

1997-98 SESSION  
COMMITTEE HEARING  
RECORDS

Committee Name:

Joint Survey Committee  
on Retirement Systems  
(JSC-RS)

Sample:

- Record of Comm. Proceedings
- 97hrAC-EdR\_RCP\_pt01a
- 97hrAC-EdR\_RCP\_pt01b
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State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS  
AND THE RETIREMENT RESEARCH COMMITTEE

April 16, 1996

Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-A

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TO: Members of the RRC Subcommittee on Protectives

FROM: Blair Testin, Consultant

RE: WRS Employee Classifications and Comparisons

Nearly all of the major public retirement systems (PERS) across the country have established multiple employee classifications with varying rights and benefits. These differences in rights and benefits have been a major area of concern in recent years because of proposed Federal IRS non-discrimination rules. Said rules have been postponed several times since 1989, and are now scheduled to be effective on January 1, 1999.

It is generally agreed that few, if any, of the major PERS could meet all of the requirements found under the proposed rules. In 1989 seven national organizations involved with state and local PERS presented a joint position paper to the IRS which noted some characteristics of public sector plans that would make it difficult or impossible to comply with non-discrimination standards developed for the private sector:

- " Judges tend to be appointed or elected to their positions late in their working careers with relatively brief periods allowed for the accrual of retirement benefits.
- Legislators frequently have low-base compensation which would produce inordinately low benefits when compared to other employees. Furthermore, they tend to have shorter service lives than other employees because of the electoral process.
- Public Safety Employees (police and fire) operate in an environment which requires a younger work force than would typically be required for non-public safety positions. the quasi-military nature of their organizational structure plus the need for a relatively young work force has led to retirement programs for them which in many respects parallels the U.S. Military retirement systems.
- Public Education Employees require plans which extend coverage to both certificated and non-certificated employees within school districts. The non-certificated employees are frequently low-paid, service-industry employees working less than full time with relatively high rates of turnover. The certificated employees tend to be higher paid, long-service employees. "

The several WRS classifications and their rights and benefits are discussed on the following pages.

**TABLE I**  
**WRS CLASSIFICATION COMPARISONS**

<u>DATA</u>	<u>GENERAL + TEACHER***</u>	<u>ELECTED + STATE EXEC.</u>	<u>P.O.P. + S.S.</u>	<u>P.O.P. - S.S.</u>
<u>Actives (1994)*</u>	214,280	1,450	12,825	2,612
% of Total # (231,167)	92.7%	0.6%	5.5%	1.1%
% of Total Payroll** (\$6,946.9 million)	91.3%	0.9%	6.3%	1.5%
Average Age	43.5	51.1	38.4	40.6
Average Service	11.0	10.8	11.5	14.4
-----				
<u>Retiree (1993)</u>				
Average Age	62.0	65.2	55.9	55.7
Average Service	21.2	16.3	27.1	29.2
-----				
<u>Benefits</u>				
Formula Multiplier	1.6%	2.0%	2.0%	2.5%
Normal Retirement	65 (57/30)	62 (57/30)	54 (53/25)	54 (53/25)
Early Retirement	55	55	50	50
Special Duty Disability	No	No	Yes	Yes
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\* State employees = 28% of total actives; local = 72%

\*\* State employees = 30% of total payroll; local = 70%

\*\*\* General/teachers = 43.2% teachers; 56.8% other

**TABLE II**  
**CURRENT BENEFIT CONTRIBUTIONS**

<u>Contributions (1996)</u>	<u>Gen &amp; Teacher</u>	<u>Elect. Exec.</u>	<u>POP + S.S.</u>	<u>POP - S.S.</u>
- Employer Normal	5.1%	10.1%	9.2%	14.2%
- Employer Ave. UAAL	<u>1.3%</u>	<u>1.0%</u>	<u>1.0%</u>	<u>1.5%</u>
- Employer Subtotal	(6.4)	(11.1%)	(10.2%)	(15.7%)
- Employee Normal	5.0%	4.6%	6.0%	6.8%
- Employee BAC	<u>1.5%</u>	<u>-</u>	<u>0.1%</u>	<u>-</u>
- Employee Subtotal	(6.5%)	(4.6%)	(6.1%)	(6.8%)
- Total Normal Cost	11.6%	14.7%	15.3%	21.0%
- Normal Cost & UAAL	<u>12.9%</u>	<u>15.7%</u>	<u>16.3%</u>	<u>22.5%</u>
- Employer 40.65 Ave.	-	-	3.2%	3.2%

**Comments:** The above tables reflect some of the reasons why employees seek POP status:

- (1) POP formula benefits are 25% higher than general.
- (2) POP normal retirement (54 vs. 65) is 11 years earlier.
- (3) POP career retirement (53/25 vs. 57/30) is 4 years earlier.
- (4) POP early retirement (50 vs. 55) is 5 years earlier.
- (5) POP only class with access to 40.65 death & disability benefits.
- (6) POP (+S.S.) have lower employee costs than general.
- (7) POP (+S.S.) total WRS and 40.65 benefit package is 6.6% of payroll higher than general employees.

**TABLE III****TOTAL WRS COST CHANGES OVER 14-YEAR PERIOD**

<u>Year Effect.</u>	<u>General Total</u>	<u>Exec. Total</u>	<u>POP + SS Total</u>	<u>POP - SS Total</u>
1983	11.5%	17.4%	18.1%	27.8%
1984	11.5%	17.4%	18.1%	27.8%
1985	11.5%	17.4%	18.1%	27.8%
1986	12.5%	17.1%	19.3%	27.1%
1987	12.1%	16.8%	19.4%	26.5%
1988	12.0%	17.4%	19.0%	26.0%
1989	12.0%	17.4%	18.3%	24.9%
1990	12.0%	17.4%	18.1%	24.9%
1991	12.2%	17.6%	17.6%	23.9%
1992	12.4%	17.6%	17.6%	23.9%
1993	12.4%	17.6%	17.3%	23.9%
1994	12.3%	17.6%	17.3%	23.8%
1995	12.3%	17.6%	17.1%	23.2%
1996	12.9%	15.7%	16.8%	22.3%

Comments: General employee total costs have been relatively stable up until 1996 when actuarial experience rates as to "turnover" and "mortality" caused a significant increase. However, total costs for both POP classes reflect a slow but significant reduction over the years. This trend is at least partially a result of cost shifting between retirement benefit costs and insurance costs under the 40.65 death and disability plan.

The average costs of 40.65 over the same period have increased each year from an average employer rate in 1984 of 0.2%, to an average rate in 1996 of 3.2%--a sixteen fold increase in just 13 years. The escalating costs of 40.65 benefits presumably reflect not only the more hazardous nature of protective employment, but also the relatively liberal qualification requirements and generous benefit levels that may exceed the regular POP retirement benefits.



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS AND THE RETIREMENT RESEARCH COMMITTEE

April 16, 1996

Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-B

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TO: Members of the RRC Protective Study Subcommittee  
 FROM: Blair Testin, Consultant  
 RE: **PROTECTIVE OCCUPATION PARTICIPANT DESIGNATIONS:  
 CURRENT LAW & ALTERNATIVE COURSES OF ACTION**

I. CHAPTER 40, 1993 STATS.

Presently, participants under the WRS may fall under the protective category by one of the following courses:

- a) by specific statutory definition
- b) by employer designation, subject to review
- c) by employee appeal to the ETF Board
- d) by collective bargaining (state)

1. **Specific Definition.** Sections 40.02 (48) (am) and (bm) specify certain positions which are deemed by their title and related duties to be POP. Par. (am) lists positions that are little changed from those positions which were defined POP in Chapter 355, Laws of 1967. Par. (bm) was created by Wis. Act 357, and represents the major change to the positions defined during the 1967 session. These paragraphs read as follows:

40.02 (48) (am)

(am) "Protective occupation participant" includes any participant whose name is certified to the fund as provided in s. 40.06 (1) (d) and (dm) and who is a conservation warden, conservation patrol boat captain, conservation patrol boat engineer, conservation pilot, conservation patrol officer, forest fire control assistant, member of the state patrol, state motor vehicle inspector, police officer, fire fighter, sheriff, undersheriff, deputy sheriff, county traffic police officer, state forest ranger, fire watcher employed by the Wisconsin veterans home, state correctional-psychiatric officer, excise tax investigator employed by the department of revenue, special criminal investigation agent in the department of justice, assistant or deputy fire marshal, or person employed under s. 51.66 (1).

40.02 (48) (bm)

(bm) "Protective occupation participant" includes any participant who is an emergency medical technician if the participant's employer classifies the participant as a protective occupation participant and the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm). Notwithstanding par. (a), an employer may classify a participant who is an emergency medical technician as a protective occupation participant without making a determination that the principal duties of the participant involve active law enforcement or active fire suppression or prevention. A determination under this paragraph may not be appealed under s. 40.06 (1) (e) or (em), but a determination under this paragraph regarding the classification of a state employe is subject to review under s. 40.06 (1) (dm). Notwithstanding sub. (17) (d), each participant who is classified as a protective occupation participant under this paragraph on or after January 1, 1991, shall be granted creditable service as a protective occupation participant for all covered service as an emergency medical technician that was earned on or after the date on which the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm), but may not be granted creditable service as a protective occupation participant for any covered service as an emergency medical technician that was earned before that date.

*Which of these are still in existence?*

2. **Employer Designation/Review.** Sections 40.02 (48)(a) and 40.06 (1)(d) authorize employers to designate additional positions as POP, if the employers determine that the positions meet the following standards:

- a) Position involves active law enforcement or fire suppression or prevention.
- b) The position duties require frequent exposure to a high degree of danger or peril.
- c) Positions require a high degree of physical conditioning.

Also, s. 40.06 (1)(em) provides that the Employee Trust Funds (ETF) may review any positions so designated by employers other than state agencies. S. 40.06 (1)(dm) provides that the Department of Employment Relations (DER) shall review all designations made by state agencies to the protective category.

**40.02 (48) (a)**

(48) (a) "Protective occupation participant" means any participant whose principal duties are determined by the participating employer, or, subject to s. 40.06 (1) (dm), by the department head in the case of a state employe, to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.

**40.06 (1) (d)**

(d) Each participating employer and, subject to par. (dm), each state agency shall notify the department in the manner and at the time prescribed by the department, of the names of all participating employes classified as protective occupation participants determined in accordance with s. 40.02 (48) or classified as teacher participants in accordance with s. 40.02 (55) or other classification as specified by the department.

**40.06 (1) (em)**

(em) The department may review any determination by a participating employer to classify an employe who is not a state employe as a protective occupation participant and may appeal the determination to the board by filing a written notice of appeal with the board. The determination by the employer shall remain in effect until the department receives a written notification from the board indicating a classification for the employe that is different from the employer's determination.

**40.06 (1) (dm)**

(dm) Each determination by a department head regarding the classification of a state employe as a protective occupation participant shall be reviewed by the department of employment relations. A state employe's name may not be certified to the fund as a protective occupation participant under par. (d) until the department of employment relations approves the determination.

3. **Appeals.** Section 40.06 (1)(e) permits employees to appeal employer determinations as to protective status to the ETF. This section reads as follows:

**40.06 (1) (e)**

(e) 1. An employe may appeal a determination under par. (d), including a determination that the employe is not a participating employe, to the board by filing a written appeal with the board. An appeal under this paragraph does not apply to any service rendered more than 7 years prior to the date on which the appeal is received by the board. The board shall consider the appeal and mail a report of its decision to the employe and the participating employer or state agency.

4. Collective Bargaining. Recent court decisions (1992 and 1993) appear to prohibit collective bargaining as to POP status for local employees and employers governed by the Municipal Employment Relations Act (MERA) found under Ch. 111.70. However, these court rulings appear to allow local employers and employees to bargain supplemental benefits that may equate those benefits that are provided under WRS law for POP. The supplemental approach could use additional contribution programs under the WRS, or could involve supplemental programs provided by employers outside of Chapter 40, Stats.

The State Employment Labor Relations Act (SELRA) found under Ch. 111 may allow collective bargaining of POP status for state employees and employers. S. 111.93 (3) specifically provides that any provisions of a collective bargaining agreement that are in conflict with provisions of civil service and other applicable statutes shall supersede such provisions and statutes--with certain exceptions as to the deferred compensation under s. 40.80, and the contribution and premium provisions under s.40.05 of the statutes.

S. 111.93 (3) reads as follows:

s. 111.93 (3)

111.93 Effect of labor organization; status of existing benefits and rights.

(3) Except as provided in ss. 40.05, 40.80 (3), 111.91 (1) (cm) and 230.88 (2) (b), if a collective bargaining agreement exists between the employer and a labor organization representing employes in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other applicable statutes, as well as rules and policies of the board of regents of the university of Wisconsin system, related to wages, fringe benefits, hours and conditions of employment whether or not the matters contained in those statutes, rules and policies are set forth in the collective bargaining agreement.

## II. ALTERNATIVE COURSES OF ACTION

Concerning the existing definitions and procedures governing the designation of POP status, the RRC subcommittee could consider the following courses of action:

1. Recommend no change, assuming that present laws and procedures are adequate in the determination of POP status.
2. Refine the basic "law enforcement" standard for POP designation to newly include completion of training as a police officer, arrest powers, authority to carry fire arms, etc.
3. Liberalize the existing standards for POP designation to facilitate new position designations which may be hazardous in nature, but not necessarily involve law enforcement or fire suppression--the opposite of #2.
4. Analyze the job descriptions and duties of certain positions which have regularly been reflected in session bills (example - county jailers) to determine whether such positions should be added to those specifically defined as POP.
5. Restudy the job descriptions and duties of the existing positions now defined as POP under the statutes for possible deletion.
6. Consider prohibiting all collective bargaining by both state and local employees relative to POP status.
7. Consider making POP status a mandatory subject of collective bargaining for both state and local employees--the opposite of #6.
8. Consider amendments to WRS law which would implement mandatory retirement, if authorized in the near future by Congress.
9. Consider reducing the differences in rights and benefits between the various WRS classifications.
10. Consider opening up the s. 40.65 death and disability program to WRS participants other than protectives.

Subsequent staff memos will explore these alternative possible courses of action.

11. Create "Hazardous duty" classification  
As it relates to Protective & Reg



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS  
AND THE RETIREMENT RESEARCH COMMITTEE

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Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-C

April 16, 1996

TO: Members of the RRC Protective Study Subcommittee

FROM: Blair Testin, Consultant

RE: **Protective Designation Legislation in Past Sessions:  
Possible Rationale for Change or No Change**

**Chapter 335, Laws of 1967.** As a result of detailed RRC studies in 1964 and 1967 (Staff Reports #10 and #15), comprehensive changes were enacted relative to the WRF protective program. These changes redefined the eligibility standards for P.O.P. coverage, removed several specific groups from protective designation and added others, reduced the retirement age and years of service for normal retirement from 60 and 30 years to 55 and 25 years, increased the formula factor to reflect a shorter working career, provided that contributions and service credit would not be recognized after age 58, and established procedures for compulsory retirement.

These substantive changes reflected a comparative study by the RRC with protective programs in other states, and were based upon some of the following basic assumptions:

- That certain public employees should retire at an earlier age in the interest of the general public.
- That there is a direct correlation between the higher formula benefits for protectives and the assumed earlier retirement.
- That the early retirement provisions would be enforced by compulsory retirement at age 58.

In addition, this major act defined specific positions to be covered by the protective program, authorized employers to designate other positions which were deemed to meet the basic criteria for protective designation, and permitted employees to appeal to the retirement board relative to employer decisions in this regard. These provisions governing POP designations are still in force.

**Post-1967.** Since the major legislation in 1967, over 20% of retirement bills introduced in each legislative session have related to the WRF/WRS protective program. Some of the bills dealt with the presumption clause for disability and death benefits, delays or exceptions to the compulsory retirement, protective disability benefits, retroactive protective credit, the merging of protective programs, etc. In addition, bills have been introduced in most

Protective Designation Legislation

sessions to add to the list of those positions specifically defined as protective. The number of such bills has sharply accelerated since the mid-1980's, reflecting amendments to the Federal Age Discrimination in Employment Act (ADEA) which raised legal questions concerning compulsory retirement of protectives. The 1995 legislative session reflected 11 bills relating to protective designation--an all-time high.

**1989 Session.** Between 1967 and 1989, no bill newly defining positions as protective became law. This presumably reflects that the legislature felt that there were ample methods for positions to be designated as protective without mandating those positions under the protective category. Also, over the years many employees have appealed to the retirement board for reconsideration of their classification, but the majority of these appeals have been unsuccessful.

Two bills were enacted in the 1989 session which newly defined positions as protectives--on either a mandatory or permissive basis. One of these bills (1989 Wis. Act 240) returned motor vehicle inspectors to the protective category on a prospective basis only. This same legislation also expanded the law enforcement authority of motor vehicle inspectors which enhanced the rationale for change. This legislation presumably had the approval of DOT and effected about 100 positions.

1989 Wis. Act 357 represented a more important change to the philosophy governing the protective program. This Act concerned paramedics and ambulance personnel who usually are part of a local fire department and are protective because they are also firefighters. However, in a few counties paramedic services are provided outside of the local fire department; and because these employees are not actively involved in fire suppression, presumably their employers could not designate said employees as protectives.

Wisconsin Act 357 newly allows employers (counties) where such personnel are not part of a fire department to elect to place their paramedic and ambulance personnel in the protective category, either unilaterally or pursuant to a collective bargaining agreement. These provisions are now coded as s. 40.02 (48)(bm). This paragraph notes that these provisions are an exception to the protective qualification standards--hence, representing a major departure from previous policies.

**Possible Conclusion.** The legislature has been remarkably consistent since 1967 in allowing the protective provisions enacted by Ch. 355, Laws of 1967, to govern the protective designation process. This may indicate legislative satisfaction with present procedures. Even in the one major exception relative to paramedics and ambulance personnel, the designation process is presumably based upon an employer election. On the other hand, the increasing number of bills each session dealing with POP designations may indicate need for change.

Session Bills. The following is a list of bills introduced between 1967 and 1995 which would newly defined positions as protectives:

1995

- S.B. 19 - Probation and parole officers
- S.B. 27 - Motor vehicle inspectors retroactivity
- S.B. 426 - Probation and parole officers
- S.B. 427 - County jailers
- S.B. 428 - Probation and parole officers, county jailers, security officers at national guard facilities.
- S.B. 429 - Security officers at national guard facilities
- S.B. 477 - Security officers at U.W. Hospitals & Clinics
- S.B. 603 - County coroners and deputy coroners.
- A.B. 99 - State motor vehicle inspectors retroactivity.
- A.B. 287 - Probation and parole officers, teachers and librarians in correctional institutions.
- A.B. 425 - County jailers

1993

- A.B. 697 - Security officers at national guard facilities
- A.B. 1129 - Probation and parole officers
- S.B. 65 - Probation and parole officers
- S.B. 284 - Probation and parole officers, teachers and librarians in correctional institutions.
- S.B. 495 - County jailers

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1991

- S.B. 33 - Child protective service workers
- S.B. 507 - Teachers and librarians in correctional inst.
- A.B. 482 - County jailers
- A.B. 719 - Teachers and librarians in correctional inst.
- A.B. 720 - Security officers at national guard facilities

1989

- A.B. 413 - Paramedics and ambulance attendants  
(Wis. Act 357)
- A.B. 382 - Motor vehicle inspectors prospectively  
(Wis. Act 240)
- S.B. 352 - County jailers

1987

- A.B. 1014- County jailers

1985 - None

1983 - None

1981 - None

1979

- A.B. 96 - Supervisor and youth counselors in correctional inst.

1977

- A.B. 679 - Correctional employees including industrial technicians and supervisors, teacher supervisors, social workers, and supervisors.

1975

- A.B. 567 - Industrial technicians and superintendent in correctional inst.
- A.B. 1184- Municipal utility linemen

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1973

- S.B. 788 - Probation and parole officers
- A.B. 1174 - Foremen and superintendents at correctional inst.

1971

- A.B. 437 - Foresters and certain other DNR personnel
- A.B. 637 - Certain natural resource employees
- S.B. 787 - Narcotic inspectors

1969

- A.B. 142 - Certain national resource employees
- S.B. 757 - State fire marshalls

1967

- A.B. 449 - Radio dispatchers
- S.B. 448 - Radio dispatchers



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS AND THE RETIREMENT RESEARCH COMMITTEE

April 16, 1996

Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-D

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TO: Members of the Protective Study Subcommittee  
FROM: Blair Testin, Consultant  
RE: POP QUALIFICATION STANDARDS: POSSIBLY RESTRICT OR LIBERALIZE

Existing Standards. Several of the early RRC studies dealt with the WRF P.O.P. programs--RRC Reports #1 - #10 and #15. The recommendations in Report #15 relative to the qualification standards for POP designation (See Attachment I) are reflected in Ch. 355, Laws of 1967. The JSCRS appendix report on this legislation (S.B. 415) noted the following discussion as to qualification standards in the public policy section of the report.

JSCRS COMMITTEE REPORT ON S.B. 415

The important point to remember concerning public safety is that these employees are employed by a public agency to safeguard and protect society. The duties could include enforcing laws, arrest and custody and firefighting. In essence the protection of both person and property is included.

An individual who is a protective occupation participant performs duties which are principally concerned with active law enforcement or active fire suppression. He is exposed to a high degree of danger or peril. He must meet the basic qualifications for membership in WRF and devote 51% or more of his work time to the duties listed above. An individual whose principal duties do not consist of 51% or more of his work time being devoted to active law enforcement or active fire suppression would not be eligible for protective occupation membership.

It is assumed that an individual's duties, under the protective occupation philosophy, would subject him to periods of great mental and physical stress as well as possible personal injury or perhaps even death. In other words the potential danger exists whenever these individuals are on duty and quite often when they are off duty. A police officer is required to be armed at all times and to be prepared to enforce laws, prevent crime and protect the public even while off duty.

These individuals are required to be present under very dangerous situations and to carry out their assigned duties regardless of the risk involved. Natural disasters, race riots, major fires are examples of situations requiring these employees to perform their duties. Other employees or members of society might be able to avoid these situations by merely leaving the area but those employees who are protective occupation participants are required to remain, thus risking life and limb until the situation is brought under control.

These employees must be able to undergo great mental and physical strain on occasion. Law enforcement and fire fighting, as well as associated employment, is definitely a younger man's occupation. As an individual grows older he is no longer able to perform duties requiring great physical endurance in the same manner as when he were younger. For this reason retirement systems throughout the country have recognized this as a problem and have provided for mandatory retirement of these employees at an earlier age and fewer years of creditable service than for general members.

**Study Requests.** In May, 1990, the Secretary of the DETF (Gary Gates) requested the RRC to restudy the qualification standards for POP designation. This request was also formally approved by the ETF Board at its meeting of December 14, 1990, in the form of the following motion.

**ETF Board Meeting Minutes - 12/14/90**

Mr. Gates read an excerpt from a memorandum he had written to the Retirement Research Committee in May and suggested the Board might want to reendorse that position in any request for further action.

**MOTION:** Mr. Dushack moved that the Board reenforce and reaffirm the request made by Mr. Gates in his May 24, 1990, memorandum to the Retirement Research Committee asking that they study the definition of protective occupation participants as defined under s. 40.02 (48), Stats., to address the question "does the statutory definition reflect the public policy it was originally based on and is there a need to alter the definition in light of changing employment conditions?" Mr. Brown seconded the motion which passed on a voice vote.

The RRC reviewed the ETF Board motion at an RRC meeting on 3/21/91, but the Committee took no action at that time. More recently, correspondence from Representative Doris Hanson (see attachment) asked for a clarification of the POP qualification standards. She suggested in her letter that some positions which are now defined as POP appear not to meet the basic POP qualification standards, while other positions which are not classified as POP appear to meet those standards. It should be noted that the existing statutes governing POP positions that are defined as such and also the qualification standards have been in existence for essentially 30 years.

**ETF Review Process.** Section 40.06 (1)(em) provides that the ETF may review all positions that are designated as POP by employers other than state agencies. The ETF and its Boards are also involved in employee appeals relative to the employer designation authority for POP coverage. An ETF memo dated October 26, 1994, to the Wisconsin Employment Relations Council provides some background information on how the ETF applies the qualification standards in carrying out its statutory duties for review and appeal. The following quotations from this memo deal with the ETF's interpretation of the qualification standards for POP designation.

DETF Memo of 10/26/94

A protective occupation participant is defined as a participant in the WRS, whose principal duties, meaning those making up 51% or more of the job duties, as determined by the employer (in the case of local government employees), satisfy all the following criteria:

- The principal duties of the position involve active law enforcement (or active fire suppression or prevention).
- The principal duties of the position require frequent exposure to a high degree of danger or peril.
- The principal duties of the position require a high degree of physical conditioning.

The DETF has not promulgated administrative rules further defining these criteria. When deciding cases turning on these terms, the ETF Board has considered the actual duties and risks of the particular job at issue.

Section 40.02 (48), Stats., which defines protective occupation participant, also includes a list of positions which are deemed to be protective occupation participants. See §40.02 (48)(am), Stats. Four listed jobs, police officer, fire fighter, deputy sheriff and county traffic police officer, are the subjects of additional clarifications in §40.02 (48)(b)1 to 3, Stats. So, for example, while a deputy sheriff is deemed to be a protective occupation participant, the term does not include an employee of a sheriff's office:

... whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement.

Accordingly, the Department's position is that merely holding the title of "deputy sheriff" or merely being employed by a sheriff's office, is not sufficient to qualify as a protective occupation participant. The employee's principal duties must also clearly fall within the scope of active law enforcement. The term "active law enforcement" does not occur in the Wisconsin Statutes outside of ch. 40. However, the DETF position is that such activity is related to actively engaging in the duties of a law enforcement officer. A "law enforcement officer" is frequently defined by the Wisconsin Statutes, generally as a person employed for the purpose of detecting and preventing crime, enforcing laws and ordinances, who is authorized to make arrests for violations of the laws and ordinances the person is employed to enforce.<sup>1</sup>

In recent decisions granting protective occupation participant status, the ETF Board has specifically relied on the definition of "law enforcement officer" found in §165.85(2)(c), Stats., to find a particular sheriff's office employee was a protective occupation participant. The Board has also ruled that an officer who fell within the definition of a "rail officer" under §165.85(2)(bn), Stats., instead of "law enforcement officer," was not a protective occupation participant.

**DER Review.** Section 40.06 (1)(dm) grants the Department of Employment Relations the same review process for POP designations made by state agencies. In dealing with its responsibilities, DER has prepared a draft of Ch. 728, Wisconsin Personnel Manual, which relates to the designation of POP status for state employees. Keeping in mind that this is presently a draft of such Chapter, the following quotations indicate DER's interpretation of the statutory qualification standards for POP designation.

**Draft - Chapter 728, Wis. Personnel Manual**

**728.020 Policy Statement**

**Policy Statement.** It is the policy of the DER to apply the "protective occupation status" provisions of Chapter 40 in a narrow sense and in accordance with the statutory intent. The intent of "protective occupation status" under the WRS is to provide a supplemental retirement benefit for those law enforcement and fire protection employees who are primarily responsible for protecting the public in the performance of their duties. The rationale for granting special retirement benefits to certain occupational groups is described in the Retirement Research Council Staff Report No. 1-1962 as follows:

"The public interest requires that employes whose duties relate directly to public safety should possess the necessary mental and physical skills to cope with any type of emergency situation. Failure to maintain high standards in this regard is to subject the public, as well as other employes, to unwarranted danger. In certain other occupational areas, the primary danger is that the employe himself will fall victim to his own physical and mental limitations."

**728.030 Guidelines for Making Protective Status Determinations**

In making "protective status" determinations for state employes, the DER will apply the following guidelines developed by a subcommittee of the State Human Resources Management Council.

- A. **Public Safety.** The concept of public safety is key and should prove to be the focal point for the position. "Public Safety" for purposes of this chapter is construed to mean protection of the public against danger as well as the responsibility to enforce public good.
- B. **Principal Duties.** The principal duties of a position are those duties which are performed by the employe at least a majority of the time and/or are determined to be of foremost importance to the position. Additional factors to be considered when determining "principal duties" are the following:
  1. The duties carry such significance that if removed from the position, the position may no longer exist and/or could no longer qualify for "protective status."
  2. The duties carry such significance that if the current incumbent is unable to perform those duties for any reason, he/she may be required to leave the position and would no longer qualify for "protective status."
  3. The duties involving active law enforcement or active fire suppression or prevention:
    - a. are based on supervisory or management expectations;
    - b. require action on the part of the employe expected to act in a law enforcement or fire suppression or prevention situation;
    - c. require frequent exposure to a high degree of danger or peril, i.e., exposure is not the result of infrequent or unique circumstances; and
    - d. require a high degree of physical conditioning.
- C. **Certification, Licensure, or Specialized Training.** A certification, license, or specialized training is required and must be maintained.

**D. Use of FLSA "Nonexempt" Public Safety Definitions in Making Protective Status Determinations.** The DER will also consider the Fair Labor Standards Act (FLSA) descriptions of "nonexempt" public safety employes (fire protection and law enforcement) when making "protective status" determinations. (Refer to Wisconsin Personnel Manual Chapter 516 for additional information regarding the FLSA provisions pertaining to "nonexempt" public safety employes).

1. Employes attending a bona fide fire or police academy or other training facility when required by the employing agency are engaged in public safety activities only when the employe meets the definitions provided in (1) or (2), except for the power of arrest for law enforcement personnel. For State Patrol Troopers who are in training to become law enforcement employes (i.e., cadets), the basic training or advanced training is considered incidental to, and part of, the employes' law enforcement activities.
2. Employes who do not meet the FLSA definitions of public safety employes but who perform related support activities such as dispatching, radio or alarm operation, apparatus and equipment repair and maintenance, and/or bulldozing do not qualify as law enforcement or fire protection personnel under the FLSA.
3. While the FLSA requires an employe to spend 80% of the total hours worked in the performance of the work described as fire protection or law enforcement, or work incidental to or in conjunction with the described work, the Wisconsin Statutes do not contain this specific percentage requirement. Therefore, the 80% FLSA rule is indicative of "protective status" but is not critical to the "protective status" determination for purposes of the WRS. The operating agency head and the DER must determine whether the "principal duties . . . involve active law enforcement or active fire suppression provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning."

**Possible Conclusion.** The correspondence from the ETF Board and Representative Hanson and also the efforts of the DETF and DER to deal with the statutory review process for a POP designation may indicate a need to clarify and update the intent of the statutory qualification standards for POP. The so-called "three-step process" has now been in effect for 30 years and may no longer be relevant.

The qualification standards presumably could take one of two opposite directions--further restriction or further liberalization. The application of the qualification standards could also be modified by possibly providing mandatory retirement for protectives if authorized by Federal law, and also by clarifying the desired role of collective bargaining on POP status--yeah or nay.

**Attachments.**

Attachment I - RRC Staff Report #15

Attachment II - March 13, 1995, from Rep. Doris Hanson

1967

STAFF REPORT NO. 15

Attachment I

\*

RETIREMENT RESEARCH COMMITTEE

A STUDY OF NORMAL RETIREMENT AGES AND NORMAL YEARS OF SERVICE  
AMONGST PROTECTIVE OCCUPATION PARTICIPANTS (OP), AS  
DEFINED BY THE WISCONSIN RETIREMENT SYSTEMS (WRS), AS  
APPLIED TO POLICE AND FIRE  
SYSTEMS THROUGHOUT THE UNITED STATES.

- SECTION I. Review, on a nation-wide basis of Retirement age and years of service pattern for protective occupation employees.
- SECTION II. Estimate of cost of reducing normal retirement age to 55 with 25 years of service for protective occupation members.
- SECTION III. Reduction of retirement benefits for protective occupation participants who remain in the system after the normal retirement age.
- X SECTION IV. Revision of standards for protective occupation participants.

Final Addenda - Action of the Retirement Research Committee.

The purpose of this study is to determine the feasibility of lowering the normal retirement age to 55 with 25 years of creditable service for protective occupation participants of the Wisconsin Retirement Fund. At present normal retirement age is based on age 60 with 30 years of creditable service. The study is divided into 4 sections covering the major aspects of the problem.

Staff Reports No. 1 - 1962 and No. 10 - 1964, previously prepared for the Retirement Research Council related to detailed studies of certain phases of this matter. Many facets of the problem, especially, those discussed in Section IV, have created considerable concern to legislators, administrators and members for a number of years.

It is hoped that this report will contain the necessary data to enable this problem to be resolved in an equitable manner. The reader should be referred to Staff Report No. 1 - 1962 and Staff Report No. 10 - 1964 for considerable history and background information on this subject. It was not the intention of this study to

SECTION IV.

REVISION OF STANDARDS FOR PROTECTIVE OCCUPATION PARTICIPANTS

It is very important that suitable guidelines be established regarding formulation of standards for protective occupation participants. A criteria must be developed which will guarantee the inclusion of all positions that should be covered as well as the determination of positions to be declared ineligible. More liberal retirement benefits are granted to protective occupation participants than are granted general members. Consequently, it is more costly to the employees concerned as well as the retirement system to provide benefits for protective occupation participants than for general members. The reasons have been enumerated previously; however, they consist of an earlier retirement age and the use of a more liberal retirement computation factor, thus resulting in a higher retirement allowance.

The criteria for positions to be included should consist of the following three elements:

- (1) Concerned with public safety.
- (2) Exposure to high degree of danger or peril.
- (3) Requires a level of physical conditioning greater than that of other occupations.

Concerned with public safety. Generally speaking the positions concerned with public safety are in the fields of law enforcement or active fire suppression. A few positions could be included which are closely related to one of the two major categories. As an example, correctional-psychiatric officers on duty in the State prison or a mental institution for the criminally insane would be in a position

closely related to law enforcement. The important point to remember concerning this element is that these employees are employed by a public agency to safeguard and protect society. The duties could include enforcing laws, arrest and custody and firefighting. In essence the protection of both person and property is included.

Exposure to high degree of danger or peril. Here we must refer to the fact that an individual who is a protective occupation participant performs duties which are principally concerned with active law enforcement or active fire suppression. He must meet the basic qualifications for membership in WRF and devote 51% or more of his work time to the duties listed above. An individual whose principal duties do not consist of 51% or more of his work time being devoted to active law enforcement or active fire suppression would not be eligible for protective occupation membership.

The following sections should become a part of the state statutes defining ineligibility for protective occupation membership:

Clerks, bookkeepers, stenographers and other employees who may have been appointed as deputy sheriffs or any other person holding a title associated with protective occupation employment but who do not perform the duties of protective occupation participants and honorary law enforcement deputies or other persons holding appointments as deputies who receive no compensation therefor who do not regularly perform official duties and all other persons whose principal duties clearly do not fall within the scope of active law enforcement, even though such a person is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement are ineligible.

Bookkeepers, stenographers, clerks, laborers, honorary deputies, voluntary fire fighters or any other person holding a title associated with protective occupation employment but who do not perform the duties of protective occupation participants or receive no compensation therefore and all other members whose principal duties clearly do not fall within the scope of active fire suppression, even though such person is subject to occasional call, or is occasionally called upon to perform duties within the scope of active fire suppression are ineligible.

It is assumed that an individual's duties, under the protective occupation philosophy, would subject him to periods of great mental and physical stress as well as possible personal injury or perhaps even death. In other words the potential danger exists whenever these individuals are on duty and quite often when they are off duty. A police officer is required to be armed at all times and to be prepared to enforce laws, prevent crime and protect the public even while off duty.

These individuals are required to be present under very dangerous situations and to carry out their assigned duties regardless of the risk involved. Natural disasters, race riots, major fires are examples of situations requiring these employees to perform their duties. Other employees or members of society might be able to avoid these situations by merely leaving the area but those employees who are protective occupation participants are required to remain, thus risking life and limb until the situation is brought under control.

Requires a level of physical condition greater than that of other public employment.

These employees must be able to undergo great mental and physical strain on occasion. Law enforcement and fire fighting, as well as associated employment, is definitely a younger man's occupation. As an individual grows older he is no longer able to perform duties requiring great physical endurance in the same manner as when he were younger. For this reason retirement systems throughout the country have recognized this as a problem and have provided for mandatory retirement of these employees at an earlier age and fewer years of creditable service than for general members.

In order for a position to be considered a protective occupation position it should satisfactorily fulfill all of the three requirements enumerated above.

It is felt that upon consideration of the criteria herein developed the following positions qualify for protective occupation membership:

See attached list.

POSITIONS TO BE INCLUDED

Conservation Warden

Conservation Boat Captain

Conservation Boat Engineer

Conservation Pilot

Conservation Patrolman

Forest Fire Control Assistant

Member of State Patrol

Motor Vehicle Inspector, if hired prior to 6/30/67.

Policeman, including the chief and all other officers.

Fireman, including the chief and all other officers.

Sheriff, undersheriff and all other deputies.

Traffic Policeman

Forest Ranger

Correctional-psychiatric officer

Investigators - whose primary duties consist of  
investigational work enforcing compliance with  
alcoholic beverages, gambling, prostitution and  
cigarette laws.

Special Agents in Attorney General's office.

Matron Guards

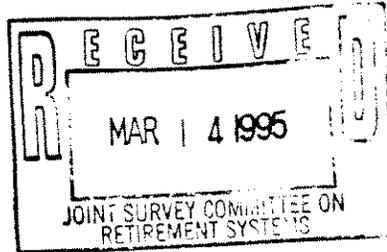
Fire Watchman



**Doris Hanson**  
State Representative  
48th Assembly District

P.O. Box 8952, Madison, WI 53708 • 266-5342  
Legislative Hotline: 266-9960

March 13, 1995



Senator Scott Fitzgerald, Co-chair  
Joint Committee on Retirement Systems  
Room 139 South, State Capitol  
Madison, WI 53707

Representative Judith Klusman, Co-chair  
Joint Committee on Retirement Systems  
Room 11 North, State Capitol  
Madison, WI 53708

Dear Senator Fitzgerald and Representative Klusman:

Last session, I introduced legislation to classify security guards at Wisconsin national guard facilities as protective occupation participants for the purposes of the Wisconsin Retirement System.

After talking with many people about this issue and sitting through testimony (last session) on many bills relating to classifying certain positions as protective occupation participants, I am writing to request a thorough study of the protective service classification system. I am sure you have already begun to see much of this legislation being reintroduced.

I hope your committee would, either as a whole or a subcommittee, look at the three criteria for inclusion as a "protective" and determine if the criteria need to be redefined. Many changes have occurred in our society today which I am sure were not considered at the initial determination for police and firefighters. A study of the "protectives" should also include an examination of the current job positions (many of which do not meet the above mentioned criteria) enumerated in the statutes.

It is evident that some positions currently granted "protective" status do not belong in this category and many positions not granted "protective" status should be included. A study and subsequent remedial legislation should eliminate the need for each group to come before your committee year after year.

Senator Fitzgerald and Representative Klusman  
March 13, 1995  
Page 2

Please give this study your utmost consideration. If you have any questions or need further information, let me know.

Sincerely,



DORIS J. HANSON  
State Representative  
48th Assembly District

DJH:lkb

cc: Members of the Joint Committee on Retirement Systems  
Blair Testin, Retirement Research



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS AND THE RETIREMENT RESEARCH COMMITTEE

April 16, 1996

Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-E

BLAIR L. TESTIN  
 RESEARCH DIRECTOR  
 ROOM 316, 110 E. MAIN STREET  
 MADISON WISCONSIN 53703  
 (608) 267-0507  
 FAX (608) 267-0675

TO: Members of the Protective Study Subcommittee  
 FROM: Blair Testin, Consultant  
 RE: COLLECTIVE BARGAINING OF P.O.P. STATUS:  
 CONSIDER PROHIBITING OR FACILITATING

Collective Bargaining Issue. The issue has long been debated whether or not POP status under the WRS can legally or should rationally be subject to bargaining. It appears that MERA law does not permit such bargaining, but SELRA law may allow such bargaining for state employees. Some parties of interest believe that the collective bargaining of POP status is not compatible with the provisions or intent of WRS law governing POP designations.

Other parties argue that general employees can bargain for benefits that are equivalent to those provided by WRS law for protectives, and hence, bargaining of POP status is not needed. Such bargaining could be through additional contributions as authorized under WRS statutes, or through additional benefits provided by the employer through outside contracting or self-administration.

Other parties of interest believe that collective bargaining ought to be authorized and facilitated, if the qualification standards for POP designation are not redefined and clarified. Presumably, collective bargaining would reduce the number of "special interest bills" that are introduced each session for POP designation.

Recent Court Action. The issue of mandatory bargaining on POP status was brought to the Wis. Employment Relations Commission (WERC) by LaCrosse County and the Wisconsin Professional Police Association (WPPA). The County viewed the classification of employees as POP as a management decision, while the WRPA viewed it as a compensation issue.

Collective Bargaining of POP Status  
Page 2

WERC reviewed this issue and ruled that the designation of POP status is subject to mandatory bargaining because it is primarily an issue related to wages and compensation. Under such interpretation, POP designation would be a mandatory subject under a MERA.

The County appealed this ruling to the Court of Appeals, District IV, and that Court ruled that POP status is not a subject of mandatory bargaining under MERA. The appeals decision further stated that collective bargaining of POP status is incompatible with the provisions and intent of WRS law. In arriving at this decision, the Appeals Court relied heavily upon past reports and memos of the RRC and JSCRS. (See attachment).

The ruling of the appeals court was next appealed to the State Supreme Court, and its decision (December 7, 1993) reversed the ruling of the appeals court, based upon a characterization of the case that was neither presented or discussed by WERC or the Court of Appeals. The WPPA presented a new argument that the LaCrosse County bargaining was relative to a level of contributions to fund employee retirement benefits, and not classification as POP. The Supreme Court decision noted that additional compensation can be provided general employees that would equate POP benefits, and that hence, contribution levels were a mandatory subject of bargaining under MERA.

**Clarification or Flexibility.** The increasing number of bills introduced each session to designate specific positions as protectives indicates that some action needs to be taken relative to the POP designation process. Much of the conflict appears to be the lack of clarity in the qualification standards for POP designation found under WRS law--the so-called "three-step process".

It could be argued that if the qualification standards are not refined so that both employees and employers recognize whether or not their positions qualify as protectives, that collective bargaining ought to be authorized and facilitated relative to POP status. An RRC staff memo dated May 14, 1986 relative to a review of county jailers discussed some of the pros and cons of the collective bargaining issue as follows:

**EXCERPT**

2. Definition Vs. Bargaining -- If additional state and local positions warrant coverage under the WRS POP retirement program or the 40.65 death and disability program, the positions could be added either by amending the definitions or by allowing employer designation plus or minus collective bargaining. The problem with specifically defining additional positions to be covered by either the WRS POP or the 40.65 program is that job descriptions can change over time (example--motor vehicle inspectors) or the job descriptions may vary from institution to institution or employer to employer (example--county jailers and paramedics). Hence, adding new positions by specific definition may cause additional inequities immediately or in the future, and may diminish the rationale for exclusive benefits for certain participants under the WRS and/or the 40.65 program.

Allowing the employer to designate added positions as POP for purposes of the WRS or the 40.65 program permits recognitions of differences in job requirements from agency to agency or employer to employer, and also changes in position duties occurring over time. In addition, the collective bargaining process could be involved in such determinations and presumably would require consideration of the costs involved in including positions under the 40.65 program or the WRS protective benefit program. This is a particularly important issue relative to the WRS POP program which reflects employer costs nearly double the employer costs for general participants.

3. Hazardous Positions -- The POP definition for WRS retirement benefits requires that the participant be involved in active law enforcement or fire suppression, and also requires frequent exposure to hazardous duty and superior physical conditioning. Accordingly, it does not include positions which may be hazardous and require good physical conditioning if law enforcement or fire prevention duties are not also involved. Examples of positions which may be hazardous but are not law enforcement or fire prevention include paramedics that are separate from fire or police departments, county jailers who are not deputized, state employees at youth facilities and mental institutions, municipal linemen, highway construction or repair, etc.

Consideration might be given to allowing employers by statute to designate additional hazardous positions to be covered by the WRS POP benefit program if such designation has been arrived at by collective bargaining. Such bargaining presumably is now permissible for state employees pursuant to s. 111.93 of the statutes, but bargaining laws governing local government do not allow local contracts to supersede state statutes.

**Possible Conclusions.** The present qualification standards for POP designations are imprecise. They should either be refined, or the statutes governing collective bargaining for both state and local employees should perhaps be clarified to authorize and facilitate bargaining of protective occupation participant status.

**Attachments.**

- Supreme Court Decision of December 7, 1993
- Appeals Court Decision of June 12, 1992

COUNTY OF LA CROSSE, Petitioner-Appellant,  
v.  
WISCONSIN EMPLOYMENT RELATIONS COMMISSION,  
Defendant-Respondent-Petitioner,  
WISCONSIN PROFESSIONAL POLICE ASSOCIATION, Interve-  
nor-Petitioner.

Supreme Court

No. 90-2739. Oral argument September 7, 1993.—Decided  
December 7, 1993.

(Reversing 170 Wis. 2d 155, 488 N.W.2d 94 (Ct. App. 1992).)

(Also reported in 508 N.W.2d 9.)

1. Labor § 114.20\*—review—Wisconsin Employment  
Relations Commission ruling—bargaining nature  
of proposals—great weight.

Because of Wisconsin Employment Relations Commis-  
sion's perceived expertise in collective bargaining matters,  
Commission's rulings with respect to bargaining nature of  
proposals are entitled to great weight.

2. Labor § 113\*—review—Wisconsin Employment Rela-  
tions Commission ruling—harmonization of  
Municipal Employment Relations Act—other stat-  
ute—special competence of courts.

Deference normally given to Wisconsin Employment Rela-  
tions Commission's rulings with respect to bargaining  
nature of proposals is unwarranted when proposal in ques-  
tion requires harmonization of Municipal Employment  
Relations Act with other state statutes, and resulting legal  
questions fall within special competence of courts.

\*See Callaghan's Wisconsin Digest, same topic and section number.

3. Labor § 113\*—review—Wisconsin Employment Rela-  
tions Commission ruling—new characterization of  
case—de novo.

Supreme court would review de novo ruling of Wisconsin  
Employment Relations Commission with respect to bar-  
gaining nature of proposal, where ruling required  
harmonization of Municipal Employment Relations Act  
with other statutes and court's decision was based upon  
characterization of case that was neither presented to nor  
addressed by commission during its original  
determination.

4. Labor § 32\*—collective bargaining—mandatory sub-  
jects—retirement benefits—primarily related to  
wages.

Proposals dealing with retirement benefits are primarily  
related to wages.

5. Labor § 32\*—collective bargaining—mandatory sub-  
jects—retirement fund contributions—primarily  
related to wages—union proposal.

Where union proposal merely asked county to increase  
level of contributions to employee retirement fund, propo-  
sal in effect sought deferral of wages until members  
received them in form of retirement benefits, and as such,  
proposal was primarily related to wages and mandatory  
subject of bargaining under statute (Stats § 111.70(1)(a)).  
GESKE, J., took no part.

REVIEW of a decision of the Court of Appeals  
reversing a order of the Circuit Court for La Crosse  
County, John J. Perlich, Judge. *Reversed.*

For the defendant-respondent-petitioner the cause  
was argued by David C. Rice, assistant attorney gen-  
eral, with whom on the briefs was James E. Doyle,  
attorney general.

\*See Callaghan's Wisconsin Digest, same topic and section number.

For the intervenor-petitioner there were briefs by *Lee Cullen, Richard Thal and Cullen, Weston, Pines & Bach*, Madison and oral argument by *Richard Thal*.

For the petitioner-appellant there was a brief and oral argument by *William A. Shepherd*, LaCrosse, assistant corporation counsel.

Amicus curiae brief was filed by *Robert W. Mulcahy, John J. Prentice and Michael, Best & Friedrich*, Milwaukee for the Wisconsin Counties Association.

JON P. WILCOX, J. The sole issue on this review is whether a bargaining proposal by the Wisconsin Professional Police Association (WPPA) that would require La Crosse County to make its contributions to the Public Employee Trust Fund for its jailers equal in amount to those made for its Protective Occupation Participants (POPs)<sup>1</sup> is a mandatory subject of bargaining.

The court of appeals, in a published decision,<sup>2</sup> reversed the order of the La Crosse County Circuit Court, Judge John J. Perlich presiding, which affirmed a determination by the Wisconsin Employment Relations Commission (WERC) that the proposal was a mandatory subject of bargaining. We granted review of this appeal pursuant to Section (Rule) 809.62, Stats. We now reverse the decision of the court of appeals.

The facts are not in dispute. Beginning in November of 1988, and continuing into 1989, La Crosse County and WPPA, representing the county's deputy sheriffs and jailers, attempted to negotiate an extension of their collective bargaining agreement. During

<sup>1</sup>The term "Protective Occupation Participant" is defined at sec. 40.02(48), Stats.

<sup>2</sup>County of La Crosse v. WERC, 170 Wis. 2d 155, 488 N.W.2d 94 (Ct. App. 1992)

the course of those negotiations, WPPA offered the following bargaining proposal on behalf of the deputies and jailers:

Effective January 1, 1990, the county shall pay the full amount of the established employer's and employees' contribution rates of Protective Service schedule for all deputies and jailers covered by this agreement.

Upon receiving WPPA's proposal, La Crosse County petitioned WERC under sec. 111.70(4)(b), Stats.,<sup>3</sup> for a declaratory ruling on the question of whether the proposal was a mandatory or permissive subject of bargaining.

It is clear from their arguments before WERC that both La Crosse County and WPPA assumed that the proposal required the county to reclassify its jailers as POPs for Wisconsin retirement system purposes. In fact, until quite recently, all the parties continued to characterize the proposal in that fashion. As a result, virtually the entire focus of this litigation has centered on one issue, that being whether a proposal requiring a county to reclassify its jailers as POPs is a mandatory subject of bargaining.<sup>4</sup>

<sup>3</sup>Section 111.70(4)(b), Stats., provides in part: "Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling."

<sup>4</sup>WPPA, and later WERC, have argued that although the proposal required a POPs reclassification, it nonetheless was a mandatory subject of bargaining under sec. 111.70(1)(a), Stats., because it related primarily to compensation. This reasoning is developed in greater detail later in the body of this opinion.

Understandably, that characterization of the issue is reflected in WERC's declaratory ruling and the decisions of the circuit court and court of appeals. Due to the nature of our holding today, we need not examine the reasoning expressed in those opinions other than to note that they were predicated completely upon the assumption that WPPA's proposal required the county to reclassify its jailers as POPs.<sup>5</sup>

It was not until oral argument before this court that counsel for WERC and WPPA first suggested a different characterization of WPPA's original proposal. The new argument was prompted by counsels' discovery, the evening prior to oral argument, of sec. 40.05(2)(g)1, Stats. That statute provides that:

A participating employer may make contributions as provided in its compensation agreements for any participating employee in addition to the employer contributions required by this subsection. . . .

In light of sec. 40.05(2)(g)1, WERC argued for the first time that WPPA's proposal could be interpreted as merely asking the county to increase the level of retirement fund contributions it made on behalf of its jailers. In other words, the proposal need not be read so as to require the county to reclassify the jailers as POPs.

The county, on the other hand, has argued that the decision to classify jailers as POPs, essentially, is statutorily left to its discretion under sec. 40.02(48)(a), Stats., and thus cannot be a mandatory subject of bargaining.

<sup>5</sup>This is reflected in the opening sentence of the court of appeals decision: "In this appeal, we decide that whether La Crosse County shall classify its jailers as protective occupation participants in the Wisconsin retirement system is not a mandatory subject of bargaining under sec. 111.70(1)(a), Stats. *County of La Crosse*, 170 Wis. 2d at 161.

Thus characterized, WERC argued that the proposal fell under sec. 40.05(2)(g)1, and sec. 111.70(1)(a),<sup>6</sup> thereby making it a mandatory subject of bargaining. Owing to the eleventh-hour nature of WERC's new position, we allowed the parties to submit supplemental briefs.

In their joint supplemental brief, WERC and WPPA reiterate the view that in light of sec. 40.05(2)(g)1, Stats., this court could interpret WPPA's original bargaining proposal as merely requesting increased retirement fund contributions by the county. If we adopt that characterization, the proposal clearly, in their estimation, is a mandatory subject of bargaining. Their reasoning in this regard is easily summarized. First, they point to previous decisions of this court which held that under sec. 111.70(1)(a), proposals "primarily related" to wages, hours and conditions of employment are mandatory subjects of bargaining. *West Bend Education Assn. v. WERC*, 121 Wis. 2d 1, 8-9, 357 N.W.2d 534 (1984); *Unified School District No. 1 of Racine County v. WERC*, 81 Wis. 2d 89, 102, 259 N.W.2d 724 (1977). Next, they cite *City of Brookfield v. WERC*, 153 Wis. 2d 238, 242-43, 450 N.W.2d 495 (Ct. App. 1989) ("*Brookfield II*"), for the proposition that proposals dealing with retirement benefits and other forms of deferred compensation are "primarily related" to wages. Since the WPPA offer is such a proposal, it is a mandatory subject of bargaining.

Alternatively, WERC and WPPA suggest that we could still interpret WPPA's proposal as requiring a POPs reclassification by the county. They believe that

<sup>6</sup>Section 111.70(1)(a), Stats., requires municipal employers to bargain with respect to "wages, hours and conditions of employment. . . ."

such an interpretation is reasonable because it is how the parties themselves have framed the issue throughout. In fact, WERC and WPPA encourage us to adopt this latter characterization and proceed to the question thereby posed, namely, whether a bargaining proposal that requires a county to reclassify its jailers as POPs is a mandatory subject of bargaining.

La Crosse County, in its supplemental brief, agrees that if we interpret WPPA's proposal as merely requiring additional retirement fund contributions, it is a mandatory subject of bargaining. It vigorously disputes that characterization, however, labelling it an attempt by WPPA to "disguise" the real issue. That issue, according to the county, is whether a proposal that requires the county to make a POPs reclassification is a mandatory subject of bargaining. Needless to say, the county believes it cannot be forced to bargain on any proposal that encompasses such a requirement. The county also argues that sec. 40.05(2)(g)1, Stats., has no bearing on this case because WPPA's proposal, as both WPPA and WERC maintained until oral argument, implicates not only the level of trust fund contributions, but the entire range of additional benefits to which POPs are entitled, including an earlier retirement age and unique disability benefits.<sup>7</sup>

<sup>7</sup>The "ARGUMENT" section of WERC's initial brief to this court opens with the following assertion:

THE WPPA BARGAINING PROPOSAL, WHICH WOULD REQUIRE THE COUNTY TO TREAT JAILERS AS "PROTECTIVE OCCUPATION PARTICIPANTS" FOR PURPOSES OF RETIREMENT BENEFITS AND CONTRIBUTION LEVELS UNDER CH 40, STATS., IS A MANDATORY SUBJECT OF BARGAINING UNDER MERA

## [1-3]

Before proceeding with our analysis, we note that normally, WERC's rulings with respect to the bargaining nature of proposals are entitled to "great weight." *West Bend*, 121 Wis. 2d at 13. That deference is predicated on the commission's perceived expertise in collective bargaining matters. *Id.* at 12. Yet, courts of this state have held that such deference is unwarranted when the proposal in question requires harmonization of the Municipal Employment Relations Act (MERA) (secs. 111.70-111.77, Stats.) with other state statutes. See, *City of Brookfield v. WERC*, 87 Wis. 2d 819, 826-27, 275 N.W.2d 723 (1979) ("*Brookfield I*"); *Glendale Professional Policemen's Assn. v. City of Glendale*, 83 Wis. 2d 90, 100-01, 264 N.W.2d 594 (1978). Such legal questions fall within the special competence of courts. *Glendale*, 83 Wis. 2d at 100-01. Moreover, deference is particularly unwarranted in this case because our decision today is based upon a characterization of the case that was neither presented to nor addressed by WERC during its original determination. For these reasons, our review of WPPA's proposal is *de novo*.

We accept the interpretation first raised by WERC at oral argument. The language of WPPA's proposal is directed solely at the level of contributions the county must make to the Public Employee Trust Fund. As such, it falls squarely within the scope of sec. 40.05(2)(g)1, Stats. Under that statute, it is clear that the legislature intended counties to be able to bargain with respect to the level of retirement fund contributions they make for their employees.

The county argues that this language indicates that WPPA has consistently asked not only for increased trust fund contributions, but for all the retirement benefits of POPs.

[4, 5]

Furthermore, we agree with the reasoning expressed in *Brookfield II*, that proposals dealing with retirement benefits are "primarily related" to wages. *Id.* at 242-43. In *Brookfield II*, the proposal at issue concerned the union's attempt to make the city provide group health insurance benefits to employees retiring during the three year term of the collective bargaining agreement. The court of appeals held that such a proposal was a mandatory subject of bargaining, in part because "it merely delays the city's deliverance of a portion of the firefighters' compensation to a time after the contract term has expired." *Id.* at 243. In this case WPPA's proposal merely asks the county to increase the level of its contributions to the Public Employee Trust Fund. Rather than taking the wages today, the union seeks their deferral until its members receive them in the form of retirement benefits. Such a proposal is "primarily related" to wages, and a mandatory subject of bargaining under sec. 111.70(1)(a), Stats.

Finally, we refrain from deciding whether a union's demand that a county reclassify its jailers as POPs is a mandatory subject of bargaining. That issue is not before us on the facts of this case.

For these reasons, we reverse the decision of the court of appeals, and reinstate the order of the circuit court insofar as it holds that WPPA's proposal is a mandatory subject of bargaining.

*By the Court.*—The decision of the court of appeals is reversed.

Justice JANINE P. GESKE, took no part.

FILED

JUN 16 1992

CLERK OF COURT OF APPEALS  
OF WISCONSIN

COURT OF APPEALS  
DECISION  
DATED AND RELEASED

June 18, 1992

NOTICE

A party may file with the Supreme Court a motion to review an adverse decision by the Court of Appeals pursuant to s. 806.10 within 30 days hereof, pursuant to Rule 809.61(1).

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 90-2739

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

COUNTY OF LA CROSSE,

Petitioner-Appellant,

v.

WISCONSIN EMPLOYMENT  
RELATIONS COMMISSION,

Decision No. 26270

Defendant-Respondent,

WISCONSIN PROFESSIONAL  
POLICE ASSOCIATION,

Intervenor.

APPEAL from an order of the circuit court for La Crosse county:

JOHN J. PERLICH, Judge. *Reversed.*

Before Eich, C. J., Gartzke, P. J., and Sundby, J.

No. 90-2739

SUNDBY, J. In this appeal, we decide that whether La Crosse County shall classify its jailers as protective occupation participants in the Wisconsin retirement system is not a mandatory subject of bargaining under sec. 111.70(1)(a), Stats. We conclude that classification of participating employees in the Wisconsin retirement system as protective occupation participants through collective bargaining is incompatible with the public employe trust fund law, ch. 40, Stats., except as specifically authorized by the legislature. We therefore reverse the order of the circuit court which affirmed a contrary declaratory ruling of the Wisconsin Employment Relations Commission (WERC).

BACKGROUND

In collective bargaining with the County for a 1989-1990 contract, the Wisconsin Professional Police Association (WPPA) made the following proposal:

Effective January 1, 1990, the County shall pay the full amount of the established employer's and employee's contribution rates of Protective Service schedule for all deputies and jailers covered by this agreement.

To implement WPPA's proposal the County must classify its jailers as protective occupation participants, sec. 40.02(48)(a), Stats., and certify the names of such participants to the Department of Employee Trust Funds (DETF) pursuant to sec. 40.06(1)(d), Stats.

Section 40.02(48)(a), Stats., defines "protective occupation participant" to "mean[s] any participant whose principal duties are determined by the participating employer ... to involve active law enforcement or active fire suppression or prevention, provided the duties require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning." It is undisputed that the County is a participating employer in the Wisconsin retirement system and that the County's jailers are participants.

Section 40.06(1)(d), Stats., requires that each participating employer notify DETF of the names of all participating employees classified as protective occupation participants. Section 40.02(48)(am), Stats., describes the notification process as certification.<sup>1</sup> An employee may appeal the participating employer's failure or refusal to classify the employee as a protective occupation participant to DETF and the Employee Trust Funds Board (ETF). Section 40.06(1)(e), Stats. DETF may review any such determination by the employer on its own initiative and appeal the determination to ETPB. Section 40.06(1)(em), Stats.

<sup>1</sup> Section 40.02(48)(am), Stats., provides in part: "Protective occupation participant includes any participant whose name is certified to the [public employee trust fund as provided in s. 40.06(1)(d) and (dm) and who is a ...". Synonyms of certify include "verify," "validate," and "guarantee." THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 339 (2d ed. unabridged, 1987).

On August 1, 1989, the County petitioned WERC pursuant to sec. 111.70(4)(b), Stats.,<sup>2</sup> for a declaratory ruling that WPPA's proposal was not a mandatory subject of bargaining. WERC found that WPPA's proposal related primarily to wages and was thus a mandatory subject of bargaining under sec. 111.70(1)(a), Stats. The circuit court affirmed.

STANDARD OF REVIEW

WERC acknowledges that this appeal involves the relationship between the Municipal Employment Relations Act (MERA) and ch. 40, Stats., and thus we do not give weight to WERC's determination. *City of Brookfield v. WERC*, 87 Wis.2d 819, 826-27, 275 N.W.2d 723, 726-27 (1979). The interpretation and harmonization of ch. 40 and MERA is a judicial function. *See id.* at 831, 275 N.W.2d at 729 (court fulfilled "exclusive judicial role" when it interpreted and harmonized ch. 62, Stats., and what is now sec. 111.70(1)(a), Stats.).

I.  
DUTY TO BARGAIN

Section 111.70(1)(a), Stats., imposes on the municipal employer the duty to bargain with the representative of its employees with respect to wages, hours and conditions of employment. However, the municipal employer is generally not

<sup>2</sup> Section 111.70(4)(b), Stats., provides in part: "Whenever a dispute arises between a municipal employer and a union of its employees concerning the duty to bargain on any subject, the dispute shall be resolved by the commission on petition for a declaratory ruling."

required to bargain on subjects reserved to management and direction of the governmental unit. *Id.* The County argues that the right to determine whether the principal duties of its jailers involve active law enforcement is an important management right which should be reserved to the County and the sheriff.

Section 111.70(1)(a), Stats., "necessarily presents certain tensions and difficulties in its application." *West Bend Education Ass'n v. WERC*, 121 Wis.2d 1, 8, 357 N.W.2d 534, 538 (1984). These tensions generally arise when a proposal touches simultaneously upon wages, hours and conditions of employment and upon managerial decision making or public policy. *Id.* To resolve a conflict, the Wisconsin Supreme Court has adopted a "primarily related" standard. *Id.* This standard requires a balancing of the employees' interest in wages, hours and conditions of employment and the public employer's interest in management prerogatives or public policy. *Id.* at 9, 357 N.W.2d at 538.

However, the balancing test assumes that the proposal is one with respect to which each party is free to bargain. The public employer is not free to bargain with respect to a proposal which would authorize a violation of public policy or a statute. *Glendale Professional Policemen's Ass'n v. Glendale*, 83 Wis.2d 90, 106, 264 N.W.2d 594, 602 (1978); *WERC v. Teamsters Local No. 563*, 75 Wis.2d 602, 612, 250 N.W.2d 696, 701 (1977), *overruled on other grounds*. The same principle logically extends to a proposal which requires the public employer to fail to perform a duty imposed upon it by statute or to perform that duty in a way contrary to the policy and purpose of the statute.

WPPA's proposal requires that the County neglect to perform its duty under sec. 40.02(48)(a), Stats., to determine whether its jailers qualify as protective occupation participants. We conclude that WPPA's proposal is contrary to the policy and purpose of the public employee trust fund law. In Part II, we examine the County's duty under sec. 40.02(48)(a) in the context of the policy and purpose of public employee trust fund law.

II.

PARTICIPATING EMPLOYER'S DUTY TO DETERMINE EMPLOYEES' STATUS

A.

WPPA contends that its proposal relates solely to the employees' deferred level of compensation which we have held is a mandatory subject of bargaining. *City of Brookfield v. WERC*, 153 Wis.2d 238, 242-43, 450 N.W.2d 495, 497 (Ct. App. 1989) (*Brookfield II*). WERC agrees. It concluded: "In essence, [WPPA's] proposal seeks to improve the level of deferred compensation which [an] employe will be entitled to receive for providing the County with employment service." WERC also relies on *Brookfield II*.

*Brookfield II* is inapposite. In that case, the union sought to bargain on its proposal that the city provide group health benefits to employees who retired during the term of the collective bargaining agreement. The city was free to bargain on the union's proposal unconstrained by statute. Here, sec. 40.02(48)(a), Stats.,

requires that the County determine whether its jailers qualify as protective occupation participants. The County lacks the power in a collective bargaining agreement or otherwise to make a final determination that its jailers are protective occupation participants; its decision is subject to review and appeal by DETF under sec. 40.06(1)(em), Stats.

We conclude that the duty imposed on the County to determine the status of participating employees in the Wisconsin retirement system is part of the legislative plan to ensure the integrity of the public employee trust fund.<sup>3</sup> The legislature was aware that the treatment of "protectives" in early retirement and pension plans had led to actuarially unsound systems. See Report and Recommendations of the Joint Legislative Interim Committee on Pension and Retirement Plans, Senate Journal, Supplement, Sixty-Eighth Session at 6, 19-20, 66-67, 71, and 79 (1947). It was also aware that the requirement of limited tenure in protective occupations creates special retirement problems. Governor's Retirement Study Commission Final Report, January 15, 1959.

<sup>3</sup> Section 40.01(2), Stats., provides in part:

The public employee trust fund is a public trust and shall be managed, administered, invested and otherwise dealt with solely for the purpose of ensuring the fulfillment at the lowest possible cost of the benefit commitments to participants, as set forth in this chapter, and shall not be used for any other purpose.

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In 1964, the Retirement Research Council (RRC)<sup>4</sup> noted that "[o]ne of the most troublesome problem areas in the development of a sound retirement program for public employees in Wisconsin centers around the benefit program[s] for employees in what are commonly referred to as the protective occupations." RRC Staff Report No. 10 at 1 (1964). RRC noted that since coverage of protective occupation employees in 1948, the legislature had often been successfully petitioned to add additional employment categories within the special retirement benefit programs. *Id.* at 1-2. RRC stated that, "The requests of additional groups for inclusion in such programs have multiplied in recent years, posing a serious problem for the legislature in attempting to maintain some semblance of order and equity in the development of the retirement and other related benefit programs." *Id.* at 2.

In 1967, the legislature lowered the normal retirement age and years-of-service requirement for protective occupation participants in the Wisconsin retirement fund. Chapter 355, Laws of 1967. "Protective occupation participant" was redefined in section 2 of the law. The Joint Survey Committee on Retirement Systems (JSCRS)<sup>5</sup> recommended this legislation as "in the best public interest." Appendix to 1967 S.B. 415 at 94.

<sup>4</sup> The Retirement Research Council was created by sec. 4, ch. 395, Laws of 1959. It has been renamed the Retirement Research Committee. See sec. 13.51, Stats. RRC provides a continuing review and study of the retirement benefits which the state provides to public employees. Section 13.51(1), Stats.

<sup>5</sup> The Joint Survey Committee on Retirement Systems reports to the legislature as to the desirability of legislative proposals affecting retirement and pension plans for public employees. Section 13.50(6)(a), Stats. JSCRS was created by ch. 376, Laws of 1947.

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The JSCRS report to the legislature incorporated a portion of RRC's study of the retirement age and years-of-service pattern for protective occupation employees in the retirement systems of other states. RRC concluded that "[a]n individual whose principal duties do not consist of 51 % or more of his work time being devoted to active law enforcement or active fire suppression would not be eligible for protective occupation membership." *Id.* at 93. RRC stated that "[i]t is assumed that an individual's duties, under the protective occupation philosophy, would subject him to periods of great mental and physical stress as well as possible personal injury or perhaps even death," *id.*, and that "[t]hese employees must be able to undergo great mental and physical strain on occasion," *id.* at 94.

It is evident that RRC and JSCRS considered that the status of protective occupation participant would be limited to a narrow class of employees meeting stringent standards. Those standards remain unchanged, in sec. 40.02(48)(a), Stats.

What has changed is the degree of state control over the determination by the municipal employer that an employee is a protective occupation participant.<sup>6</sup> In the 1989 executive budget bill, 1989 S.B. 31, sec. 815c, the governor recommended amendments to sec. 40.02(48), Stats., which would have required DETF to approve or deny each classification of a participant as a protective

<sup>6</sup> The Joint Legislative Interim Committee on Pension and Retirement Plans stated that a sound pension plan should be under government supervision. Report and Recommendations of the Joint Legislative Interim Committee on Pension and Retirement Plans, Senate Journal, Supplement, Sixty-Eighth Session at 8 (1947).

occupation participant based upon DETF's determination whether the employee's occupation met the statutory requirements. 1989 S.B. 31, Analysis by the Legislative Reference Bureau at 384-85. However, upon recommendation of JSCRS, these amendments were deleted from the budget bill. JSCRS recommended "greater study and development." Appendix to 1989 S.B. 31 at 379. In place of these provisions, sec. 40.06(1)(em), Stats., was created in the budget act to make review by DETF discretionary as to protective occupation participants who are not state employees. June 19, 1989, memorandum from RRC/JSCRS Director of Retirement Research to co-chairmen of RRC/JSCRS (June 19, 1989 RRC/JSCRS Director's Memo). Section 40.06(1)(em) provides in part:

The department may review any determination by a participating employer to classify an employee who is not a state employee as a protective occupation participant and may appeal the determination to the board by filing a written notice of appeal with the board.<sup>7</sup>

The budget bill retained sec. 40.06(1)(dm), Stats., which requires that the Department of Employment Relations approve each determination by a department head classifying a state employee as a protective occupation participant. The June 19, 1989 RRC/JSCRS Director's memo states: "These amendments together appear to tighten the procedures governing protective designation, and these may be desirable....."

<sup>7</sup> In fairness to WPPA, we note that it made its proposal before sec. 40.06(1)(em), Stats., became effective. However, the statute would have applied to the County's classification of jailers under WPPA's proposal.

The "greater study and development" recommended by JSCRS includes study of the appropriate classification of county jailers. Because of questions received by DETF regarding the retirement employment category of jailers, in 1985 DETF surveyed the counties, asking for information as to their jailers. May 14, 1986 memorandum, concerning local jailer classification, from RRC/JSCRS Director of Retirement Research to members of the Ad Hoc Committee on [sec.] 40.65[. Stats.] Benefits, attachment, (May 14, 1986, RRC/JSCRS Director's memo). The survey revealed that thirty-four counties classified jailers as protective occupation participants, while twenty-nine classified them as general employees. *Id.*

The May 14, 1986 RRC/JSCRS Director's memo stated:

The DETF Board has reviewed appeals from jailers who are classified as general employees, and the [DETF] has deemed that they do not meet the requirement(s) for protective designation under present statutes. The DETF Board felt that the legislature should investigate their arguments further, and consider whether statutory changes were appropriate. [Emphasis in original.]

The May 14, 1986, RRC/JSCRS Director's memo further stated: "If the legislature mandated all jailers to be classified as protectives, such action would ignore the local differences in job requirements." *Id.* In the memo, the Director of Retirement Research outlined alternatives that the Ad Hoc Committee could consider:

\* Section 40.65, Stats., provides special duty disability and death benefits to protective occupation participants and participating employees listed in sec. 40.02(48)(c), Stats.

do nothing; amend the definition of protective occupation participants to include jailers; expand the eligibility definition for benefits under sec. 40.65, Stats., to include any positions designated by the employer by unilateral action or collective bargaining; or amend the law to permit the employer to designate positions to be covered under the protective program even if they were not law enforcement or fire prevention service, if the positions otherwise would meet the requirements of frequent exposure to danger or peril and a requirement for high physical conditioning. *Id.* at 2. The Director of Retirement Research stated that the latter approach would allow employers to bargain on the protective designation. *Id.*

The Ad Hoc Committee considered the RRC staff memo at its meeting of May 14, 1986. Minutes of the May 14, 1986 meeting of the sec. 40.65, Stats., Ad Hoc Committee of the RRC. RRC files. According to a June 29, 1988 memorandum of the RRC/JSCRS Director of Retirement Research to RRC members (June 29, 1988 RRC/JSCRS Director's memo), the Ad Hoc Committee determined that there was no need to mandate all local jailers as protectives. The June 29, 1988 RRC/JSCRS Director's memo stated: "The Committee noted that the existing employer designation process allows county employers to recognize the existing differences in duties and job descriptions from county to county."

WERC notes that 1989 S.B. 352 specifically would have added county jailers to the list of employees deemed to be protective occupation participants, but

the bill failed to pass. (See 1989 S.B. 352, amending secs. 40.02(48)(am) and (c), Stats.) WERC suggests that the failure of the bill may demonstrate that jailers are not deemed protective occupation participants presently unless they are specifically determined to be such by their employer. WERC also suggests, however, that the bill may have been intended simply to clarify that jailers already are protective occupation participants. It concedes that this interpretation is contradicted by the fact that the legislation would have conferred protective occupation participant status on jailers prospectively only.

In the 1991-92 legislative session a renewed effort was made to include county jailers in the positions listed in secs. 40.02(48)(am) and (c), Stats. 1991 A.B. 482 was virtually identical to 1989 S.B. 352. 1991 A.B. 482 was considered by JSCRS at a public hearing on February 20, 1992. The minutes of the JSCRS meeting show that the bill was supported by the LaCrosse County Sheriffs Department and Deputy Sheriffs Association, the Wisconsin County Police Association, the Wisconsin Professional Police Association, the Wisconsin Sheriffs and Deputy Sheriffs Association and the American Federation of State, County and Municipal Employees. The bill was opposed by the Wisconsin Counties Association. Minutes of the February 20, 1992 meeting of the JSCRS. 1991 A.B. 482 failed to pass pursuant to Senate Joint Resolution #1. Assembly Journal, April 7, 1992.

It is the general rule that the failure of the legislature to enact a bill is not evidence of legislative intent. *State ex rel. Filas v. Milwaukee County*, 65 Wis.2d 130, 135, 221 N.W.2d 902, 905 (1974). "The nonpassage of a bill may be explainable for a number of reasons unrelated to the merits of the legislation." *Id.* We conclude, however, that the failure of the legislature to enact 1989 S.B. 352 or 1991 A.B. 482 is evidence of an understanding of the legislature and the proponents of the legislation that legislative action is necessary to permit counties to designate jailers as protective occupation participants without determining that they satisfy the requirements of sec. 40.02(48)(a), Stats.

Public employee retirement systems are unique in that legislative adjunct agencies oversee the systems and suggest and pass on legislation affecting the systems. The RRC "provide[s] a continuous review and study of the retirement benefits afforded by the state and ... allocate[s] adequate study to the complexities of modern retirement programs." Section 13.51(1), Stats. No bill modifying a retirement system for public officers or employees may be acted upon by the legislature until it has been referred to JSCRS and the committee has submitted to the legislature a report as to the desirability of such proposal as a matter of public policy. Section 13.50(6)(a), Stats.

Here, RRC outlined to the Ad Hoc Committee on [sec.] 40.65f, Stats., J Benefits alternative courses of legislative action. The Ad Hoc Committee determined

that there was no need to mandate local jailers as protective occupation participants. The JSCRS did not recommend legislation which would have included county jailers in the enumeration of "protective occupation participant[s]" under secs. 40.02(48)(am) and (c), Stats. We conclude that, in the unusual circumstances of this case, the failure of the legislature to include county jailers in the enumeration of protective occupation participants demonstrates that the legislature considers that county jailers are not protective occupation participants unless so determined by the county employer under sec. 40.02(48)(a), Stats. Without enabling legislation, the county employer may not submit that determination to the collective bargaining process.

B.

We are also persuaded to our conclusion that the determination by the County of the status of jailers is not a mandatory subject of collective bargaining by comparing the provisions of MERA and the State Employment Labor Relations Act (SELRA). Under SELRA, a collective bargaining agreement between a state agency and its employees supersedes conflicting statutory provisions as to wages, hours, fringe benefits, and conditions of employment.\* MERA does not contain a

\* Section 111.93(3), Stats., provides in part:

(If a collective bargaining agreement exists between the employer and a labor organization representing employees in a collective bargaining unit, the provisions of that agreement shall supersede the provisions of civil service and other applicable

(continued)

comparable provision. In *Glendale Professional Policemen's Ass'n*, the court noted that determining the scope of the municipal employer's duty to bargain under sec. 111.70, Stats., is particularly difficult because the statute does not contain a legislative resolution of statutory conflicts as does SELRA. 83 Wis.2d at 106, 264 N.W.2d at 602.

The failure of the legislature to include in MERA a provision giving collective bargaining agreements precedence over conflicting statutes evidences an intent that such priority does not exist.

C.

We are further persuaded to our conclusion by the fact that when the legislature has wished to permit the employer to classify an employee as a protective occupation participant without requiring that the employer determine that the principal duties of the participant involve active law enforcement or active fire suppression or prevention, it has done so by specific legislation. 1989 Wis. Act 357 created sec. 40.02(48)(bm), Stats., which permits a participating employer to classify an emergency medical technician (EMT) as a protective occupation participant,

\* (continued)

statutes... related to wages, fringe benefits, hours and conditions of employment whether or not the matters contained in those statutes, rules and policies are set forth in the collective bargaining agreement

notwithstanding sec. 40.02(48)(a), Stats. Further, a determination by the employer under sec. 40.02(48)(b)m) may not be reviewed by DETF or appealed to ETFB, unless it involves the classification of a state employee.

In the May 14, 1986 RRC/JSCRS Director's memo the RRC/JSCRS Director of Retirement Research advised the Committee that one alternative as to local jailers was to amend the Wisconsin retirement system law and sec. 40.65, Stats., to permit the employer to designate positions as "protective" even if the employees were not involved in law enforcement or fire prevention. The May 14, 1986 RRC/JSCRS Director's memo stated that "[t]his approach would allow employers to bargain on the protective designation, and to recognize the job requirements for the position and also the costs involved in the protective program." The legislature adopted that approach as to EMT's but has rejected that approach as to county jailers.

It is evident that the classification of local jailers is highly controversial. It is also evident that the legislature and the proponents of protective occupation participant status for local jailers consider that legislative action is required before their status may become a mandatory subject of bargaining.

D.

An employee who believes that he or she has been improperly classified as a general employee is not without remedy. The employee may appeal that determination to DETF and ETFB. Section 40.06(1)(e), Stats.<sup>10</sup> A decision of ETFB is reviewable by certiorari pursuant to sec. 40.08(12), Stats.

Where a statute sets forth a procedure for review of an administrative decision, such remedy is exclusive, unless the remedy is inadequate. *Nodell Inv. Corp. v. Glendale*, 78 Wis.2d 416, 422, 254 N.W.2d 310, 314 (1977). This requirement is sometimes termed the exhaustion of remedies doctrine and sometimes the primary jurisdiction doctrine. Here, the exhaustion of remedies doctrine applies rather than the primary jurisdiction doctrine because the administrative process began when the County addressed the classification of its jailers under sec. 40.02(48)(a).

<sup>10</sup> Section 40.06(1)(e), Stats., provides in part:

1. An employee may appeal a determination under par. (d), including a determination that the employee is not a participating employee, to the department by filing a written appeal with the department.... The department shall investigate the appeal and mail a report of its determination to the employee and the participating employer or state agency.

2. Either the employee or the participating employer ... may appeal the department's determination under subd. 1 to the board by filing a timely appeal with the department. If an appeal is not filed as required under this subdivision, the determination from which an appeal is permitted is final.

Stats. See *Nodell*, 78 Wis.2d at 427 n.13, 254 N.W.2d at 316 n.13 (If administrative procedure has begun, the primary jurisdiction rule does not apply).

The premise of the exhaustion rule is that the administrative remedy (1) is available to the party on his or her initiative, (2) relatively rapidly, and (3) will protect the party's claim of right. *Nodell*, 78 Wis.2d at 424, 254 N.W.2d at 315. WPPA has not shown that the appeal procedure under sec. 40.06(1)(e), Stats., is inadequate in these or other respects.

The exhaustion rule is a doctrine of judicial restraint which the legislature and the courts have evolved in drawing the boundary line between administrative and judicial spheres of activity. *Castelar v. Milwaukee*, 94 Wis.2d 513, 532, 289 N.W.2d 259, 268 (1980) (quoting *Nodell*, 78 Wis.2d at 424, 254 N.W.2d at 315). However, the principle which underpins the doctrine supports equally the proposition that collective bargaining should not supplant the administrative remedy provided by sec. 40.06(1)(e), Stats. The exhaustion doctrine is premised on the notion that the expertise that comes with experience and the fact-finding facility that comes with a more flexible procedure enable the administrative agency to perform a valuable public function. *Wisconsin Collectors Ass'n v. Thorp Finance Corp.*, 32 Wis.2d 36, 44, 145 N.W.2d 33, 36 (1966).

While *Wisconsin Collectors* discussed the primary jurisdiction rule, we noted in *Thiensville Village v. DNR*, 130 Wis.2d 276, 282 n.2, 386 N.W.2d 519, 522 n.2 (Ct. App. 1986), that the doctrines of exhaustion of remedies and primary jurisdiction have developed into complementary parts of a general principle.

In *Thiensville Village*, we extended the exhaustion doctrine to competing administrative agencies. We stated that the spirit of the doctrine is served by allowing the agency with the expertise and experience to retain the right of first review. *Thiensville Village*, 130 Wis.2d at 282, 386 N.W.2d at 522. We conclude that the goals of the exhaustion/primary jurisdiction principle -- agency expertise and fact-finding facility -- are best served by requiring that an employee who wishes to contest the employer's failure or refusal to classify the employee as a protective occupation participant appeal that determination to DETF and ETFB. It violates these goals to substitute for the administrative and judicial process, the collective bargaining process where the decision as to whether a participating employee shall be classified as a protective occupation participant may be made by an arbitrator lacking the expertise and experience of DETF or ETFB.

III.

EFFECT OF ENUMERATION OF DEPUTY SHERIFFS IN SECTION 40.02(48)(am), STATS.

We next consider WERC's conclusion that the County's role in classifying jailers as protective occupation participants is "ministerial." WERC concluded that jailers could be classified as protective occupation participants simply by being employed in one of the capacities listed in sec. 40.02(48)(am), Stats. Because a jailer may meet the definition of "deputy sheriff" in sec. 40.02(48)(b)3, Stats., and deputy sheriff is listed in sec. 40.02(48)(am), WERC concluded that "whatever role remains for the County to fulfill ... if ... jailers are to become protective occupation participants appears to be a ministerial one."<sup>11</sup> We disagree.

The listing of "deputy sheriff" in sec. 48.02(48)(am), Stats., does not automatically confer protective occupation participant status upon jailers. A jailer must also meet the definition of "protective occupation participant" in sec. 40.02(48)(a), Stats. As we have seen, thirty-four counties have concluded that their jailers meet the definition, while twenty-nine have concluded that their jailers do not. The determination whether a jailer meets the definition of "protective occupation participant" is not ministerial because the participating employer must determine whether the participant's "principal" duties involve "active" law enforcement, "frequent" exposure to a "high degree" of danger or peril, and require a "high

degree" of physical conditioning. The determination requires fact finding and the exercise of judgment.

IV.

DECISION

For the foregoing reasons, we conclude that the classification of county jailers under sec. 40.02(48)(a), Stats., is not a mandatory subject of bargaining under sec. 111.70(1)(a), Stats. We therefore reverse the order affirming WERC's declaratory ruling.

*By the Court.* Order reversed.

Recommended for publication in the official reports.

<sup>11</sup> Presumably, the County's "ministerial" duty is to certify the names of its jailers to DETF pursuant to sec. 40.06(1)(d), Stats.



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS AND THE RETIREMENT RESEARCH COMMITTEE

April 16, 1996

Committee	Protective
Meeting Date	4-16-96
Agenda Item	2-F

BLAIR L. TESTIN  
 RESEARCH DIRECTOR  
 ROOM 316, 110 E. MAIN STREET  
 MADISON WISCONSIN 53703  
 (608) 267-0507  
 FAX (608) 267-0675

TO: Members of the Protective Study Subcommittee  
 FROM: Blair Testin, Consultant  
 RE: POSSIBLE REINSTATEMENT OF MANDATORY RETIREMENT

**P.O.P. Philosophy.** The legislature has determined that certain public employees involved in law enforcement and fire suppression should retire at an earlier age in the public interest. In order that such employees would not be negatively effected by an earlier normal retirement and presumably shorter working career, said employees have traditionally been given a higher benefit formula than other WRS participants.

Hence, there is a direct correlation between the earlier normal retirement and the higher benefit formulas for protectives. In order to enforce this correlation, the legislature has provided various mandatory retirement provisions in the past. However, the legislature has been required to significantly modify the mandatory provisions because of the Federal Age Discrimination in Employment Act (ADEA) which was first extended to the public sector in 1974.

**Chapter 355, Laws of 1967.** This major session act dealing with protective participants under the WRF reduced the normal retirement age from 60 to 55, and provided an improvement in the benefit formula for such employees. WRF law then provided that employees would be subject to compulsory retirement in the quarter calendar year of reaching their normal retirement age, unless extended by the employer. This session act further provided that additional POP service credit could not be earned upon attainment of age 58, even if the employer regularly extended their employment.

**1978 ADEA Amendments.** The ADEA as first applied to the public sector in 1974 permitted mandatory retirement if such provisions were part of a bonafide retirement plan, or if a bonafide occupational qualification (BFOQ) was involved in such policy. Amendments in 1978 to the ADEA repealed the exemption relative to a bonafide pension plan which provided mandatory retirement, but retained the possible defense for mandatory retirement relative to a BFOQ rationale. These changes raised questions as to the legality of compulsory retirement for protectives under the WRS statutes.

**Chapter 96, Laws of 1981.** This major act merged the three pension plans administered by the state, and recodified all of the pension laws involved. In restating the provisions relative to compulsory retirement, a new reference was made to any prohibitions under Federal law. These provisions are found today under s. 40.23 (1)(f) as follows:

**40.23 (1)(f)**

(f) Any participating employe may be retired by the employer after attainment of the employe's normal retirement date, under policies established or agreed to by the employer, except:

1. As prohibited by federal law or by s. 111.33.
2. Each elected official's and each sheriff's employment shall be continued to the end of the official's or sheriff's term of office and to the end of each subsequent term of office to which elected.
4. Any employer may, in a collective bargaining agreement, limit its right to require retirement.

**1983 Wis. Act 141.** This Act was another major change in benefit formulas for all WRS classifications, including protectives. In an attempt to reestablish the correlation between the higher formula benefits and an earlier normal retirement for protective participants, this Act established the so-called "prorata reduction" which gradually reduced the multiplier applicable to all years of service for protectives who remained in covered employment after their normal retirement age of 55. The prorata reductions were such that if a POP stayed in protective service until 65, the multiplier would be the same as applied to general employees.

**1986 ADEA Amendments.** The Federal ADEA Law was once again amended in 1986 with an effective date of 1/1/88. These amendments, among other things, prohibited any reductions in benefits based upon attained age. In addition, the ADEA amendments permitted a seven-year exemption for public safety officers (law enforcement and firefighters), but only if the employer had a mandatory retirement or a hiring policy in effect on March 3, 1983.

**1987 Wis. Act 372.** This legislation reflected a number of changes necessary to comply with new Federal law. Among other things, this Act repealed the prorata reduction in benefits for protectives who remained in covered service after the normal retirement age. Hence, once again, there was no enforced correlation between the early retirement and higher benefit formulas for protectives.

**H.R. 849.** Federal legislation was introduced in the 1993 Congressional session -- H.R. 2722 -- to amend ADEA law allowing state and local employers to reestablish mandatory retirement ages for their public safety officers--but not earlier than age 55. This legislation passed the House of Representatives, but it was too late in the session to receive final action by the Senate.

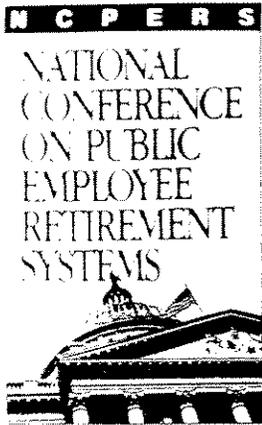
H.R. 849 represents the same ADEA amendments introduced in the current Congressional session. This legislation seems to have nearly universal support from the various organizations involved with public pension plans, and the most vocal opposition appears to be coming from AARP. Because of the nearly universal support, this legislation presumably will be enacted sometime in the near future.

If this Federal legislation becomes law, the existing provisions of WRS law--40.23 (1)(f)--would permit employers to retire employees after attaining their normal retirement date under policies established or agreed to by the employer. This compulsory retirement provision may be best described as permissive or conditional because it requires an employer initiative.

This subcommittee could consider establishing an absolute mandatory retirement provision applicable to all protective participants which would not involve individual employer extensions or agreements. Such a mandatory policy would enforce the correlation between the higher benefit formulas and the earlier normal retirement now provided for the POP classification.

**ATTACHMENTS:**

- I - NCPERS Newsletter Excerpt
- II - H.R. 849/104th Congress



# URGENT WORD from WASHINGTON

1620 Eye Street, N.W.  
Suite 220

• Washington, D.C. 20006-4005

• Telephone 202-429-2230  
• Fax 202-223-8323

March 21, 1996

## HR 849, Age Discrimination in Employment Act Provisions

On March 8, the Senate Labor Committee held a brief hearing on H.R. 849, the public safety officers exemption from the ADEA. Testifying on behalf of the bill were witnesses from the International Association of Fire Fighters, the International Association of Chiefs of Police, and Senator Carol Moseley-Braun. The American Association of Retired Persons, as been the only opponent to the bill, had a witness from the Indiana State Police. The second panel included Dr. Frank Landy, the author of the Penn State Study, and Dr. Loren Myhre, a research physiologist, who countered the findings of the Study.

After the hearing, the committee scheduled a markup of the bill for March 20, but was later canceled. It was obvious the opposition didn't have the votes to stop the bill or to adopt an amendment by Senator Jim Jeffords (R-VT) that would have gutted the bill. Instead, the committee will let H.R. 849 leave committee on March 27 and go directly to the Senate floor on March 28.

Under the unanimous consent agreement worked out by Senate Majority Leader Robert Dole, H.R. 849 is scheduled to be on the Senate floor March 28, and be completed before the Easter recess, which begins March 29. It is unclear at this time whether H.R. 849 will be brought up under a unanimous consent agreement or under a time agreement which limits the number of amendments and the amount of time spent on the bill. All the public safety organizations and employers supporting the bill are currently contacting Senators for their commitment to support H.R. 849 and oppose the Jeffords amendment.

When the bill passes the Senate, it will return to the House for some technical amendments. The House will hold the bill at the desk and move it quickly. The White House has said it has no objections to the bill and the President will sign it.

104TH CONGRESS  
1ST SESSION

# H. R. 849

To amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes.

---

## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1995

Mr. FAWELL (for himself, Mr. OWENS, Mr. GOODLING, Mr. CLAY, Mr. BALLENGER, Mr. PETRI, Mrs. ROUKEMA, Mr. HOEKSTRA, Mr. SAWYER, Mr. MARTINEZ, Mr. KILDEE, Mr. TALENT, Mrs. MEYERS of Kansas, Mr. KNOLLENBERG, Mr. PAYNE of New Jersey, Mr. WELDON of Florida, Mr. GRAHAM, Mr. GENE GREEN of Texas, Mr. McDERMOTT, Mr. ENGEL, Ms. SLAUGHTER, Mr. ANDREWS, and Ms. EDDIE BERNICE JOHNSON of Texas) introduced the following bill; which was referred to the Committee on Economic and Educational Opportunities

---

## A BILL

To amend the Age Discrimination in Employment Act of 1967 to reinstate an exemption for certain bona fide hiring and retirement plans applicable to State and local firefighters and law enforcement officers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled.*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the "Age Discrimination  
3 in Employment Amendments of 1995".

4 **SEC. 2. REINSTATEMENT OF EXEMPTION.**

5 (a) **REPEAL OF REPEALER.**—Section 3(b) of the Age  
6 Discrimination in Employment Amendments of 1986 (29  
7 U.S.C. 623 note; Public Law 99-592) is repealed.

8 (b) **EXEMPTION.**—Section 4(j) of the Age Discrimi-  
9 nation in Employment Act of 1967 (29 U.S.C. 623), as  
10 in effect immediately before December 31, 1993—

11 (1) is hereby reenacted as such, and

12 (2) as so reenacted, is amended by striking "at-  
13 tained the age" and all that follows through "1983,  
14 and", and inserting the following:

15 "attained—

16 "(A) the age of hiring or retirement in ef-  
17 fect under applicable State or local law on  
18 March 3, 1983; or

19 "(B) if the age of retirement was not in ef-  
20 fect under applicable State or local law on  
21 March 3, 1983, 55 years of age; and".

22 **SEC. 3. STUDY AND GUIDELINES FOR PERFORMANCE**  
23 **TESTS.**

24 (a) **STUDY.**—Not later than 3 years after the date  
25 of enactment of this Act, the Chairman of the Equal Em-  
26 ployment Opportunity Commission (in this section re-

1 ferred to as "the Chairman") shall conduct, directly or  
2 by contract, a study that will include—

3 (1) a list and description of all tests available  
4 for the assessment of abilities important for comple-  
5 tion of public safety tasks performed by law enforce-  
6 ment officers and firefighters.

7 (2) a list of such public safety tasks for which  
8 adequate tests do not exist,

9 (3) a description of the technical characteristics  
10 that performance tests must meet to be compatible  
11 with applicable Federal civil rights Acts and policies.

12 (4) a description of the alternative methods  
13 available for determining minimally acceptable per-  
14 formance standards on the tests described in para-  
15 graph (1).

16 (5) a description of the administrative stand-  
17 ards that should be met in the administration, scor-  
18 ing, and score interpretation of the tests described  
19 in paragraph (1), and

20 (6) an examination of the extent to which the  
21 tests described in paragraph (1) are cost effective,  
22 safe, and comply with Federal civil rights Acts and  
23 regulations.

24 (b) ADVISORY GUIDELINES.—Not later than 4 years  
25 after the date of enactment of this Act, the Chairman shall

1 develop and issue, based on the results of the study re-  
2 quired by subsection (a), advisory guidelines for the ad-  
3 ministration and use of physical and mental fitness tests  
4 to measure the ability and competency of law enforcement  
5 officers and firefighters to perform the requirements of  
6 their jobs.

7 (e) CONSULTATION REQUIREMENT: OPPORTUNITY  
8 FOR PUBLIC COMMENT.—(1) The Chairman shall, during  
9 the conduct of the study required by subsection (a), con-  
10 sult with—

11 (A) the United States Fire Administration,

12 (B) the Federal Emergency Management  
13 Agency,

14 (C) organizations that represent law enforce-  
15 ment officers, firefighters, and their employees, and

16 (D) organizations that represent older individ-  
17 uals.

18 (2) Before issuing the advisory guidelines required in  
19 subsection (b), the Chairman shall allow for public com-  
20 ment on the proposed guidelines.

21 (d) DEVELOPMENT OF STANDARDS FOR WELLNESS  
22 PROGRAMS.—Not later than 2 years after the date of the  
23 enactment of this Act, the Chairman shall propose advi-  
24 sory standards for wellness programs for law enforcement  
25 officers and firefighters.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There is  
2 authorized to be appropriated to carry out this section  
3 \$5,000,000.

4 **SEC. 4. EFFECTIVE DATES.**

5 (a) GENERAL EFFECTIVE DATE.—Except as pro-  
6 vided in subsection (b), this Act shall take effect on the  
7 date of the enactment of this Act.

8 (b) SPECIAL EFFECTIVE DATE.—Section 2(b)(1)  
9 shall take effect on December 31, 1993.

*copies to: Jon, Joe, Ted, David, Helen, Jim & Leean  
✓ Tom & Al*

**STATE OF WISCONSIN  
DEPARTMENT OF EMPLOYE TRUSTS  
201 East Washington Avenue  
Madison, WI 53702**

Board	Meeting Date	Item #
WR	09/19/96	3
ETF	09/20/96	7

**CORRESPONDENCE MEMORANDUM**

**DATE:** September 13, 1996

**TO:** Employee Trust Funds Board, Wisconsin Retirement Board

**FROM:** Mary Anglim  
Division of Retirement Services

**SUBJECT:** Ruling by the Wisconsin Employment Relations Commission on Collective Bargaining of Protective Employee Status (Case 146, No. 52775 DR(M)-563, Decision No. 28773)

This memorandum is for the Boards' information only.

On June 26, 1996 the Wisconsin Employment Relations Commission (WERC) ruled that LaCrosse County does not have a duty to bargain with the Wisconsin Professional Police Association (WPPA) regarding protective employee status for jailers employed by the County. The key language of the ruling is as follows:

Collective bargaining over "protective status" irreconcilably conflicts with the statutory entitlement to "protective occupation" benefits because collective bargaining could produce scenarios in which ineligible employees receive benefits or eligible employees lose benefits. Collective bargaining over "protective occupation" status issues also irreconcilably conflicts with the statutory entitlement to benefits because it places the Commission in the role of evaluating the statutory eligibility criteria under Sec. 40.02 (48), Stats. where the Legislature has reserved those roles to the County initially and ETF and ETFB, ultimately. . . .

[T]he statutory process set forth in Chapter 40 is the exclusive means by which protective occupation participant issues are to be resolved. If these issues were subject to the collective bargaining process, it is obvious that employees who do not meet the statutory standards could acquire the legislatively established benefits and also that employees who do meet the standards in question could lose those benefits. We do not think that potential is within the range of options and alternatives contemplated by the Legislature when it created the Public Employee Trust Fund.

The effect of this ruling is to affirm the Department's position that employe classifications must

Employe Trust Funds Board  
Wisconsin Retirement Board  
September 13, 1996  
Page 2

be based on the facts of the employe's duties and that such classifications are ultimately under the authority of the Employe Trust Funds Board.

In 1989, WERC had ruled to the contrary, finding that protective occupation status is primarily a compensation issue and that Wis. Stat. § 40.02 (48), the definition of "protective occupation participant," could include jailers. Based on these findings WERC ruled that protective occupation status is a mandatory subject of bargaining. The Circuit Court affirmed WERC's decision, but it was reversed by the Court of Appeals, based primarily on the Court's analysis of the legislative history of the protective occupation provision in Wis. Stat. § 40.02 (48).

In its appeal to the Supreme Court, the WPPA argued that the bargaining proposal in question did not include reclassifying the jailers as protectives, but merely sought employer contributions to the Wisconsin Retirement System (WRS) in the same *amount* as if the jailers were protectives. The Supreme Court held that the amount of employer contributions to the WRS is a mandatory subject of bargaining, thus partially reversing the Court of Appeals but leaving unresolved the question of whether protective occupation status can be collectively bargained.

In subsequent negotiations, the WPPA proposed that the County enroll the jailers as protective occupation employes. The employes themselves would agree to pay the extra retirement contributions required for the new classification. The parties asked WERC to rule on whether this demand is a mandatory subject of bargaining. WERC held that a proposal is a prohibited subject of bargaining when it "irreconcilably conflicts with a statutory provision or limits constitutional rights." It concluded that the WPPA proposal is a prohibited subject of bargaining, for the reasons explained in the passage reproduced above.



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS  
AND THE RETIREMENT RESEARCH COMMITTEE

Sub 12-6-97

BLAIR L. TESTIN  
RESEARCH DIRECTOR

ROOM 316; 110 E. MAIN STREET  
MADISON WISCONSIN 53703

(608) 267-0507  
FAX (608) 267-0675

April 3, 1997

TO: Senator Rick Grobschmidt & Rep. Judith Klusman  
Co-Chairs of the RRC/JSCRS

FROM: Blair Testin, Consultant *BT*

RE: **POSSIBLE CHANGES FOR THE RRC PROTECTIVE SUBCOMMITTEE  
MEMBERSHIP**

At the beginning of the 1997 session the appointments to the RRC Protective Study Subcommittee included the following eight members:

Senator Rick Grobschmidt, Co-Chair  
Rep. Judith Klusman, Co-Chair  
Sen. Robert Wirch  
Mayor Dolores Meyer, Employer Rep.  
Ms. Jessica O'Donnell, DER  
Mr. Timothy Pelzek, State Employee Rep.  
Mr. David Heineck, Insurance Comm.  
Mr. David Stella, ETF

Ms. Dolores Meyer is apparently no longer the Mayor of Medford, and hence, would lose her status on the RRC. To reflect this change and also changes in the Senate and Assembly for the 1997 session, I would recommend that Rep. Jeskewitz take the place of Ms. Dolores Meyer on the protective subcommittee. This appointment would maintain eight members on the subcommittee and also maintain the political balance of the body.

If you both are in agreement with this change, I believe it could be formally announced at the meeting of the JSCRS on April 18. I also presume that one of the Co-Chairs should notify Rep. Jeskewitz of that appointment before the meeting.

Please let me know if you are in agreement or have other suggestions.

BT:db



State of Wisconsin

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS  
AND THE RETIREMENT RESEARCH COMMITTEE

BLAIR L. TESTIN  
RESEARCH DIRECTOR  
ROOM 316: 110 E. MAIN STREET  
MADISON WISCONSIN 53703  
(608) 267-0507  
FAX (608) 267-0675

April 7, 1997

TO: Members of the JSCRS and Members of the RRC  
Protective Study Subcommittee

FROM: Blair Testin, Consultant *BT*

RE: **April 18 Meeting of the JSCRS and RRC Protective Subcommittee**

Senator Grobschmidt and Representative Klusman, Co-Chairs of the JSCRS and the RRC have scheduled a meeting for the Joint Survey Committee on Retirement Systems for Friday, April 18, 1997, at 11:30 A.M., in Room 417 North (G.A.R. Hall) of the State Capitol Building. The tentative meeting agenda and appendix reports for S.B. 31 and S.B. 32 are enclosed.

The Co-Chairs have also scheduled a meeting of the RRC Protective Study Subcommittee to meet upon adjournment of the JSCRS. The tentative agenda for that meeting is also enclosed for members of the subcommittee. The discussion will be based upon information furnished the subcommittee at its last meeting relative to the memos listed on the agenda. If you need additional copies of these memos, please contact the RRC office.

BT:db

Enc.

Lisa

## Co-Sponsor Memorandum

TO: All Legislators  
FROM: Rep. Steve Freese  
DATE: April 9, 1997

RE: Co-sponsoring LRB 1865/1 Call 6-7502 by Friday 4/18/97

---

### ***Analysis by the Legislative Reference Bureau***

Under current law, participants under the Wisconsin retirement system (WRS) whose principal duties involve law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger of peril and a high degree of physical conditioning are classified as protective occupation participants. Current law specifically classifies police officers, fire fighters and various other individuals as protective occupation participants. Under the WRS, the normal retirement age of a protective occupation participant is lower than that of other participants and the percentage multiplier used to calculate retirement annuities is higher for protective occupation participants than for other participants.

This bill specifically classifies county jailers as protective occupation participants for the purposes of the WRS.

This bill will be referred to the joint survey committee on retirement systems for a detailed analysis, which will be printed as an appendix to the bill.

---

***LRB 1865/1*** relates to classifying county jailers as protective occupation participants for the purposes of the Wisconsin retirement system (WRS). County jailers, whose principal duties involve a high degree of danger or peril have not been included in the classification. I would like to make that change to current law.

If you are interested in co-sponsoring ***LRB 1865/1***, or if you would like to see a copy of the complete LRB draft, please contact my office at 6-7502 by Friday, April 18, 1997.



WISCONSIN STATE SENATOR  
**RICHARD GROBSCHMIDT**  
7TH SENATE DISTRICT

**Co-Sponsor Memorandum**

TO: All Legislators  
FROM: Rep. Steve Freese  
DATE: April 9, 1997

RE: Co-sponsoring LRB 1865/1 Call 6-7502 by Friday 4/18/97

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***LRB 1865/1 relates to classifying county jailers as protective occupation participants for the purposes of the Wisconsin retirement system (WRS). County jailers, whose principal duties involve a high degree of danger or peril have not been included in the classification. I would like to make that change to current law.***

***If you are interested in co-sponsoring LRB 1865/1, or if you would like to see a copy of the complete LRB draft, please contact my office at 6-7502 by Friday, April 18, 1997.***

APR 22 1997

**Murphy & Desmond, s.c.**  
Lawyers

Manchester Place, 2 East Mifflin Street  
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Jane F. Zimmerman  
Diane M. Pica  
Gregory P. Seibold  
David A. McLean  
Noah D. Fiedler  
Robert J. Lightfoot II

Of Counsel  
John P. Desmond

18 April 1997

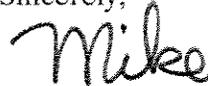
The Honorable Richard A. Grobschmidt  
State Capitol  
Madison, WI 53702

Dear Senator Grobschmidt:

At the hearing of the Joint Survey Committee on Retirement Systems today, I sought to register in behalf of the Milwaukee Teachers Retirement Fund Association for Senate Bills 31 and 32. Unfortunately, there were no hearing slips available at the tables on either side of the room. May I ask through this letter to be formally recorded as in favor of SB 31 and 32 for the Milwaukee Teachers Retirement Fund Association?

Thank you for your help in this matter.

Sincerely,



Michael R. Vaughan

MRV:jmb  
970053  
Grobschm.lt

Fri. 4-18 GAA Hearing Rm  
11:30 am

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

Representative Klusman moved, seconded by Representative Schneider to recommend Senate Bill 31 as good public policy.

Ayes: (8) Grobschmidt, Heineck, Jeskewitz, Klusman, Rude, Schneider, Stella, Wirch

Noes: (0)

Absent: (2) Fisher, Hamblen

Motion carried by roll call vote.

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PROTECTIVE STUDY SUBCOMMITTEE

Roll Call:

Present: (7) Grobschmidt, Heineck, Jeskewitz, Klusman, O'Donnell, Stella, Wirch

Absent: (1) Pelzek

---

MEMBERS ORIGINALLY APPOINTED TO  
ACTUARIAL SUBCOMMITTEE:

Senator Petak  
Rep. Klusman  
Mr. Otto Schultz  
Mr. David Stella  
Mr. David Heineck  
Ms. Jane Hamblen  
Sen. Andrea

MAY 06 1997

STATE OF WISCONSIN  
MINUTES OF MEETING  
JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS  
FRIDAY, APRIL 18, 1997  
11:30 A.M.  
ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BUILDING  
MADISON, WISCONSIN

CALL TO ORDER AND ROLL CALL  
(Agenda Item 1)

The meeting of the Joint Survey Committee on Retirement Systems was called to order by Co-Chair Grobschmidt at 11:41 A.M. in Room 417 North (G.A.R. Hall) of the State Capitol Building in Madison, Wisconsin.

Roll call was taken as follows:

Present:	(8)	Sen. Grobschmidt, Mr. Heineck, Rep. Jeskewitz, Rep. Klusman, Sen. Rude, Rep. Schneider, Mr. Stella, Sen. Wirch.
Absent:	(2)	Ms. Fisher, Ms. Hamblen.
Others Present:		Harold Rebholz, Wis. Retired Educ. Assoc./School Admin. Alliance; Andrew Theilke, DOA; Esther Olson, ASPRO; Ken Opin, WFT; Rep. Doris Hanson; Edward W. Mishefske; Chippewa Falls Fire Dept.; Ronald W. Brown, Eau Claire Fire Dept.; Marie Schuster, DER; Jessica O'Donnell, DER; Priscilla Thain, PROFS.; Steve Werner, Wis. Prof. Police Assoc.; Marty Beil, WSEU; Rick Gale, Prof. Firefighters of Wis.; Dick Lipke, Retired Prof. Firefighters of Wis.; Mark Zeier, Prof. Firefighters of Wis.; Mark Reihl, State Council of Carpenters; Edward Muzik, TAUWP; John Reinemann, DOR; Steve Urso, Wis. Prof. Police Assoc.; S. James Kluss, Wis. Prof. Police Assoc.; Robert Stedman, Wis. State Fire Chiefs Assoc.; Michael Vaughan, Milw. Teachers Retirement Fund Assoc.; Roy E. Kubista, AFSCME; Sandy Drew, ETF; Lisa Moen, Staff for Sen. Grobschmidt; Ginger Mueller, Staff for Rep. Klusman; Blair Testin, Consultant for JSCRS; Deb Breggeman, Staff for JSCRS.

Senator Grobschmidt indicated that many members of the Joint Survey Committee on Retirement Systems were new to the Committee. He also mentioned that he was once again serving on the Committee in the role of Senate Co-Chair, having been Assembly Co-Chair in the past. Senator Grobschmidt pointed out that Mr. Blair Testin, although retired, is serving as a Consultant to the Committee.

CONSIDERATION OF THE MINUTES OF MARCH 25, 1996  
(Agenda Item 2)

Representative Klusman moved, seconded by Senator Wirch, to approve the minutes of the March 25, 1996, meeting of the Joint Survey Committee on Retirement Systems.

Motion carried by voice vote.

- 2 -

CONSIDERATION OF SENATE BILL 31  
(Agenda Item 3)

Senate Bill 31, relating to the requirements for receiving an automatic joint survivor death benefit under the Wisconsin Retirement System.

Mr. Blair Testin, Consultant for the JSCRS, briefly discussed the appendix report to Senate Bill 31.

Representative Klusman opened the meeting to public testimony on Senate Bill 31. Appearing before the Committee were:

<u>NAME</u>	<u>POSITION</u>
1. <u>Sen. Rick Grobschmidt</u> , Chief Author of S.B. 31	IN FAVOR
2. <u>Rep. Doris Hanson</u> , Co-Author of S.B. 31	IN FAVOR
3. <u>Mr. Harold Rebholz</u> , School Administrators Alliance	IN FAVOR
4. <u>Ms. Esther Olson</u> , Academic Staff Public Rep. Organization	IN FAVOR
5. <u>Mr. Ken Opin</u> , WFT, WEAC, Wis. Retirement Consortium	IN FAVOR
6. <u>Mr. Edward Muzik</u> , T.A.U.W.P.	IN FAVOR
7. <u>Ms. Margaret Lewis</u> , U.W. System	IN FAVOR

Hearing no further requests for testimony, Senator Grobschmidt closed the public hearing on Senate Bill 31.

Registering on Senate Bill 31 were:

<u>NAME</u>	<u>POSITION</u>
1. <u>Senator Fred Risser</u>	IN FAVOR
2. <u>Senator Calvin Potter</u>	IN FAVOR
3. <u>Chief Robert Stedman</u> , Wis. State Fire Chiefs Assoc.	IN FAVOR
4. <u>Mr. Joe Strohl</u> , Retired Prof. Firefighters of Wis.	IN FAVOR
5. <u>Mr. Mark Zeier</u> , Prof. Firefighters of Wis.	IN FAVOR
6. <u>Mr. Mark Reihl</u> , Wis. State Council of Carpenters	IN FAVOR
7. <u>Mr. Marty Beil</u> , Wis. State Employees Union	IN FAVOR
8. <u>Mr. Steve Werner</u> , Wis. Prof. Police Assoc.	IN FAVOR
9. <u>Mr. Steve Urso</u> , Wis. Prof. Police Assoc.	IN FAVOR
10. <u>Ms. Priscilla Thain</u> , PROFS, Inc.	IN FAVOR
11. <u>Mr. Dick Lipke</u> , PROFS., Retired Prof. Firefighters of Wis.	IN FAVOR
12. <u>Mr. Rick Gale</u> , Prof. Firefighters of Wis., West Allis Firefighters	IN FAVOR

- 3 -

<u>NAME</u>	<u>POSITION</u>
13. <u>Mr. Edward W. Mishefske</u> , Wis. Fire Chiefs Educ. Assoc.	IN FAVOR
14. <u>Mr. Ronald Brown</u> , Wis. State Fire Chiefs Assoc.	IN FAVOR

CONSIDERATION OF SENATE BILL 32  
(Agenda Item 4)

Senate Bill 32, relating to the five-year vesting requirement to receive an annuity under the Wisconsin Retirement System.

Mr. Blair Testin, Consultant for the JSCRS, briefly discussed the appendix report to Senate Bill 32.

Representative Klusman opened the hearing to public testimony on Senate Bill 32. Appearing before the Committee were:

<u>NAME</u>	<u>POSITION</u>
1. <u>Senator Rick Grobschmidt</u> , Chief Author of S.B. 32	IN FAVOR
2. <u>Mr. Harold Rebholz</u> , School Admin. Alliance	IN FAVOR
3. <u>Mr. Ken Opin</u> , WRT, WEAC, Wis. Retirement Consortium	IN FAVOR
4. <u>Ms. Esther Olson</u> , Acad. Staff Public Rep. Organization	IN FAVOR

Hearing no further requests for public testimony, Senator Grobschmidt closed the public hearing on Senate Bill 32.

Registering on Senate Bill 32 were:

<u>NAME</u>	<u>POSITION</u>
1. <u>Senator Fred Risser</u>	IN FAVOR
2. <u>Mr. Edward Mishefske</u> , Wis. Fire Chiefs Assoc.	IN FAVOR
3. <u>Mr. Edward Muzik</u> , T.A.U.W.P.	IN FAVOR
4. <u>Mr. Ronald Brown</u> , Wis. State Fire Chiefs Assoc.	IN FAVOR
5. <u>Mr. Mark Zeier</u> , Prof. Firefighters of Wis.	IN FAVOR
6. <u>Mr. Mark Reihl</u> , Wis. State Council of Carpenters	IN FAVOR
7. <u>Mr. Rick Gale</u> , Prof. Firefighters of Wis., West Allis Firefighter	IN FAVOR
8. <u>Mr. Dick Lipke</u> , Pres. Retired Prof. Firefighters	IN FAVOR
9. <u>Ms. Priscilla Thain</u> , PROFS., Inc.	IN FAVOR
10. <u>Mr. Steve Werner</u> , Wis. Prof. Police Assoc.	IN FAVOR
11. <u>Mr. Steve Urso</u> , Wis. Prof. Police Assoc.	IN FAVOR
12. <u>Mr. Joe Strohl</u> , Retired Prof. Firefighters of Wis.	IN FAVOR

EXECUTIVE SESSION ON SENATE BILL 31

Senator Grobschmidt called the meeting into Executive Session and asked the Committee Clerk to recall the roll.

Present: (8) Sen. Grobschmidt, Mr. Heineck, Rep. Jeskewitz, Rep. Klusman,  
Sen. Rude, Rep. Schneider, Mr. Stella, Sen. Wirch.

Absent: (2) Ms. Fisher, Ms. Hamblen.

Representative Klusman moved, seconded by Rep. Schneider, to recommend Senate Bill 31 as good public policy.

Roll call vote as follows:

Ayes: (8) Sen. Grobschmidt, Mr. Heineck, Rep. Jeskewitz, Rep. Klusman,  
Sen. Rude, Rep. Schneider, Mr. Stella, Sen. Wirch.

Noes: (0)

Absent: (2) Ms. Fisher, Ms. Hamblen.

Motion carried by roll call vote.

OTHER MATTERS  
(Agenda Item 5)

There were no other matters considered at this time.

ADJOURNMENT  
(Agenda Item 6)

The meeting of the Joint Survey Committee on Retirement Systems adjourned at 12:23 p.m.  
The next meeting will be at the call of the Co-Chairs.

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Debra Breggeman, Recording Secretary

**STATE OF WISCONSIN**

**RRC PROTECTIVE STUDY SUBCOMMITTEE**

**FRIDAY, APRIL 18, 1997**

**UPON ADJOURNMENT OF THE JSCRS**

**ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BLDG.**

**A G E N D A**

1. Call to Order and Roll Call.
2. Consideration of the Minutes of the April 16, 1996 Meeting.
3. Subcommittee Discussion of the Memos of the Last Meeting:
  - A. WRS Employee Classifications & Comparisons
  - B. P.O.P. Designations: Current Law & Alternative Courses of Action
  - C. Protective Designation Legislation in Past Sessions:  
Possible Rationale for Change or No Change
  - D. P.O.P. Qualification Standards: Possibly Restrict or Liberalize
  - E. Collective Bargaining of P.O.P. Status: Consider Prohibiting or  
Facilitating
  - F. Possible Reinstatement of Mandatory Retirement
4. Invited Public Testimony.
5. Possible Courses of Action.
6. Next Meeting.
7. Adjournment.

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STATE OF WISCONSIN

JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS

11:30 A.M.

FRIDAY, APRIL 18, 1997

ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BLDG.

A G E N D A

1. Call To Order and Roll Call.
2. Consideration of the Minutes Of The March 25, 1996, Meeting.
3. Senate Bill 31, relating to the requirements for receiving an automatic joint survivor death benefit under the Wisconsin Retirement System.
4. Senate Bill 32, relating to the five-year vesting requirement to receive an annuity under the Wisconsin Retirement System.
5. Other Matters.
6. Adjournment.

Note: The Committee may take Executive Action on the above bills.

# Committee Meeting Attendance Sheet

## Senate Joint survey committee on Retirement Systems

Date: 4-18-97 Meeting Type: Public

Location: GAA HEARING ROOM

<u>Committee Member</u>	<u>Present</u>	<u>Absent</u>	<u>Excused</u>
Sen. Richard Grobschmidt, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Judith Klusman, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Robert Wirch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Brian Rude	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Suzanne Jeskewitz	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Marlin Schneider	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Jane Hamblen	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Heineck	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Stella	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Susan Fisher	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: \_\_\_\_\_

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Lisa Moen, Committee Clerk

*Buettner*

**JOINT SURVEY COMMITTEE ON RETIREMENT SYSTEMS**

Senator Rick Grobschmidt, Co-Chair  
Representative Judith Klusman, Co-Chair

Room 417 North (G.A.R. Hall)

Friday, April 18, 1997 11:30 A.M.

**Senate Bill 31**

relating to: requirements for receiving an automatic joint survivor death benefit under the Wisconsin Retirement System.

By Senators **Grobschmidt, C. Potter, Rude, Risser, Buettner, Plache, Fitzgerald, Shibilski, Moen and Schultz**; cosponsored by Representatives **Hanson, Ott, Travis, Musser, Dobyns, Huber, Notestein, Boyle, Turner, Ziegelbauer, R. Young, Plale, Kreuser, Springer, Baldwin, Gronemus, Black, Hasenohrl, Ryba, Brandemuehl, Murat, Meyer, and Lorge.**

**Senate Bill 32**

relating to: five-year vesting requirement to receive an annuity under the Wisconsin Retirement System.

By Senators **Grobschmidt, Risser, Wirsch, Buettner and Plache**; cosponsored by Representatives **Notestein, Musser, Plale, Baumgart, Meyer, Springer, Riley, Huber, Seratti, Boyle, Powers, Baldwin, F. Lasee, Dobyns, R. Young, Murat and Hanson.**

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**RETIREMENT RESEARCH COMMITTEE**

**PROTECTIVE STUDY SUBCOMMITTEE**

Senator Rick Grobschmidt, Co-Chair  
Representative Judith Klusman, Co-Chair

Room 417 (G.A.R. Hall), State Capitol Bldg.

Friday, April 18, 1997 Upon Adjournment of the JSCRS

The Subcommittee will discuss various provisions governing the WRS protective occupation program. These provisions may include:

- Basic definition and criteria for protective status.
- Mandatory, normal and early retirement provisions.

**STATE OF WISCONSIN**  
**MINUTES OF MEETING**  
**RETIREMENT RESEARCH COMMITTEE**  
**PROTECTIVE STUDY SUBCOMMITTEE**  
**FRIDAY, APRIL 18, 1997**  
**UPON ADJOURNMENT OF THE JSCRS**  
**ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BLDG.**  
**MADISON, WISCONSIN**

MAY 9 6 1997

**CALL TO ORDER AND ROLL CALL**

(Agenda Item 1)

The meeting of the RRC Protective Study Subcommittee was called to order by Co-Chair Grobschmidt at 12:48 P.M., in Room 417 North (G.A.R. Hall) of the State Capitol Building in Madison, Wisconsin.

Roll call was taken as follows:

Present: (7) Sen. Grobschmidt, Mr. Heineck, Rep. Jeskewitz,  
Rep. Klusman, Ms. O'Donnell, Mr. Stella, Sen. Wirch.

Absent: (1) Mr. Pelzek.

Others Present: Marie Schuster, DER; Leean White, DER; Mark Zeier, Prof. Firefighters of Wis.; Rick Gale, Prof. Firefighters of Wis.; Forbes McIntosh, WCPA; Steve Werner, Wis. Prof. Police Assoc.; Steve Urso, Wis. Prof. Police Assoc.; Marty Beil, WSEU; Mark O'Connell, Wis. Counties Assoc.; Lisa Moen, Staff for Sen. Grobschmidt; Ginger Mueller, Staff for Rep. Klusman; Blair Testin, Consultant for RRC; Deb Breggeman, Staff for RRC.

**CONSIDERATION OF THE MINUTES OF APRIL 16, 1996**

(Agenda Item 2)

**Representative Klusman moved, seconded by Mr. Stella, to approve the minutes of the April 16, 1996, meeting of the RRC Protective Study Subcommittee.**

**Motion carried by voice vote.**

Senator Grobschmidt noted the following changes to the Subcommittee membership: Senator Grobschmidt replaced Senator Petak, Representative Wirch had become Senator Wirch, and Representative Jeskewitz replaced Mayor Meyer.

**SUBCOMMITTEE DISCUSSION OF MEMOS OF THE LAST MEETING**

(Agenda Item 3)

Mr. Blair Testin, Consultant for the Retirement Research Committee, gave a brief overview of the following memos that were discussed at the April 16, 1996, meeting of the RRC Protective Study Subcommittee:

- 2 -

- A. WRS Employee Classifications and Comparisons
- B. P.O.P. Designations: Current Law and Alternative Courses of Action
- C. Protective Designation Legislation in Past Sessions: Possible Rationale for Change or No Change
- D. P.O.P. Qualification Standards: Possibly Restrict or Liberalize
- E. Collective Bargaining of P.O.P. Status: Consider Prohibiting or Facilitating
- F. Possible Reinstatement of Mandatory Retirement

**INVITED PUBLIC TESTIMONY**

(Agenda Item 4)

Co-Chair Grobschmidt opened the meeting to public testimony:

Appearing before the Subcommittee were:

<u>NAME</u>	<u>POSITION</u>
1. <u>Mr. Steve Werner/Mr. Steve Urso</u> , Wis. Prof. Police Assoc.	<b>INFORMATION</b>
2. <u>Mr. Mark Zeier</u> , Wis. Prof. Firefighters	<b>INFORMATION</b>
3. <u>Mr. Marty Beil</u> , Wis. State Employees Union	<b>INFORMATION</b>
4. <u>Mr. Mark O'Connell</u> , Wisconsin Counties Assoc.	<b>INFORMATION</b>

Hearing no further requests for testimony, Co-Chair Grobschmidt closed the hearing to public testimony.

**POSSIBLE COURSES OF ACTION**

(Agenda Item 5)

The Co-Chairs thanked those who testified at the meeting. All Subcommittee members agreed that additional information was provided in the testimony.

**NEXT MEETING**

(Agenda Item 6)

The next meeting of the RRC Protective Study Subcommittee will be at the call of the Co-Chairs.

**ADJOURNMENT**

(Agenda Item 7)

The meeting of the RRC Protective Study Subcommittee adjourned at 2:34 P.M.

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Debra K. Breggeman, Recording Secretary

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MAY 06 1997

STATE OF WISCONSIN  
MINUTES OF MEETING  
RETIREMENT RESEARCH COMMITTEE  
PROTECTIVE STUDY SUBCOMMITTEE  
FRIDAY, APRIL 18, 1997  
UPON ADJOURNMENT OF THE JSCRS  
ROOM 417 NORTH (G.A.R. HALL), STATE CAPITOL BLDG.  
MADISON, WISCONSIN

CALL TO ORDER AND ROLL CALL

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- Present: (7) Sen. Grobschmidt, Mr. Heineck, Rep. Jeskewitz,  
Rep. Klusman, Ms. O'Donnell, Mr. Stella, Sen. Wirch.
- Absent: (1) Mr. Pelzek.
- Others Present: Marie Schuster, DER; Leean White, DER; Mark Zeier, Prof. Firefighters of Wis.; Rick Gale, Prof. Firefighters of Wis.; Forbes McIntosh, WCPA; Steve Werner, Wis. Prof. Police Assoc.; Steve Urso, Wis. Prof. Police Assoc.; Marty Beil, WSEU; Mark O'Connell, Wis. Counties Assoc.; Lisa Moen, Staff for Sen. Grobschmidt; Ginger Mueller, Staff for Rep. Klusman; Blair Testin, Consultant for RRC; Deb Breggeman, Staff for RRC.

CONSIDERATION OF THE MINUTES OF APRIL 16, 1996

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Representative Klusman moved, seconded by Mr. Stella, to approve the minutes of the April 16, 1996, meeting of the RRC Protective Study Subcommittee.

Motion carried by voice vote.

Senator Grobschmidt noted the following changes to the Subcommittee membership: Senator Grobschmidt replaced Senator Petak, Representative Wirch had become Senator Wirch, and Representative Jeskewitz replaced Mayor Meyer.

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2. <u>Mr. Mark Zeier</u> , Wis. Prof. Firefighters	INFORMATION
3. <u>Mr. Marty Beil</u> , Wis. State Employees Union	INFORMATION
4. <u>Mr. Mark O'Connell</u> , Wisconsin Counties Assoc.	INFORMATION

Hearing no further requests for testimony, Co-Chair Grobschmidt closed the hearing to public testimony.

#### POSSIBLE COURSES OF ACTION

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The Co-Chairs thanked those who testified at the meeting. All Subcommittee members agreed that additional information was provided in the testimony.

#### NEXT MEETING

(Agenda Item 6)

The next meeting of the RRC Protective Study Subcommittee will be at the call of the Co-Chairs.

#### ADJOURNMENT

(Agenda Item 7)

The meeting of the RRC Protective Study Subcommittee adjourned at 2:34 P.M.

\_\_\_\_\_  
Debra K. Breggeman, Recording Secretary

TO: JSCRS/RRC Co-Chairs

Those parties of interest who were invited to testify at the RRC Subcommittee meeting on protectives include:

1. WPPA - Steve Werner
2. Prof. Firefighters of WI - Mark Zeier
3. WSEU - Marty Beil
4. Wis. Assoc. Of Counties - Mark O'Connell
5. Wis. Alliance of Counties - Invite Declined

Cities

- Def. of Protective
- Mandatory Retirement
- 40.65 - Relative to Audit  
Schedule Mtg to discuss  
audit
- Employment after Retirement

TO: JSCRS/RRC Co-Chairs

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3. WSEU - Marty Beil
4. Wis. Assoc. Of Counties - Mark O'Connell
5. Wis. Alliance of ~~Counties~~ - Invite Declined

*Cities*

per Blain

tighten restrictions  
Werner  
also

RRC sub.

invite police  
fire

5 1/2 over ret 800 hrs  
29 yrs of ser. Certif.

could tighten restr. } To new hires  
mand. ret. at 57 } or phase in  
Prohibit col. bang. } grandfather

public interest - assumption  
that they retire early.