Employment Law

Discrimination – Arrest Records – Noncriminal Offenses

***Oconomowoc Area Sch. Dist. v. Cota*, 2025 WI 11 (filed April 10, 2025)**

HOLDINGS: Noncriminal offenses may fall within the reach of arrest records under the Wisconsin Fair Employment Act, and the school district engaged in arrest-record discrimination.

SUMMARY: Several school district employees were suspected of skimming money from cash payments received in exchange for recycled scrap metal. Among those suspected were the respondent Cota brothers (hereinafter the Cotas). When the district's investigation foundered, the district turned over the matter to the local police department for investigation. No new information surfaced as to the Cotas, but they were cited for municipal theft regardless. The school district later fired the Cotas for their involvement in the theft even though they had never been convicted or pleaded guilty. The citations were later dismissed.

The Cotas sued, alleging that the school district violated the Wisconsin Fair Employment Act's prohibition on terminating employment because of employees' "arrest record[s]." *See* Wis. Stat. §§ 111.321, 111.322(1). The Act defines *arrest record* broadly to include "information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority." Wis. Stat. § 111.32(1). The Labor and Industry Review Commission (LIRC) concluded that the Cotas had been fired as a result of arrest-record discrimination. The circuit court affirmed LIRC. In a published decision, the court of appeals reversed. *See* 2024 WI App 8.

In a majority opinion authored by Justice Dallet, the supreme court reversed the court of appeals. The decision focused on the meaning of "arrest record" under Wis. Stat. section 111.32(1). The court held that the municipal citations fell within the statute's provision for "any … other offense" (¶ 20). "In sum, ordinary meaning, statutory context, and express statutory purpose all support the same conclusion: that 'any … other offense,' as it appears in [Wis. Stat. section] 111.32(1), includes non-criminal offenses" (¶ 26).

Finally, "substantial evidence" supported LIRC's determination that discrimination had occurred (¶ 30). Said the court: "Before we conclude, we clarify that the Act does not prohibit terminating employees with arrest records. Rather, it prohibits terminating employees *because of* their arrest records. See §§ 111.321, 111.322(1). The District thus did not lose its ability to terminate the Cotas by referring the matter to the police, and it remained free to terminate the Cotas after such a referral for any lawful reason" (¶ 34).

Justice Protasiewicz concurred but wrote separately "to call attention to the oddity of this outcome and to recommend that our statutes better accommodate employers who are victims" (¶ 36).

Chief Justice Ziegler dissented: "The upshot of the court's decision is directly at odds with the legislatively enacted purpose of the statutes at issue. These statutes were enacted to protect employees from unwarranted termination. But today's opinion will ensure the opposite" (¶ 49).

Justice R.G. Bradley also dissented, joined by Chief Justice Ziegler. "By misapprehending a question of law for one of fact, the majority sidesteps its responsibility to declare the law and effectively endorses LIRC's misinterpretation of the governing statute to shield employees from any adverse employment consequences for their malfeasance" (¶ 61).

State Government

Biennial State Budget – Governor's Partial Veto Power

***LeMieux v. Evers*, 2025 WI 12 (filed April 18, 2025)**

HOLDING: The governor's partial vetoes under scrutiny in this case did not violate article V, section 10(1)(b) or (c) of the Wisconsin Constitution.

SUMMARY: The question in this original action before the supreme court was

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In this column, Prof. Daniel D. Blinka and Prof. Thomas J. Hammer summarize all decisions of the Wisconsin Supreme Court (except those involving lawyer or judicial discipline).

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whether Governor Tony Evers exceeded his partial-veto authority under article V, section 10(1) of the Wisconsin Constitution. At issue was Wisconsin's 2023-25 biennial budget bill, which included an education revenue limit increase for two fiscal years. Using his partial-veto authority, the governor expanded the provision from two fiscal years to 402 fiscal years by striking words and digits from the bill. The Wisconsin Legislature's efforts to override the governor's vetoes failed and the law went into effect.

The supreme court upheld the governor's vetoes. In that part of the opinion that garnered the votes of four justices (Justice Karofsky (author of the majority/lead opinion), Justice A.W. Bradley, Justice Dallet, and Justice Protasiewicz), the court concluded that the vetoes did not violate article V, section 10(1)(b) or (c) of the Wisconsin Constitution.

Section 10(1)(b) provides *inter alia* that "[a]ppropriation bills may be approved in whole or in part by the governor...." The court's precedent establishes four principles that have been applied to determine the validity of "deletion vetoes" of appropriation bills, that is, partial vetoes in which the governor strikes text: 1) The remaining parts of the bill must constitute a complete, entire, and workable law. 2) Deletion vetoes may only be exercised on bills containing appropriations within their four corners. 3) The deletion vetoes may not result in a law that is not germane to the original bill. 4) While the governor can strike individual words, letters, or numbers, the governor cannot create a new word by rejecting individual letters, nor may the governor create a new sentence by combining parts of two or more sentences of the enrolled bill (*see* ¶ 12). The majority concluded that Governor Evers' partial vetoes satisfied these four deletion-veto principles and are thus valid under article V, section 10(1)(b) (*see* ¶ 24).

Section 10(1)(c) provides that "[i]n approving an appropriation bill in part, the governor may not create a new word by rejecting individual letters in the words of the enrolled bill, and may not create a new sentence by combining parts of 2 or more sentences of the enrolled bill." The majority concluded that this provision "relates exclusively to the deletion of letters to create new words, not the deletion of digits to create new numbers" (¶ 25). Accordingly, the majority held that the governor's partial vetoes did not violate article V, section 10(1)(c) (¶ 27).

The majority concluded its opinion by recognizing that the governor's 400-year modification of the enrolled bill was both "significant and attention-grabbing" (¶ 28). But it noted that the legislature is not without recourse. Without taking a position about the legislature's options, the majority noted that these vetoes might be addressed in the next biennial budget, the legislature might pursue a constitutional amendment to further limit the governor's partial veto power, and it might use various legislative drafting techniques to limit the governor's veto power (*see* ¶¶ 29-30).

Justice Dallet filed a concurring opinion.

Justice Hagedorn filed a dissent that was joined in by Chief Justice Ziegler and Justice R.G. Bradley. **WL**