The **Board reserves the right to abolish positions in the District and to reduce the staff whenever reasons of decreased enrollment of students, return to duty of regular staff members after leaves of absence, suspension of schools or territorial changes affecting the District, or other circumstances warrant.**

The District Administrator shall develop administrative guideline for the reduction of staff based on the best interests of the District and consistent with the terms of any applicable interdistrict agreements, and applicable law.

Any staff member selected for reduction shall be informed with at least **fourteen (14) days advance notice.** Where appropriate, attrition may be used to achieve the necessary number of position reductions.

Selection of staff for reduction once positions have been identified, **will be based on the following considerations:**

- A. qualifications of the employees being considered for reduction
- B. performance of employees, based on performance evaluations
- C. input from direct supervisors

The District Administrator shall determine the appropriate employees for reduction **considering all factors that he or she deems important and in the best interests of the District.**

No employee whose position has been eliminated shall have any right to be contacted by the District in the event that a vacancy opens in the future for which the laid off employee may be qualified. Likewise, no such employee is entitled to a future position or is provided any preference over other applicants. **Any employee whose position was eliminated under this policy may file a grievance under Policy 4340.** Staff whose employment ended with the District due to a reduction in force, shall not be prevented from applying for future positions with the District.

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Contracts



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One Big Question?

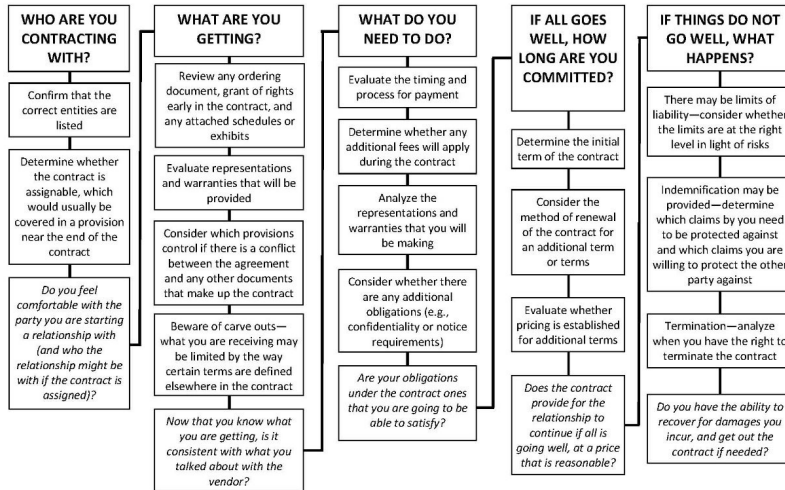
How does your school district handle its vendor contracts?

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Roadmap to Contractual Success



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Competitive Bidding




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Competitive Bidding for School Districts

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|--|---|
| <p>Current Law</p> <p>Competitive bidding requirements do not apply to school districts (except in certain circumstances).</p> | <p>Board Policy</p> <p>While not required by law, school board policy may require competitive bidding.</p> |
| <p>Proposed Law – AB 723</p> <p>Would require competitive bidding for school districts for certain expenditures exceeding \$150,000</p> | <p>Status of Proposed AB 723</p> <p>Passed out of Committee (Local Government) Laid on the table.</p> |


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Board Policy – NEOLA Example

6320 - PURCHASING

It is the policy of the School Board that the Superintendent **seek at least two (2) price quotations on purchases of more than \$25,000 for a single item**, except in cases of emergency or when the materials purchased are of such a nature that price negotiations would not result in a savings to the District.

When the purchase of, and contract for, single items of supplies, materials, or equipment is reasonably anticipated to reach **the amount of \$25,000 or more, the District shall obtain competitive bids.**


Bids shall be sealed and shall be opened by the Business Administrator in the presence of at least one (1) witness. **All orders or contracts should be awarded to the lowest responsible bidder.** A bidder may be required to submit a sworn statement regarding:

1. financial ability to complete the contract;
2. nature and quality of equipment to be used in performing the contract;
3. experience and past performance in performing the contract;
4. such other information the District deems relevant to the protection and welfare of the public in the performance of the contract.

Such statements shall be delivered to the District no later than five (5) days prior to the bid opening and shall be kept confidential by the District, except upon the written order of the person submitting the statement or on behalf of whom the statement is submitted, for the necessary use by the District in qualifying the person/bidder or the District. The statements shall be reviewed and the bidder notified if is qualified to submit a bid.

The Board reserves the right to reject any and all bids.

The Board shall be informed of the terms and conditions of all competitive bids and shall award contracts as a consequence of such bids.


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Is Lowest the Best?



- From the movie *Armageddon*: “You know we’re sitting on four million pounds of fuel, one nuclear weapon and a thing that has 270,000 moving parts built by the lowest bidder. Makes you feel good, doesn’t it?”

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Electioneering



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Electioneering

Election Day and Absentee Voting Period Electioneering Restrictions



- On election day, and during the period when absentee ballots can be cast, there is a prohibition on any activities intended to influence voting on public property near locations where ballots are cast.
- Electioneering is prohibited at:
 - A polling place or on public property within 100 feet of an entrance to a polling place on election day; and
 - At a municipal clerk's office or on public property within 100 feet of an entrance to the municipal clerk's office during the period when absentee ballots can be cast.



Electioneering

Yard Signs at Personal Residences



- Individuals are allowed to place yard signs advocating for or against positions related to elections.
 - *i.e.*, Yard signs to advocate a particular position related to matters raised in referendums.



What Board Members, Administrators, and Staff Members **CAN** Do:

- **Discuss the referendum in a *neutral* manner.**
 - Communicate neutral messages while performing responsibilities or representing school district.
 - Providing a factual description of needs related to the referendum and how referendum funds would be used if the referendum passes.
 - Descriptions **MUST** remain completely neutral, based on factual information, and do not incorporate any kind of encouragement to vote “yes” or “no.”
- **Disseminate *neutral* information about a referendum.**
 - Provide factual information needed by voters to make informed voting decisions.
 - For example, referendum fact sheets and FAQs, reasons that the referendum is being held, and descriptions or visual representations of referendum projects.
 - Factual information should be easily and readily verifiable by an outside source.
- **Make expenditures and produce materials to disseminate *neutral* information.**
 - Reasonably spend funds to provide voters with neutral materials so that voters are informed about the referendum.
 - For example, factual (neutral) banners, brochures, fact sheets, videos, newspaper advertisements, and other reasonable means of communication.

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What Board members, Administrators, and Staff Members **Can** Do But **Must** Exercise **CAUTION**:

- **Support referenda in a personal capacity outside of working hours.**
 - Staff are entitled to a personal opinion and may advocate for or against referenda.
 - Recommend explicit qualification of such views.
- **Join citizen or advocacy committees in a personal capacity.**
 - Staff are entitled to join citizen or advocacy committees in a personal capacity.
 - Note that citizen or advocacy committees present unique challenges for board members due to Open Meetings Law considerations.
- District employees do not lose their rights to personal opinions or protection under the First Amendment as a result of public employment.
- Difficult for the public to separate staff opinion/advocacy from their image as staff member.
- Personal support or advocacy that inadvertently intertwines a personal opinion with the elected official's or staff member's position as an elected official or staff member of the school district may lead to legal issues for both the district and potentially the individual, together with other ethical and/or employment considerations.

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What Board Members, Administrators, and School Staff **CANNOT** Do:

- **Support (or oppose) a referendum as a representative of the board, district, and/or a school or while performing their job duties.**
 - Cannot advocate for/against a referendum.
 - Can support/advocate only in an individual, personal capacity, and while not performing their job or representing the board, district, and/or a school within the district.
- **Use public funds or school facilities to advocate for (or against) a referendum.**
 - Cannot appropriate or use public funds to provide support for (or against) a referendum.
 - School facilities may not be used for purposes of advocating a particular position regarding a referendum
 - Preference may not be given to advocacy groups that support a certain position regarding the referendum.
- **Use school or district resources to advocate for (or against) a referendum.**
 - Cannot appropriate or use funds to provide support for (or against) a referendum.
 - Prohibited from using school district resources for purposes of advocating for or against a referendum.

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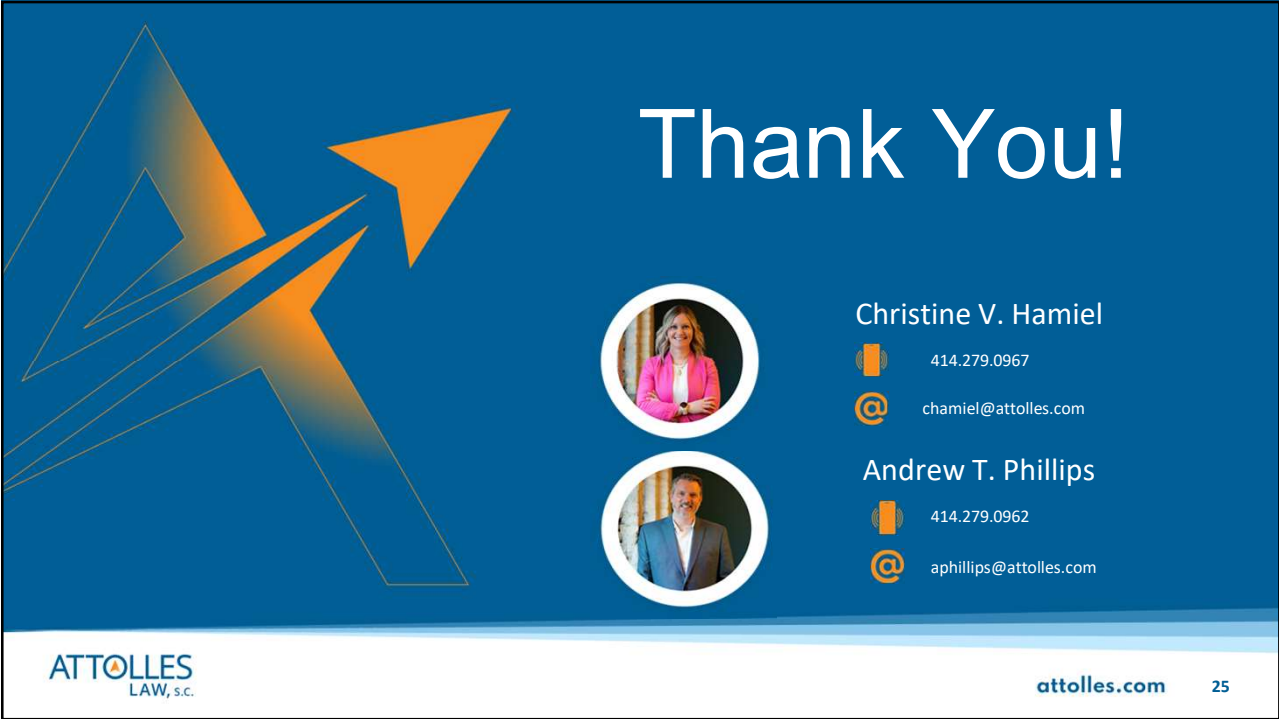


Q&A

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Thank You!

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