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Details:

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2009-10

(session year)

Senate

(Assembly, Senate or Joint)

Committee on ... Labor, Elections, and Urban Affairs (SC-LEUA)

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Senate

Record of Committee Proceedings

Committee on Labor, Elections and Urban Affairs

Senate Bill 436

Relating to: vacating an award following arbitration pursuant to a collective bargaining agreement.

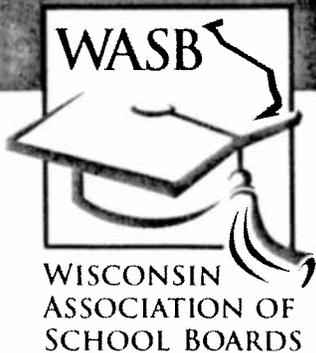
By Senator Taylor; cosponsored by Representatives Kessler and A. Williams.

December 22, 2009 Referred to Committee on Labor, Elections and Urban Affairs.

April 22, 2010 Failed to pass pursuant to Senate Joint Resolution 1.



Adam Plotkin
Committee Clerk



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JOHN H. ASHLEY, EXECUTIVE DIRECTOR

SB 436

TO: Assembly Committee on Labor
FROM: Sheri Krause, Government Relations Specialist
DATE: January 13, 2010
RE: Assembly Bill 609, relating to vacating an award following arbitration pursuant to a collective bargaining agreement

The Wisconsin Association of School Boards **opposes Assembly Bill 609**, which would limit the ability for a court to vacate an arbitration decision pursuant to a collective bargaining agreement.

Of primary concern to the WASB is the proposed elimination of the ability to overturn an arbitration award when an arbitrator exceeds his or her powers by issuing an award that violates a strong public policy. By specifically defining when an arbitrator exceeds his or her powers without mentioning a violation of strong public policy, Assembly Bill 609 removes a violation of strong public policy as a reason for vacating an arbitration award.

Wisconsin has a strong legislative policy favoring arbitration as a settlement tool when disputes arise between labor organizations and municipal employers. However, the Wisconsin Supreme Court has long recognized that a court may vacate an arbitration award "if the award itself is illegal or violates strong public policy."

The WASB believes strongly that in the interest of protecting children, neither party should be excluded from challenging an arbitration award if it is believed that the award violates strong public policy. The safety of our children should be given priority over the employment interests of adults.

One of the cases cited to the WASB as a reason for supporting this legislation is *Zellner v. Cedarburg School District*. However, the WASB believes this case illustrates the need to retain current law.

In *Zellner v. Cedarburg*, a teacher was fired for purposefully accessing pornographic material on his school computer. An arbitrator deemed the penalty too harsh and ordered the school board to reinstate him with back pay. The school board challenged the arbitrator's decision and succeeded

in overturning it at the circuit court level on the grounds that it violated strong public policy. The teacher appealed, but the appeals court affirmed the circuit court's decision. The teacher appealed again, but the Wisconsin Supreme Court declined to hear the case and the school board's decision to terminate the teacher was upheld. Throughout the appeals process, the courts repeatedly stated that the "arbitration award violated the strong public policy against immoral conduct in schools."

The WASB believes this case illustrates the need to retain current law and the ability to challenge an arbitration award on public policy grounds. School boards do not often seek to vacate an arbitration award, it is a time-consuming and costly process with no guarantee of success. However, school boards have an obligation to govern public education in a manner which reflects the public policy concerns of their communities and they should retain the full use of the judicial system to do so.

We ask that you do not advance Assembly Bill 609. Thank you.

- Zellner would have been
re-instated
- can't appeal based
on strong public policy
contract misreading