



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0508/5

CMH:wlj:rs

6
Stays
↑
RMR

DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do Not
Sen cat

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees. This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Current law provides that, in reaching a decision, the arbitrator must give weight to many factors, including the lawful authority of the municipal employer; the stipulations of the parties; the interests and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed agreement; comparison of wages, hours, and conditions of employment with those of other public and private sector employees; the cost of living; the overall compensation and benefits that the employees currently receive; and other similar factors. But, under current law, the arbitrator must give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer. This bill eliminates the authorization for the arbitrator to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 111.70 (1) (a) of the statutes is amended to read:
- 2 111.70 (1) (a) "Collective bargaining" means the performance of the mutual
- 3 obligation of a municipal employer, through its officers and agents, and the
- 4 representative of its municipal employees in a collective bargaining unit, to meet and
- 5 confer at reasonable times, in good faith, with the intention of reaching an
- 6 agreement, or to resolve questions arising under such an agreement, with respect to
- 7 wages, hours and conditions of employment, and with respect to a requirement of the

1 municipal employer for a municipal employee to perform law enforcement and fire
 2 fighting services under s. 61.66, except as provided in sub. (4) (m) and (mc) and s.
 3 40.81 (3) and except that a municipal employer shall not meet and confer with respect
 4 to any proposal to diminish or abridge the rights guaranteed to municipal employees
 5 under ch. 164. The duty to bargain, however, does not compel either party to agree
 6 to a proposal or require the making of a concession. Collective bargaining includes
 7 the reduction of any agreement reached to a written and signed document. The
 8 municipal employer shall not be required to bargain on subjects reserved to
 9 management and direction of the governmental unit except insofar as the manner
 10 of exercise of such functions affects the wages, hours and conditions of employment
 11 of the municipal employees in a collective bargaining unit. In creating this
 12 subchapter the legislature recognizes that the municipal employer must exercise its
 13 powers and responsibilities to act for the government and good order of the
 14 jurisdiction which it serves, its commercial benefit and the health, safety and welfare
 15 of the public to assure orderly operations and functions within its jurisdiction,
 16 subject to those rights secured to municipal employees by the constitutions of this
 17 state and of the United States and by this subchapter.

****NOTE: Marta: This provision fixes a cross-reference that should have been added last budget.

18 SECTION 2. 111.70 (1) (b) of the statutes is amended to read:

19 111.70 (1) (b) "Collective bargaining unit" means ~~a~~ ^{plain} the unit consisting of
 20 ~~municipal employees who are school district professional employees or of municipal~~ ^{plain}
 21 ~~employees who are not school district professional employees~~ that is determined by
 22 the commission to be appropriate for the purpose of collective bargaining. ^{plain}

23 SECTION 3. 111.70 (1) (dm) of the statutes is repealed.

plain

plain

plain

plain

Handwritten notes and signatures at the bottom of the page, including "ck" and other illegible text.

1 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

2 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

3 **SECTION 6.** 111.70 (4) (cm) 5. of the statutes is amended to read:

4 111.70 (4) (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the
5 other impasse resolution procedures provided in this paragraph, a municipal
6 employer and labor organization may at any time, as a permissive subject of
7 bargaining, agree in writing to a dispute settlement procedure, including
8 authorization for a strike by municipal employees or binding interest arbitration,
9 which is acceptable to the parties for resolving an impasse over terms of any
10 collective bargaining agreement under this subchapter. A copy of such agreement
11 shall be filed by the parties with the commission. If the parties agree to any form of
12 binding interest arbitration, the arbitrator shall give weight to the factors
13 enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

14 **SECTION 7.** 111.70 (4) (cm) 5s. of the statutes is repealed.

15 **SECTION 8.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

16 111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute relating to one
17 or more issues, ~~qualifying for interest arbitration under subd. 5s. in a collective~~
18 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable
19 period of negotiation and after mediation by the commission under subd. 3. and other
20 settlement procedures, if any, established by the parties have been exhausted, and
21 the parties are deadlocked with respect to any dispute between them over wages,
22 hours and conditions of employment to be included in a new collective bargaining
23 agreement, either party, or the parties jointly, may petition the commission, in
24 writing, to initiate compulsory, final and binding arbitration, as provided in this
25 paragraph. At the time the petition is filed, the petitioning party shall submit in

1 writing to the other party and the commission its preliminary final offer containing
2 its latest proposals on all issues in dispute. Within 14 calendar days after the date
3 of that submission, the other party shall submit in writing its preliminary final offer
4 on all disputed issues to the petitioning party and the commission. If a petition is
5 filed jointly, both parties shall exchange their preliminary final offers in writing and
6 submit copies to the commission at the time the petition is filed.

7 **SECTION 9.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

8 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
9 commission shall make an investigation, with or without a formal hearing, to
10 determine whether arbitration should be commenced. If in determining whether an
11 impasse exists the commission finds that the procedures set forth in this paragraph
12 have not been complied with and such compliance would tend to result in a
13 settlement, it may order such compliance before ordering arbitration. The validity
14 of any arbitration award or collective bargaining agreement shall not be affected by
15 failure to comply with such procedures. Prior to the close of the investigation each
16 party shall submit in writing to the commission its single final offer containing its
17 final proposals on all issues in dispute that are subject to interest arbitration under
18 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~^{plan}
19 applies. If a party fails to submit a single, ultimate final offer, the commission shall
20 close the investigation based on the last written position of the party. ~~The municipal~~
21 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~
22 ~~of the investigation.~~ Such final offers may include only mandatory subjects of
23 bargaining, except that a permissive subject of bargaining may be included by a
24 party if the other party does not object and shall then be treated as a mandatory
25 subject. No later than such time, the parties shall also submit to the commission a

1 stipulation, in writing, with respect to all matters which are agreed upon for
2 inclusion in the new or amended collective bargaining agreement. The commission,
3 after receiving a report from its investigator and determining that arbitration should
4 be commenced, shall issue an order requiring arbitration and immediately submit
5 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
6 alternately strike names until a single name is left, who shall be appointed as
7 arbitrator. The petitioning party shall notify the commission in writing of the
8 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
9 formally appoint the arbitrator and submit to him or her the final offers of the
10 parties. The final offers shall be considered public documents and shall be available
11 from the commission. In lieu of a single arbitrator and upon request of both parties,
12 the commission shall appoint a tripartite arbitration panel consisting of one member
13 selected by each of the parties and a neutral person designated by the commission
14 who shall serve as a chairperson. An arbitration panel has the same powers and
15 duties as provided in this section for any other appointed arbitrator, and all
16 arbitration decisions by such panel shall be determined by majority vote. In lieu of
17 selection of the arbitrator by the parties and upon request of both parties, the
18 commission shall establish a procedure for randomly selecting names of arbitrators.
19 Under the procedure, the commission shall submit a list of 7 arbitrators to the
20 parties. Each party shall strike one name from the list. From the remaining 5
21 names, the commission shall randomly appoint an arbitrator. Unless both parties
22 to an arbitration proceeding otherwise agree in writing, every individual whose
23 name is submitted by the commission for appointment as an arbitrator shall be a
24 resident of this state at the time of submission and every individual who is

1 designated as an arbitration panel chairperson shall be a resident of this state at the
2 time of designation.

3 SECTION 10. 111.70 (4) (cm) 7. of the statutes is repealed.

4 SECTION 11. 111.70 (4) (cm) 7g. of the statutes is repealed.

5 SECTION 12. 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

6 111.70 (4) (cm) 7r. ~~Other factors~~ Factors considered.' (intro.) In making any
7 decision under the arbitration procedures authorized by this paragraph, the
8 arbitrator or arbitration panel shall also give weight to the following factors:

9 SECTION 13. 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,
10 renumbered 111.70 (4) (cm) 8m. and amended to read:

11 111.70 (4) (cm) 8m. "Term of agreement; reopening of negotiations." Except for
12 the initial collective bargaining agreement between the parties and except as the
13 parties otherwise agree, every collective bargaining agreement covering municipal
14 employees subject to this paragraph ~~other than school district professional~~
15 employees shall be for a term of 2 years. ~~No, but in no case may a collective~~
16 bargaining agreement for any collective bargaining unit consisting of municipal
17 employees ~~subject to this paragraph other than school district professional~~

18 employees shall be for a term exceeding 3 years. ~~e.~~ (INS 7-18) No arbitration award may contain
19 a provision for reopening of negotiations during the term of a collective bargaining
20 agreement, unless both parties agree to such a provision. The requirement for
21 agreement by both parties does not apply to a provision for reopening of negotiations
22 with respect to any portion of an agreement that is declared invalid by a court or
23 administrative agency or rendered invalid by the enactment of a law or promulgation
24 of a federal regulation.

25 SECTION 14. 111.70 (4) (cm) 8m. b. of the statutes is repealed.

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KEEP STRICKEN

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✓1 **SECTION 15.** 111.70 (4) (cm) 8p. of the statutes is repealed.

✓2 **SECTION 16.** 111.70 (4) (cm) 8s. of the statutes is repealed.

✓3 **SECTION 17.** 111.70 (4) (cn) of the statutes is repealed.

4 **SECTION 18.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

5 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
6 bargaining unit for the purpose of collective bargaining and shall whenever possible,
7 unless otherwise required under this subchapter, avoid fragmentation by
8 maintaining as few collective bargaining units as practicable in keeping with the size
9 of the total municipal ~~work force~~ workforce. In making such a determination, the
10 commission may decide whether, in a particular case, the municipal employees in the
11 same or several departments, divisions, institutions, crafts, professions, or other
12 occupational groupings constitute a collective bargaining unit. Before making its
13 determination, the commission may provide an opportunity for the municipal
14 employees concerned to determine, by secret ballot, whether ~~or not they~~ desire to be
15 established as a separate collective bargaining unit. ~~The commission shall not~~
16 ~~decide, however, that any group of municipal employees constitutes an appropriate~~
17 ~~collective bargaining unit if the group includes both municipal employees who are~~
18 ~~school district professional employees and municipal employees who are not school~~
19 ~~district professional employees.~~ The commission shall not decide, however, that any
20 ~~other~~ group of municipal employees constitutes an appropriate collective bargaining
21 unit if the group includes both professional employees and nonprofessional
22 employees, unless a majority of the professional employees vote for inclusion in the
23 unit. The commission shall not decide that any group of municipal employees
24 constitutes an appropriate collective bargaining unit if the group includes both craft
25 employees and noncraft employees unless a majority of the craft employees vote for

1 inclusion in the unit. The commission shall place the professional employees who are
 2 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in
 3 a separate collective bargaining unit from a unit that includes any other professional
 4 employees whenever at least 30% of those professional employees request an election
 5 to be held to determine that issue and a majority of the professional employees at the
 6 charter school who cast votes in the election decide to be represented in a separate
 7 collective bargaining unit. Upon the expiration of any collective bargaining
 8 agreement in force, the commission shall combine into a single collective bargaining
 9 unit 2 or more collective bargaining units consisting of school district professional
 10 employees who are employed by a school district that employs fewer than 500
 11 individuals, with each collective bargaining unit maintaining its representative if
 12 a majority of the employees voting in each collective bargaining unit vote to combine.
 13 Any vote taken under this subsection shall be by secret ballot.

****NOTE: Do you want language permitting the withdrawal of units, upon the expiration of a cba, if the majority of the unit wants to withdraw?

14 SECTION 19. 118.245 of the statutes is repealed.

15 SECTION 9316. Initial applicability; Employment Relations
 16 Commission.

17 (1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (a), (b),
 18 (dm), (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r., 8m. a., b., and c., 8p.,
 19 and 8s., (cn), and (d) 2. a. of the statutes first applies to petitions for arbitration that
 20 relate to collective bargaining agreements that cover periods beginning on or after
 21 July 1, 2009, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as
 22 affected by this act, on the effective date of this subsection.

23 (END)

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MS
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2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0508/6ins
CMH:.....

1

2 Insert 4-14

3 ~~SECTION 11~~ 111.70 (1) (ne) of the statutes is amended to read:

4 111.70 (1) (ne) "School district professional employee" means a municipal
5 employee who is a professional employee and who is employed to perform services
6 for a school district.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

7 ~~SECTION 11~~ 111.70 (4) (cm) 5. of the statutes is amended to read:

8 111.70 (4) (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the
9 other impasse resolution procedures provided in this paragraph, a municipal
10 employer and labor organization may at any time, as a permissive subject of
11 bargaining, agree in writing to a dispute settlement procedure, including
12 authorization for a strike by municipal employees or binding interest arbitration,
13 which is acceptable to the parties for resolving an impasse over terms of any
14 collective bargaining agreement under this subchapter. A copy of such agreement
15 shall be filed by the parties with the commission. If the parties agree to any form of
16 binding interest arbitration, the arbitrator shall give weight to the factors
17 enumerated under subds. 7., and 7g. for a collective bargaining unit consisting of
18 municipal employees who are not school district employees and under subd. 7r. for
19 a collective bargaining unit consisting of municipal employees.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

20

21 Insert 7-9

22 ~~SECTION 11~~ 111.70 (4) (cm) 7. of the statutes is amended to read:

1 111.70 (4) (cm) 7. 'Factor given greatest weight.' In making any decision under
 2 the arbitration procedures authorized by this paragraph, except for any decision
 3 involving a collective bargaining unit consisting of school district employees, the
 4 arbitrator or arbitration panel shall consider and shall give the greatest weight to
 5 any state law or directive lawfully issued by a state legislative or administrative
 6 officer, body or agency which places limitations on expenditures that may be made
 7 or revenues that may be collected by a municipal employer. The arbitrator or
 8 arbitration panel shall give an accounting of the consideration of this factor in the
 9 arbitrator's or panel's decision.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

10 **SECTION 4.** 111.70 (4) (cm) 7g. of the statutes is amended to read:

11 111.70 (4) (cm) 7g. 'Factor given greater weight.' In making any decision under
 12 the arbitration procedures authorized by this paragraph, except for any decision
 13 involving a collective bargaining unit consisting of school district employees, the
 14 arbitrator or arbitration panel shall consider and shall give greater weight to
 15 economic conditions in the jurisdiction of the municipal employer than to any of the
 16 factors specified in subd. 7r.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

17 **SECTION 5.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

18 111.70 (4) (cm) 7r. (intro.) 'Other factors considered.' In making any decision
 19 under the arbitration procedures authorized by this paragraph, the arbitrator or
 20 arbitration panel shall also give weight to the following factors:

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

21

22

1 Insert 7-18

Not

2 nor may a collective bargaining agreement for any collective bargaining unit
3 consisting of school district employees subject to this paragraph be for a term
4 exceeding 4 years. ✓

5

6 Insert 9-14

7 ~~SECTION 6~~ 111.70 (4) (m) 6. of the statutes is amended to read:

8 111.70 (4) (m) 6. Solicitation of sealed bids for the provision of group health care
9 benefits for school district ~~professional~~ employees as provided in s. 120.12 (24).

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672; 2001 a. 16; 2005 a. 253; 2007 a. 20.

***NOTE: Marta, please review this. If you want this just to apply to teachers, I can change the language to school district employees who are professional employees.

10

11

12 Insert 9-16

13 ~~SECTION 6~~ 120.12 (24) of the statutes is amended to read:

14 120.12 (24) HEALTH CARE BENEFITS. Prior to the selection of any group health
15 care benefits provider for school district ~~professional~~ employees, as defined in s.
16 111.70 (1) (ne), solicit sealed bids for the provision of such benefits.

History: 1973 c. 61, 90; 1975 c. 180, 421; 1977 c. 206, 418; 1979 c. 301, 318, 334; 1983 a. 189 s. 329 (21); 1985 a. 29, 218, 225; 1987 a. 285; 1989 a. 31, 114, 209, 264, 359; 1991 a. 39, 269; 1993 a. 16, 27, 437; 1995 a. 27 ss. 4022r, 4023m, 9126 (19), 9145 (1); 1995 a. 77, 201; 1997 a. 27, 160, 237, 240; 1999 a. 9; 1999 a. 150 s. 672; 2001 a. 30; 2005 a. 220; 2007 a. 20 s. 9121 (6) (a); 2007 a. 40.

Hanaman, Cathlene

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Thursday, January 29, 2009 10:59 AM
To: Hanaman, Cathlene
Subject: RE: LRB Draft: 09-0508/6 Repeal QEO

Cathlene,
Under 111.70 (4) (d) 2.a. please authorize 2 or more collective bargaining units consisting of school district employees to combine and eliminate the requirement that the districts employ fewer than 500 full-time employees. So, this would allow any 2 or more school district collective bargaining units to combine.

Thanks!!!!

From: Duchek, Michael [mailto:Michael.Duchek@legis.wisconsin.gov]
Sent: Wednesday, January 28, 2009 6:42 PM
To: Skwarczek, Marta A - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0508/6 Repeal QEO

Following is the PDF version of draft 09-0508/6.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0508/6

CMH:wlj:md

7
Stays

DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

Do Not Gen

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This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

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6 agreement, or to resolve questions arising under such an agreement, with respect to
7 wages, hours and conditions of employment, and with respect to a requirement of the
8 municipal employer for a municipal employee to perform law enforcement and fire
9 fighting services under s. 61.66, except as provided in sub. (4) (m) and (mc) and s.
10 40.81 (3) and except that a municipal employer shall not meet and confer with respect
11 to any proposal to diminish or abridge the rights guaranteed to municipal employees
12 under ch. 164. The duty to bargain, however, does not compel either party to agree
13 to a proposal or require the making of a concession. Collective bargaining includes
14 the reduction of any agreement reached to a written and signed document. The

1 municipal employer shall not be required to bargain on subjects reserved to
2 management and direction of the governmental unit except insofar as the manner
3 of exercise of such functions affects the wages, hours and conditions of employment
4 of the municipal employees in a collective bargaining unit. In creating this
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6 powers and responsibilities to act for the government and good order of the
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9 subject to those rights secured to municipal employees by the constitutions of this
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12 111.70 (1) (b) "Collective bargaining unit" means a unit consisting of municipal
13 employees who are school district professional employees or of municipal employees
14 who are not school district professional employees that is determined by the
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9 municipal employees who are not school district employees and under subd. 7r. for
10 a collective bargaining unit consisting of municipal employees.

11 **SECTION 8.** 111.70 (4) (cm) 5s. of the statutes is repealed.

12 **SECTION 9.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

13 111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute relating to one
14 or more issues, ~~qualifying for interest arbitration under subd. 5s. in a collective~~
15 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable
16 period of negotiation and after mediation by the commission under subd. 3. and other
17 settlement procedures, if any, established by the parties have been exhausted, and
18 the parties are deadlocked with respect to any dispute between them over wages,
19 hours and conditions of employment to be included in a new collective bargaining
20 agreement, either party, or the parties jointly, may petition the commission, in
21 writing, to initiate compulsory, final and binding arbitration, as provided in this
22 paragraph. At the time the petition is filed, the petitioning party shall submit in
23 writing to the other party and the commission its preliminary final offer containing
24 its latest proposals on all issues in dispute. Within 14 calendar days after the date
25 of that submission, the other party shall submit in writing its preliminary final offer

1 on all disputed issues to the petitioning party and the commission. If a petition is
2 filed jointly, both parties shall exchange their preliminary final offers in writing and
3 submit copies to the commission at the time the petition is filed.

4 **SECTION 10.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

5 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
6 commission shall make an investigation, with or without a formal hearing, to
7 determine whether arbitration should be commenced. If in determining whether an
8 impasse exists the commission finds that the procedures set forth in this paragraph
9 have not been complied with and such compliance would tend to result in a
10 settlement, it may order such compliance before ordering arbitration. The validity
11 of any arbitration award or collective bargaining agreement shall not be affected by
12 failure to comply with such procedures. Prior to the close of the investigation each
13 party shall submit in writing to the commission its single final offer containing its
14 final proposals on all issues in dispute that are subject to interest arbitration under
15 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~
16 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall
17 close the investigation based on the last written position of the party. ~~The municipal~~
18 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~
19 ~~of the investigation.~~ Such final offers may include only mandatory subjects of
20 bargaining, except that a permissive subject of bargaining may be included by a
21 party if the other party does not object and shall then be treated as a mandatory
22 subject. No later than such time, the parties shall also submit to the commission a
23 stipulation, in writing, with respect to all matters which are agreed upon for
24 inclusion in the new or amended collective bargaining agreement. The commission,
25 after receiving a report from its investigator and determining that arbitration should

1 be commenced, shall issue an order requiring arbitration and immediately submit
2 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
3 alternately strike names until a single name is left, who shall be appointed as
4 arbitrator. The petitioning party shall notify the commission in writing of the
5 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
6 formally appoint the arbitrator and submit to him or her the final offers of the
7 parties. The final offers shall be considered public documents and shall be available
8 from the commission. In lieu of a single arbitrator and upon request of both parties,
9 the commission shall appoint a tripartite arbitration panel consisting of one member
10 selected by each of the parties and a neutral person designated by the commission
11 who shall serve as a chairperson. An arbitration panel has the same powers and
12 duties as provided in this section for any other appointed arbitrator, and all
13 arbitration decisions by such panel shall be determined by majority vote. In lieu of
14 selection of the arbitrator by the parties and upon request of both parties, the
15 commission shall establish a procedure for randomly selecting names of arbitrators.
16 Under the procedure, the commission shall submit a list of 7 arbitrators to the
17 parties. Each party shall strike one name from the list. From the remaining 5
18 names, the commission shall randomly appoint an arbitrator. Unless both parties
19 to an arbitration proceeding otherwise agree in writing, every individual whose
20 name is submitted by the commission for appointment as an arbitrator shall be a
21 resident of this state at the time of submission and every individual who is
22 designated as an arbitration panel chairperson shall be a resident of this state at the
23 time of designation.

24 **SECTION 11.** 111.70 (4) (cm) 7. of the statutes is amended to read:

1 111.70 (4) (cm) 7. 'Factor given greatest weight.' In making any decision under
2 the arbitration procedures authorized by this paragraph, except for any decision
3 involving a collective bargaining unit consisting of school district employees, the
4 arbitrator or arbitration panel shall consider and shall give the greatest weight to
5 any state law or directive lawfully issued by a state legislative or administrative
6 officer, body or agency which places limitations on expenditures that may be made
7 or revenues that may be collected by a municipal employer. The arbitrator or
8 arbitration panel shall give an accounting of the consideration of this factor in the
9 arbitrator's or panel's decision.

10 **SECTION 12.** 111.70 (4) (cm) 7g. of the statutes is amended to read:

11 111.70 (4) (cm) 7g. 'Factor given greater weight.' In making any decision under
12 the arbitration procedures authorized by this paragraph, except for any decision
13 involving a collective bargaining unit consisting of school district employees, the
14 arbitrator or arbitration panel shall consider and shall give greater weight to
15 economic conditions in the jurisdiction of the municipal employer than to any of the
16 factors specified in subd. 7r.

17 **SECTION 13.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

18 111.70 (4) (cm) 7r. (intro.) 'Other factors considered.' In making any decision
19 under the arbitration procedures authorized by this paragraph, the arbitrator or
20 arbitration panel shall also give weight to the following factors:

21 **SECTION 14.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,
22 renumbered 111.70 (4) (cm) 8m. and amended to read:

23 111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for
24 the initial collective bargaining agreement between the parties and except as the
25 parties otherwise agree, every collective bargaining agreement covering municipal

1 employees subject to this paragraph ~~other than school district professional~~
2 ~~employees~~ shall be for a term of 2 years. ~~No, but in no case may a collective~~
3 bargaining agreement for any collective bargaining unit consisting of municipal
4 employees subject to this paragraph other than school district ~~professional~~
5 employees shall be for a term exceeding 3 years. ~~e. nor may a collective bargaining~~
6 ~~agreement for any collective bargaining unit consisting of school district employees~~
7 ~~subject to this paragraph be for a term exceeding 4 years.~~ No arbitration award may
8 contain a provision for reopening of negotiations during the term of a collective
9 bargaining agreement, unless both parties agree to such a provision. The
10 requirement for agreement by both parties does not apply to a provision for
11 reopening of negotiations with respect to any portion of an agreement that is
12 declared invalid by a court or administrative agency or rendered invalid by the
13 enactment of a law or promulgation of a federal regulation.

14 **SECTION 15.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

15 **SECTION 16.** 111.70 (4) (cm) 8p. of the statutes is repealed.

16 **SECTION 17.** 111.70 (4) (cm) 8s. of the statutes is repealed.

17 **SECTION 18.** 111.70 (4) (cn) of the statutes is repealed.

18 **SECTION 19.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

19 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
20 bargaining unit for the purpose of collective bargaining and shall whenever possible,
21 unless otherwise required under this subchapter, avoid fragmentation by
22 maintaining as few collective bargaining units as practicable in keeping with the size
23 of the total municipal ~~work force~~ workforce. In making such a determination, the
24 commission may decide whether, in a particular case, the municipal employees in the
25 same or several departments, divisions, institutions, crafts, professions, or other

1 occupational groupings constitute a collective bargaining unit. Before making its
2 determination, the commission may provide an opportunity for the municipal
3 employees concerned to determine, by secret ballot, whether or not they desire to be
4 established as a separate collective bargaining unit. ~~The commission shall not~~
5 ~~decide, however, that any group of municipal employees constitutes an appropriate~~
6 ~~collective bargaining unit if the group includes both municipal employees who are~~
7 ~~school district professional employees and municipal employees who are not school~~
8 ~~district professional employees.~~ The commission shall not decide, however, that any
9 other group of municipal employees constitutes an appropriate collective bargaining
10 unit if the group includes both professional employees and nonprofessional
11 employees, unless a majority of the professional employees vote for inclusion in the
12 unit. The commission shall not decide that any group of municipal employees
13 constitutes an appropriate collective bargaining unit if the group includes both craft
14 employees and noncraft employees unless a majority of the craft employees vote for
15 inclusion in the unit. The commission shall place the professional employees who are
16 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in
17 a separate collective bargaining unit from a unit that includes any other professional
18 employees whenever at least 30% of those professional employees request an election
19 to be held to determine that issue and a majority of the professional employees at the
20 charter school who cast votes in the election decide to be represented in a separate
21 collective bargaining unit. Upon the expiration of any collective bargaining
22 agreement in force, the commission shall combine into a single collective bargaining
23 unit 2 or more collective bargaining units consisting of school district employees who
24 are employed by a school district that employs fewer than 500 full-time equivalent

1 employees if a majority of the employees voting in each collective bargaining unit
2 vote to combine. Any vote taken under this subsection shall be by secret ballot.

3 **SECTION 20.** 111.70 (4) (m) 6. of the statutes is amended to read:

4 111.70 (4) (m) 6. Solicitation of sealed bids for the provision of group health care
5 benefits for school district professional employees as provided in s. 120.12 (24).

****NOTE: Marta, please review this. If you want this just to apply to teachers, I
can change the language to school district employees who are professional employees.

6 **SECTION 21.** 118.245 of the statutes is repealed.

7 **SECTION 22.** 120.12 (24) of the statutes is amended to read:

8 120.12 (24) HEALTH CARE BENEFITS. Prior to the selection of any group health
9 care benefits provider for school district professional employees, as defined in s.
10 111.70 (1) (ne), solicit sealed bids for the provision of such benefits.

11 **SECTION 9316. Initial applicability; Employment Relations**
12 **Commission.**

13 (1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (a), (b),
14 (dm), (fm), (nc), and (ne) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), 8m. a.,
15 b., and c., 8p., and 8s., (cn), (d) 2. a., and (m) 6. of the statutes first applies to petitions
16 for arbitration that relate to collective bargaining agreements that cover periods
17 beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm)
18 6. of the statutes, as affected by this act, on the effective date of this subsection.

19 (END)



8
Lstay

d-note

DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

SA —

do not gen.

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees. This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.70 (1) (a) of the statutes is amended to read:

2 111.70 (1) (a) "Collective bargaining" means the performance of the mutual
3 obligation of a municipal employer, through its officers and agents, and the
4 representative of its municipal employees in a collective bargaining unit, to meet and
5 confer at reasonable times, in good faith, with the intention of reaching an
6 agreement, or to resolve questions arising under such an agreement, with respect to
7 wages, hours and conditions of employment, and with respect to a requirement of the
8 municipal employer for a municipal employee to perform law enforcement and fire
9 fighting services under s. 61.66, except as provided in sub. (4) (m) and (mc) and s.
10 40.81 (3) and except that a municipal employer shall not meet and confer with respect
11 to any proposal to diminish or abridge the rights guaranteed to municipal employees
12 under ch. 164. The duty to bargain, however, does not compel either party to agree
13 to a proposal or require the making of a concession. Collective bargaining includes
14 the reduction of any agreement reached to a written and signed document. The

1 municipal employer shall not be required to bargain on subjects reserved to
2 management and direction of the governmental unit except insofar as the manner
3 of exercise of such functions affects the wages, hours and conditions of employment
4 of the municipal employees in a collective bargaining unit. In creating this
5 subchapter the legislature recognizes that the municipal employer must exercise its
6 powers and responsibilities to act for the government and good order of the
7 jurisdiction which it serves, its commercial benefit and the health, safety and welfare
8 of the public to assure orderly operations and functions within its jurisdiction,
9 subject to those rights secured to municipal employees by the constitutions of this
10 state and of the United States and by this subchapter.

11 **SECTION 2.** 111.70 (1) (b) of the statutes is amended to read:

12 111.70 (1) (b) "Collective bargaining unit" means a unit consisting of municipal
13 employees who are school district ~~professional~~ employees or of municipal employees
14 who are not school district ~~professional~~ employees that is determined by the
15 commission to be appropriate for the purpose of collective bargaining.

16 **SECTION 3.** 111.70 (1) (dm) of the statutes is repealed.

17 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

18 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

19 **SECTION 6.** 111.70 (1) (ne) of the statutes is amended to read:

20 111.70 (1) (ne) "School district ~~professional~~ employee" means a municipal
21 employee ~~who is a professional employee and~~ who is employed to perform services
22 for a school district.

23 **SECTION 7.** 111.70 (4) (cm) 5. of the statutes is amended to read:

24 111.70 (4) (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the
25 other impasse resolution procedures provided in this paragraph, a municipal

1 employer and labor organization may at any time, as a permissive subject of
2 bargaining, agree in writing to a dispute settlement procedure, including
3 authorization for a strike by municipal employees or binding interest arbitration,
4 which is acceptable to the parties for resolving an impasse over terms of any
5 collective bargaining agreement under this subchapter. A copy of such agreement
6 shall be filed by the parties with the commission. If the parties agree to any form of
7 binding interest arbitration, the arbitrator shall give weight to the factors
8 enumerated under subds. 7. and 7g. for a collective bargaining unit consisting of
9 municipal employees who are not school district employees and under subd. 7r. for
10 a collective bargaining unit consisting of municipal employees.

11 **SECTION 8.** 111.70 (4) (cm) 5s. of the statutes is repealed.

12 **SECTION 9.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

13 111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute relating to one
14 or more issues, ~~qualifying for interest arbitration under subd. 5s. in a collective~~
15 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable
16 period of negotiation and after mediation by the commission under subd. 3. and other
17 settlement procedures, if any, established by the parties have been exhausted, and
18 the parties are deadlocked with respect to any dispute between them over wages,
19 hours and conditions of employment to be included in a new collective bargaining
20 agreement, either party, or the parties jointly, may petition the commission, in
21 writing, to initiate compulsory, final and binding arbitration, as provided in this
22 paragraph. At the time the petition is filed, the petitioning party shall submit in
23 writing to the other party and the commission its preliminary final offer containing
24 its latest proposals on all issues in dispute. Within 14 calendar days after the date
25 of that submission, the other party shall submit in writing its preliminary final offer

1 on all disputed issues to the petitioning party and the commission. If a petition is
2 filed jointly, both parties shall exchange their preliminary final offers in writing and
3 submit copies to the commission at the time the petition is filed.

4 **SECTION 10.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

5 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
6 commission shall make an investigation, with or without a formal hearing, to
7 determine whether arbitration should be commenced. If in determining whether an
8 impasse exists the commission finds that the procedures set forth in this paragraph
9 have not been complied with and such compliance would tend to result in a
10 settlement, it may order such compliance before ordering arbitration. The validity
11 of any arbitration award or collective bargaining agreement shall not be affected by
12 failure to comply with such procedures. Prior to the close of the investigation each
13 party shall submit in writing to the commission its single final offer containing its
14 final proposals on all issues in dispute that are subject to interest arbitration under
15 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~
16 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall
17 close the investigation based on the last written position of the party. ~~The municipal~~
18 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~
19 ~~of the investigation.~~ Such final offers may include only mandatory subjects of
20 bargaining, except that a permissive subject of bargaining may be included by a
21 party if the other party does not object and shall then be treated as a mandatory
22 subject. No later than such time, the parties shall also submit to the commission a
23 stipulation, in writing, with respect to all matters which are agreed upon for
24 inclusion in the new or amended collective bargaining agreement. The commission,
25 after receiving a report from its investigator and determining that arbitration should

1 be commenced, shall issue an order requiring arbitration and immediately submit
2 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
3 alternately strike names until a single name is left, who shall be appointed as
4 arbitrator. The petitioning party shall notify the commission in writing of the
5 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
6 formally appoint the arbitrator and submit to him or her the final offers of the
7 parties. The final offers shall be considered public documents and shall be available
8 from the commission. In lieu of a single arbitrator and upon request of both parties,
9 the commission shall appoint a tripartite arbitration panel consisting of one member
10 selected by each of the parties and a neutral person designated by the commission
11 who shall serve as a chairperson. An arbitration panel has the same powers and
12 duties as provided in this section for any other appointed arbitrator, and all
13 arbitration decisions by such panel shall be determined by majority vote. In lieu of
14 selection of the arbitrator by the parties and upon request of both parties, the
15 commission shall establish a procedure for randomly selecting names of arbitrators.
16 Under the procedure, the commission shall submit a list of 7 arbitrators to the
17 parties. Each party shall strike one name from the list. From the remaining 5
18 names, the commission shall randomly appoint an arbitrator. Unless both parties
19 to an arbitration proceeding otherwise agree in writing, every individual whose
20 name is submitted by the commission for appointment as an arbitrator shall be a
21 resident of this state at the time of submission and every individual who is
22 designated as an arbitration panel chairperson shall be a resident of this state at the
23 time of designation.

24 **SECTION 11.** 111.70 (4) (cm) 7. of the statutes is amended to read:

1 111.70 (4) (cm) 7. 'Factor given greatest weight.' In making any decision under
2 the arbitration procedures authorized by this paragraph, except for any decision
3 involving a collective bargaining unit consisting of school district employees, the
4 arbitrator or arbitration panel shall consider and shall give the greatest weight to
5 any state law or directive lawfully issued by a state legislative or administrative
6 officer, body or agency which places limitations on expenditures that may be made
7 or revenues that may be collected by a municipal employer. The arbitrator or
8 arbitration panel shall give an accounting of the consideration of this factor in the
9 arbitrator's or panel's decision.

10 **SECTION 12.** 111.70 (4) (cm) 7g. of the statutes is amended to read:

11 111.70 (4) (cm) 7g. 'Factor given greater weight.' In making any decision under
12 the arbitration procedures authorized by this paragraph, except for any decision
13 involving a collective bargaining unit consisting of school district employees, the
14 arbitrator or arbitration panel shall consider and shall give greater weight to
15 economic conditions in the jurisdiction of the municipal employer than to any of the
16 factors specified in subd. 7r.

17 **SECTION 13.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

18 111.70 (4) (cm) 7r. (intro.) 'Other factors considered.' In making any decision
19 under the arbitration procedures authorized by this paragraph, the arbitrator or
20 arbitration panel shall also give weight to the following factors:

21 **SECTION 14.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,
22 renumbered 111.70 (4) (cm) 8m. and amended to read:

23 111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for
24 the initial collective bargaining agreement between the parties and except as the
25 parties otherwise agree, every collective bargaining agreement covering municipal

1 employees subject to this paragraph ~~other than school district professional~~
2 employees shall be for a term of 2 years. ~~No, but in no case may a collective~~
3 bargaining agreement for any collective bargaining unit consisting of municipal
4 employees subject to this paragraph other than school district professional
5 employees ~~shall be for a term exceeding 3 years. e. nor may a collective bargaining~~
6 agreement for any collective bargaining unit consisting of school district employees
7 subject to this paragraph be for a term exceeding 4 years. No arbitration award may
8 contain a provision for reopening of negotiations during the term of a collective
9 bargaining agreement, unless both parties agree to such a provision. The
10 requirement for agreement by both parties does not apply to a provision for
11 reopening of negotiations with respect to any portion of an agreement that is
12 declared invalid by a court or administrative agency or rendered invalid by the
13 enactment of a law or promulgation of a federal regulation.

14 **SECTION 15.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

15 **SECTION 16.** 111.70 (4) (cm) 8p. of the statutes is repealed.

16 **SECTION 17.** 111.70 (4) (cm) 8s. of the statutes is repealed.

17 **SECTION 18.** 111.70 (4) (cn) of the statutes is repealed.

18 **SECTION 19.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

19 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
20 bargaining unit for the purpose of collective bargaining and shall whenever possible,
21 unless otherwise required under this subchapter, avoid fragmentation by
22 maintaining as few collective bargaining units as practicable in keeping with the size
23 of the total municipal ~~work force~~ workforce. In making such a determination, the
24 commission may decide whether, in a particular case, the municipal employees in the
25 same or several departments, divisions, institutions, crafts, professions, or other

1 occupational groupings constitute a collective bargaining unit. Before making its
2 determination, the commission may provide an opportunity for the municipal
3 employees concerned to determine, by secret ballot, whether ~~or not~~ they desire to be
4 established as a separate collective bargaining unit. ~~The commission shall not~~
5 ~~decide, however, that any group of municipal employees constitutes an appropriate~~
6 ~~collective bargaining unit if the group includes both municipal employees who are~~
7 ~~school district professional employees and municipal employees who are not school~~
8 ~~district professional employees. The commission shall not decide, however, that any~~
9 ~~other group of municipal employees constitutes an appropriate collective bargaining~~
10 ~~unit if the group includes both professional employees and nonprofessional~~
11 ~~employees, unless a majority of the professional employees vote for inclusion in the~~
12 ~~unit. The commission shall not decide that any group of municipal employees~~
13 ~~constitutes an appropriate collective bargaining unit if the group includes both craft~~
14 ~~employees and noncraft employees unless a majority of the craft employees vote for~~
15 ~~inclusion in the unit. The commission shall place the professional employees who are~~
16 ~~assigned to perform any services at a charter school, as defined in s. 115.001 (1), in~~
17 ~~a separate collective bargaining unit from a unit that includes any other professional~~
18 ~~employees whenever at least 30% of those professional employees request an election~~
19 ~~to be held to determine that issue and a majority of the professional employees at the~~
20 ~~charter school who cast votes in the election decide to be represented in a separate~~
21 ~~collective bargaining unit. Upon the expiration of any collective bargaining~~
22 ~~agreement in force, the commission shall combine into a single collective bargaining~~
23 ~~unit 2 or more collective bargaining units consisting of school district employees if~~
24 ~~a majority of the employees voting in each collective bargaining unit vote to combine.~~
25 Any vote taken under this subsection shall be by secret ballot.

1 SECTION 20. 111.70 (4) (m) 6. of the statutes is amended to read:

2 111.70 (4) (m) 6. Solicitation of sealed bids for the provision of group health care
3 benefits for school district professional employees as provided in s. 120.12 (24).

> **NOTE:** Marta, please review this. If you want this just to apply to teachers, I
can change the language to school district employees who are professional employees.

4 SECTION 21. 118.245 of the statutes is repealed.

5 SECTION 22. 120.12 (24) of the statutes is amended to read:

6 120.12 (24) HEALTH CARE BENEFITS. Prior to the selection of any group health
7 care benefits provider for school district professional employees, as defined in s.
8 111.70 (1) (ne), solicit sealed bids for the provision of such benefits.

9 SECTION 9316. Initial applicability; Employment Relations
10 Commission.

11 (1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (a), (b),
12 (dm), (fm), (nc), and (ne) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), 8m. a.,
13 b., and c., 8p., and 8s., (cn), (d) 2. a., and (m) 6. of the statutes first applies to petitions
14 for arbitration that relate to collective bargaining agreements that cover periods
15 beginning on or after July 1, 2009, and that are filed under section 111.70 (4) (cm)
16 6. of the statutes, as affected by this act, on the effective date of this subsection.

17 (END)

LRB-0508/8
CMH:bjk:

Date

Marta

This redraft takes out the
so 111.70 (4) (m) 6 that asked you to review that
section

CS following
~~that followed~~

cmH

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0508/8dn
CMH:wlj:jf

February 4, 2009

Marta:

This redraft takes out the NOTE following s. 111.70 (4) (m) 6. that asked you to review that section.

Cathlene Hanaman
Legislative Attorney
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov



DOA:.....Skwarczek, BB0135 - Repeal QEO

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

EMPLOYMENT

Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin Employment Relations Commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final, and binding arbitration with respect to any dispute relating to wages, hours, and conditions of employment. An arbitrator must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

This process does not apply, however, to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employees if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). A QEO consists of a proposal to maintain the percentage contribution by the employer to the employees' existing fringe benefit costs and the employees' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1 percent of the existing total compensation and fringe benefit costs for the employees in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7 percent of the total compensation and

fringe benefit costs for all municipal employees in a collective bargaining unit for any 12-month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees. This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

Under current law, school district professional employees must be placed in a collective bargaining unit that is separate from the units of other school district employees. This bill eliminates this requirement.

Finally, the bill eliminates a 3.8 percent cap imposed on salary and fringe benefit annual cost increases for all nonrepresented professional school district employees.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 111.70 (1) (a) of the statutes is amended to read:

2 111.70 (1) (a) "Collective bargaining" means the performance of the mutual
3 obligation of a municipal employer, through its officers and agents, and the
4 representative of its municipal employees in a collective bargaining unit, to meet and
5 confer at reasonable times, in good faith, with the intention of reaching an
6 agreement, or to resolve questions arising under such an agreement, with respect to
7 wages, hours and conditions of employment, and with respect to a requirement of the
8 municipal employer for a municipal employee to perform law enforcement and fire
9 fighting services under s. 61.66, except as provided in sub. (4) (m) and (mc) and s.
10 40.81 (3) and except that a municipal employer shall not meet and confer with respect
11 to any proposal to diminish or abridge the rights guaranteed to municipal employees
12 under ch. 164. The duty to bargain, however, does not compel either party to agree
13 to a proposal or require the making of a concession. Collective bargaining includes
14 the reduction of any agreement reached to a written and signed document. The

1 municipal employer shall not be required to bargain on subjects reserved to
2 management and direction of the governmental unit except insofar as the manner
3 of exercise of such functions affects the wages, hours and conditions of employment
4 of the municipal employees in a collective bargaining unit. In creating this
5 subchapter the legislature recognizes that the municipal employer must exercise its
6 powers and responsibilities to act for the government and good order of the
7 jurisdiction which it serves, its commercial benefit and the health, safety and welfare
8 of the public to assure orderly operations and functions within its jurisdiction,
9 subject to those rights secured to municipal employees by the constitutions of this
10 state and of the United States and by this subchapter.

11 **SECTION 2.** 111.70 (1) (b) of the statutes is amended to read:

12 111.70 (1) (b) "Collective bargaining unit" means a unit consisting of municipal
13 employees who are school district ~~professional~~ employees or of municipal employees
14 who are not school district ~~professional~~ employees that is determined by the
15 commission to be appropriate for the purpose of collective bargaining.

16 **SECTION 3.** 111.70 (1) (dm) of the statutes is repealed.

17 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

18 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

19 **SECTION 6.** 111.70 (1) (ne) of the statutes is amended to read:

20 111.70 (1) (ne) "School district ~~professional~~ employee" means a municipal
21 employee ~~who is a professional employee and~~ who is employed to perform services
22 for a school district.

23 **SECTION 7.** 111.70 (4) (cm) 5. of the statutes is amended to read:

24 111.70 (4) (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the
25 other impasse resolution procedures provided in this paragraph, a municipal

1 employer and labor organization may at any time, as a permissive subject of
2 bargaining, agree in writing to a dispute settlement procedure, including
3 authorization for a strike by municipal employees or binding interest arbitration,
4 which is acceptable to the parties for resolving an impasse over terms of any
5 collective bargaining agreement under this subchapter. A copy of such agreement
6 shall be filed by the parties with the commission. If the parties agree to any form of
7 binding interest arbitration, the arbitrator shall give weight to the factors
8 enumerated under subds. 7., and 7g. for a collective bargaining unit consisting of
9 municipal employees who are not school district employees and under subd. 7r. for
10 a collective bargaining unit consisting of municipal employees.

11 **SECTION 8.** 111.70 (4) (cm) 5s. of the statutes is repealed.

12 **SECTION 9.** 111.70 (4) (cm) 6. a. of the statutes is amended to read:

13 111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute relating to one
14 or more issues, ~~qualifying for interest arbitration under subd. 5s. in a collective~~
15 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable
16 period of negotiation and after mediation by the commission under subd. 3. and other
17 settlement procedures, if any, established by the parties have been exhausted, and
18 the parties are deadlocked with respect to any dispute between them over wages,
19 hours and conditions of employment to be included in a new collective bargaining
20 agreement, either party, or the parties jointly, may petition the commission, in
21 writing, to initiate compulsory, final and binding arbitration, as provided in this
22 paragraph. At the time the petition is filed, the petitioning party shall submit in
23 writing to the other party and the commission its preliminary final offer containing
24 its latest proposals on all issues in dispute. Within 14 calendar days after the date
25 of that submission, the other party shall submit in writing its preliminary final offer

1 on all disputed issues to the petitioning party and the commission. If a petition is
2 filed jointly, both parties shall exchange their preliminary final offers in writing and
3 submit copies to the commission at the time the petition is filed.

4 **SECTION 10.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

5 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
6 commission shall make an investigation, with or without a formal hearing, to
7 determine whether arbitration should be commenced. If in determining whether an
8 impasse exists the commission finds that the procedures set forth in this paragraph
9 have not been complied with and such compliance would tend to result in a
10 settlement, it may order such compliance before ordering arbitration. The validity
11 of any arbitration award or collective bargaining agreement shall not be affected by
12 failure to comply with such procedures. Prior to the close of the investigation each
13 party shall submit in writing to the commission its single final offer containing its
14 final proposals on all issues in dispute that are subject to interest arbitration under
15 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~
16 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall
17 close the investigation based on the last written position of the party. ~~The municipal~~
18 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~
19 ~~of the investigation.~~ Such final offers may include only mandatory subjects of
20 bargaining, except that a permissive subject of bargaining may be included by a
21 party if the other party does not object and shall then be treated as a mandatory
22 subject. No later than such time, the parties shall also submit to the commission a
23 stipulation, in writing, with respect to all matters which are agreed upon for
24 inclusion in the new or amended collective bargaining agreement. The commission,
25 after receiving a report from its investigator and determining that arbitration should

1 be commenced, shall issue an order requiring arbitration and immediately submit
2 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
3 alternately strike names until a single name is left, who shall be appointed as
4 arbitrator. The petitioning party shall notify the commission in writing of the
5 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
6 formally appoint the arbitrator and submit to him or her the final offers of the
7 parties. The final offers shall be considered public documents and shall be available
8 from the commission. In lieu of a single arbitrator and upon request of both parties,
9 the commission shall appoint a tripartite arbitration panel consisting of one member
10 selected by each of the parties and a neutral person designated by the commission
11 who shall serve as a chairperson. An arbitration panel has the same powers and
12 duties as provided in this section for any other appointed arbitrator, and all
13 arbitration decisions by such panel shall be determined by majority vote. In lieu of
14 selection of the arbitrator by the parties and upon request of both parties, the
15 commission shall establish a procedure for randomly selecting names of arbitrators.
16 Under the procedure, the commission shall submit a list of 7 arbitrators to the
17 parties. Each party shall strike one name from the list. From the remaining 5
18 names, the commission shall randomly appoint an arbitrator. Unless both parties
19 to an arbitration proceeding otherwise agree in writing, every individual whose
20 name is submitted by the commission for appointment as an arbitrator shall be a
21 resident of this state at the time of submission and every individual who is
22 designated as an arbitration panel chairperson shall be a resident of this state at the
23 time of designation.

24 **SECTION 11.** 111.70 (4) (cm) 7. of the statutes is amended to read:

1 111.70 (4) (cm) 7. 'Factor given greatest weight.' In making any decision under
2 the arbitration procedures authorized by this paragraph, except for any decision
3 involving a collective bargaining unit consisting of school district employees, the
4 arbitrator or arbitration panel shall consider and shall give the greatest weight to
5 any state law or directive lawfully issued by a state legislative or administrative
6 officer, body or agency which places limitations on expenditures that may be made
7 or revenues that may be collected by a municipal employer. The arbitrator or
8 arbitration panel shall give an accounting of the consideration of this factor in the
9 arbitrator's or panel's decision.

10 **SECTION 12.** 111.70 (4) (cm) 7g. of the statutes is amended to read:

11 111.70 (4) (cm) 7g. 'Factor given greater weight.' In making any decision under
12 the arbitration procedures authorized by this paragraph, except for any decision
13 involving a collective bargaining unit consisting of school district employees, the
14 arbitrator or arbitration panel shall consider and shall give greater weight to
15 economic conditions in the jurisdiction of the municipal employer than to any of the
16 factors specified in subd. 7r.

17 **SECTION 13.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

18 111.70 (4) (cm) 7r. (intro.) 'Other factors considered.' In making any decision
19 under the arbitration procedures authorized by this paragraph, the arbitrator or
20 arbitration panel shall ~~also~~ give weight to the following factors:

21 **SECTION 14.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,
22 renumbered 111.70 (4) (cm) 8m. and amended to read:

23 111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for
24 the initial collective bargaining agreement between the parties and except as the
25 parties otherwise agree, every collective bargaining agreement covering municipal

1 employees subject to this paragraph ~~other than school district professional~~
2 employees shall be for a term of 2 years. ~~No, but in no case may a collective~~
3 bargaining agreement for any collective bargaining unit consisting of municipal
4 employees subject to this paragraph other than school district professional
5 employees shall be for a term exceeding 3 years. ~~e. nor may a collective bargaining~~
6 ~~agreement for any collective bargaining unit consisting of school district employees~~
7 ~~subject to this paragraph be for a term exceeding 4 years.~~ No arbitration award may
8 contain a provision for reopening of negotiations during the term of a collective
9 bargaining agreement, unless both parties agree to such a provision. The
10 requirement for agreement by both parties does not apply to a provision for
11 reopening of negotiations with respect to any portion of an agreement that is
12 declared invalid by a court or administrative agency or rendered invalid by the
13 enactment of a law or promulgation of a federal regulation.

14 **SECTION 15.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

15 **SECTION 16.** 111.70 (4) (cm) 8p. of the statutes is repealed.

16 **SECTION 17.** 111.70 (4) (cm) 8s. of the statutes is repealed.

17 **SECTION 18.** 111.70 (4) (cn) of the statutes is repealed.

18 **SECTION 19.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

19 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective
20 bargaining unit for the purpose of collective bargaining and shall whenever possible,
21 unless otherwise required under this subchapter, avoid fragmentation by
22 maintaining as few collective bargaining units as practicable in keeping with the size
23 of the total municipal ~~work force~~ workforce. In making such a determination, the
24 commission may decide whether, in a particular case, the municipal employees in the
25 same or several departments, divisions, institutions, crafts, professions, or other

1 occupational groupings constitute a collective bargaining unit. Before making its
2 determination, the commission may provide an opportunity for the municipal
3 employees concerned to determine, by secret ballot, whether ~~or not~~ they desire to be
4 established as a separate collective bargaining unit. ~~The commission shall not~~
5 ~~decide, however, that any group of municipal employees constitutes an appropriate~~
6 ~~collective bargaining unit if the group includes both municipal employees who are~~
7 ~~school district professional employees and municipal employees who are not school~~
8 ~~district professional employees.~~ The commission shall not decide, however, that any
9 other group of municipal employees constitutes an appropriate collective bargaining
10 unit if the group includes both professional employees and nonprofessional
11 employees, unless a majority of the professional employees vote for inclusion in the
12 unit. The commission shall not decide that any group of municipal employees
13 constitutes an appropriate collective bargaining unit if the group includes both craft
14 employees and noncraft employees unless a majority of the craft employees vote for
15 inclusion in the unit. The commission shall place the professional employees who are
16 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in
17 a separate collective bargaining unit from a unit that includes any other professional
18 employees whenever at least 30% of those professional employees request an election
19 to be held to determine that issue and a majority of the professional employees at the
20 charter school who cast votes in the election decide to be represented in a separate
21 collective bargaining unit. Upon the expiration of any collective bargaining
22 agreement in force, the commission shall combine into a single collective bargaining
23 unit 2 or more collective bargaining units consisting of school district employees if
24 a majority of the employees voting in each collective bargaining unit vote to combine.
25 Any vote taken under this subsection shall be by secret ballot.

