



STATE OF WISCONSIN
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CORRESPONDENCE MEMORANDUM

DATE: March 9, 2015
TO: Employee Trust Funds Board
FROM: David H. Nispel, General Counsel
SUBJECT: Status of County Jailers Appeals

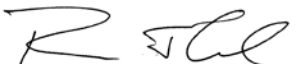
This memo is for informational purposes only. No Board action is required.

This memo provides an update regarding the status of the large number of appeals that have been filed on behalf of county jailers who have been reclassified by their employers from “protective occupation participants” to general employees. Appeals of this nature, where an employee appeals an employer’s action (rather than a department determination by ETF) directly to an administrative law judge, are referred to as “direct appeals.” Appeals such as these that deal with an employer’s classification of an employee are heard by the ETF Board pursuant to Wis. Stat. §§ 40.03(1)(j) and 40.06(e).

As of this date, 335 jailers from twelve counties have appealed their reclassifications. It is possible more will be filed. The twelve counties are: Bayfield, Brown, Buffalo, Chippewa, Clark, Dunn, Fond du Lac, Iron, Kewaunee, Marquette, Ozaukee and Taylor. Ten of the counties are represented by the same private attorney, while one county is represented by its Human Resources Director and the other county is represented by its Corporation Counsel.

ETF’s Special Consultant to the Deputy Secretary met with the attorneys for the counties and appellants in late April 2013, and they initially agreed that ETF would send one case from each county to the Division of Hearings and Appeals for a hearing before an Administrative Law Judge. However, In March 2014, the parties agreed to forward five cases, which are representative of the employment position categories, to the Administrative Law Judge for hearing.

On April 2, 2014, a prehearing conference was held with the Administrative Law Judge. Since that date, the parties filed legal briefs regarding a motion to limit testimony and exclude certain witnesses from testifying at the evidentiary hearing. The final brief was filed in mid-July. On December 16, 2014, the Administrative Law Judge issued

Reviewed and approved by Robert J. Conlin, Secretary

Electronically signed 3/10/15

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a decision on the motion. Expert testimony regarding the nature of the appellants' job duties and law enforcement duties likely will be relevant and assist the Administrative Law Judge in reaching a decision. Such testimony will be allowed at the evidentiary hearing. However, testimony regarding the motivation, process and timing of the County's decision to reclassify the appellants' job duties is not relevant, and such testimony will not be allowed.

On January 20, 2015, another prehearing conference was held. The Administrative Law Judge issued a scheduling order setting deadlines for various procedural activities. He also scheduled an evidentiary hearing for May 18-21, 2015. The parties agreed that the issue in this case is whether the appellants' job duties are such that the county wrongly reclassified them out of the protective retirement category set forth in Wis. Stat. § 40.02(48)(a).

Staff will be available at the Board meeting to answer questions.