

State of Wisconsin

DEPARTMENT OF EMPLOYMENT RELATIONS

-- COMPENSATION & LABOR RELATIONS BULLETIN --

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Subject: Paying Dues Under Maintenance of
Membership Agreements

The purpose of this bulletin is to clarify the Department of Employment Relations' (DER) interpretation of two rulings by the Wisconsin Employment Relations Commission (WERC) with regard to dues deductions under maintenance of membership agreement (MOM).

This bulletin supersedes collective bargaining bulletins CBB-58, dated January 12, 1998, and the Addendum, dated August 13, 1999, which are now obsolete and should be destroyed.

This bulletin covers employees with permanent appointments (**employee types 01-permanent, 02-seasonal, and 06-permanent project**) in positions in classifications covered by a bargaining unit with a MOM agreement in effect.

On June 18, 1996, the WERC issued a declaratory ruling (Case 399, No. 52742, DR (2)-3) that changed how the Employer must treat employees for purposes of determining who is required to pay dues under a MOM.

The WERC's ruling interpreted s. 111.81(12m), Wis. Stats., which states that:

“Maintenance of membership agreement” means an agreement between the employer and a labor organization representing employees or supervisors specified in s. 111.85(5) which requires that all of the employees or supervisors whose dues are being deducted from earnings under s. 20.92(1) or 111.84(1)(f) at the time the agreement takes effect shall continue to have dues deducted for the duration of the agreement and that ***dues shall be deducted*** from the earnings of all employees or supervisors ***who are hired on or after the effective date of the agreement.***
(Emphasis added.)

The WERC found that the phrase, “who are hired on or after the effective date of the agreement” refers *only* to those employees who were *newly hired into state service* on or after the effective date of the MOM agreement.

On May 16, 2002, the WERC issued a second declaratory ruling (Case 522, No. 60859, DR (S)-6) clarifying how the Employer must treat employees for purposes of determining dues deductions under a MOM upon reinstatement after a separation from state service. The ruling states in part:

“ . . . [the employee] was first hired by the State in June, 1989 but left her State employment in 1996. She returned to State employment in October, 1999. . . . the critical question . . . is whether the State had an obligation to return her to State employment. Put another way, if the State was free to reject [the employee's] interest in returning to State employment, then the State “hired” her within the common usage of that word.”

The WERC found that reinstatement after a separation in state employment is a “hire” within the meaning of s. 111.81(12m), Wis. Stats., *when the appointment is permissive*. For that reason, any individual *permissively* reinstated, after a separation in state employment, to a position in a bargaining unit where a MOM agreement is in effect will be required to have union dues deducted. The WERC excluded mandatory reappointment (e.g., restoration) after a separation from state employment from the definition of “hire.” Under those circumstances, the employee’s original date of hire determines whether dues must be deducted.

Due to the WERC’s most recent ruling, all state agencies must review the hire dates of employees permissively reinstated to bargaining units with MOM agreements in effect and make any necessary corrections to the affected employee’s MOM dues deductions. Such deductions will be prospective only.

Employees covered by bargaining units with MOM agreements will have dues deducted if:

1. The employee’s original hire date is *later* than the effective date of the MOM agreement for the applicable collective bargaining unit; or
2. The employee separated from state service and subsequently reinstated on a permissive basis to a bargaining unit after the effective date of the MOM agreement; or
3. The employee’s original hire date is *earlier* than the effective date of the MOM agreement for the applicable collective bargaining unit *and*
 - a. The employee was paying dues at the time the MOM went into effect; *or*
 - b. The employee had previously signed a membership card and that card was not revoked prior to the MOM date.

The following examples illustrate how DER’s interpretation would apply to a given situation:

Example 1: Employee A was originally hired into a position covered by the Wisconsin Professional Employees Council (WPEC) on November 13, 1994. She never signed a membership card. She promoted to a supervisory position effective December 10, 1995. She subsequently transferred to a WPEC-covered position effective October 12, 1997. WPEC’s MOM effective date is January 7, 1996.

Q: Is Employee A required to pay maintenance of membership dues?

A: No. Since Employee A’s original date of hire is prior to the MOM effective date *and* she never signed a membership card, she is not required to pay dues.

Example 2: Employee B has an original hire date of March 1, 1995. He resigned from his position in the WPEC bargaining unit, in which he was a dues paying member, to accept a nonrepresented position. He did not revoke his membership card. Effective January 21, 1996, he moved to another WPEC-covered position. WPEC’s MOM effective date is January 7, 1996.

Q: Is Employee B required to pay maintenance of membership dues?

A: Yes. Since Employee B did not revoke his membership card prior to the MOM effective date, the card is still valid and the employee must pay dues.

Example 3: Employee C has an original hire date of January 5, 1985. He resigned from his position in the Wisconsin Science Professionals (WSP) bargaining unit, in which he was a dues paying member, to accept a position covered by WPEC, effective July 3, 1988. When he left the WSP bargaining unit, he revoked his membership card. He subsequently promoted to another WSP-covered position and does not complete a new dues deduction card. WSP's MOM date is August 28, 1988 and WPEC's MOM effective date is January 7, 1996.

Q: Is Employee C required to pay maintenance of membership dues?

A: No. Employee C is not required to pay dues in either the WPEC or WSP position. The effective date of the WPEC MOM is after Employee C's original hire date, therefore, he is not required to pay WPEC dues. Employee C revoked his WSP membership card prior to the WSP MOM effective date, therefore, he is not required to pay WSP dues upon returning to the unit.

Example 4: Employee D has an original hire date of December 11, 1994. She resigns from her position in the WPEC bargaining unit, in which she was not a dues paying member, to accept a position in the private sector. In March, 1996, Employee D reinstates to a WPEC-covered position and does not complete a dues deduction card. WPEC's MOM effective date is January 7, 1996.

Q: Is Employee D required to pay maintenance of membership dues?

A: Yes. Although Employee D's seniority date will be adjusted for the time she was gone from state service and that adjusted date will be earlier than the MOM effective date, her "hire date" for the purposes of dues deduction under a MOM agreement is the date of reinstatement when such permissive reinstatement is after a separation from state employment. Since her "hire date" is after WPEC's MOM effective date, she is required to pay dues.

Example 5: Employee E has an original hire date of January 14, 1990. He signed a WPEC membership card and was paying dues at the time the WPEC MOM went into effect. He subsequently revokes his membership card.

Q: Is Employee E required to pay maintenance of membership dues?

A: Yes. Although Employee E's original hire date is prior to the WPEC MOM effective date, he was paying dues at the time the WPEC MOM went into effect. Therefore, even though he subsequently revoked his membership card, he is required to continue paying dues.

Example 6: Employee F was originally hired into a WSP-covered position on February 8, 1998, and subsequently moved to a WPEC-covered position. She did not sign a membership card for either bargaining unit. WSP's MOM effective date is August 28, 1988 and WPEC's MOM effective date is January 7, 1996.

Q: Is Employee F required to pay maintenance of membership dues in either bargaining unit?

A: Yes. Since Employee F's original hire date is later than both the WSP and WPEC MOM dates, she is required to pay dues in both her original (WSP) and subsequent (WPEC) position.

Example 7: Employee G was originally hired into a WPEC-covered position on March 19, 1995. He did not sign a membership card and was not paying dues at the time the MOM went into effect on January 7, 1996. Employee G was laid off effective July 6, 1997. He was restored to a WPEC-covered position on September 14, 1997, and did not sign a membership card.

Q. Is Employee G required to pay maintenance of membership dues?

A. No. Employee G restored to state service. Because the appointment (restoration) was mandatory, his original date of hire is prior to the MOM effective date, and he was not paying dues at the time the MOM went into effect, he is not required to pay dues.

The following bargaining units have Maintenance of Membership Agreements in effect:

<u>BARGAINING UNIT</u>	<u>EFFECTIVE DATE OF MOM AGREEMENT</u>
Wisconsin Science Professionals (WSP)	August 28, 1988
Teaching Assistants Association (TAA)	June 1, 1990
Professional Social Services (WSEU)	June 1, 1992
Milwaukee Graduate Assistants Association (MGAA)	May 10, 1995
Wisconsin Professional Employees Council (WPEC)	January 7, 1996
Administrative Support Unit (WSEU)	October 5, 2001

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