



## 2001 SENATE BILL 448

February 20, 2002 - Introduced by Senators DARLING, ROSENZWEIG, KANAVAS, LAZICH, GROBSCHMIDT, BURKE, BRESKE and SHIBILSKI, cosponsored by Representatives WALKER, KRUSICK, PLALE, STASKUNAS, OWENS, OTT, DUFF, STONE, MCCORMICK, BIES, MUSSER, MONTGOMERY and SINICKI. Referred to Committee on Labor and Agriculture.

1     **AN ACT to amend** 111.70 (8) (a), 111.71 (2) and 111.77 (8) (b); and **to create** 111.70  
2           (4) (jr) of the statutes; **relating to:** collective bargaining arbitration procedure  
3           for law enforcement officers employed by a county having a population of  
4           500,000 or more.

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

Under current law affecting county law enforcement agencies, employers and recognized or certified representatives of employees have the duty to bargain collectively in good faith. If a collective bargaining dispute arises and an impasse has been reached, and the parties have no procedures for the settlement of a dispute, either party may petition the employment relations commission (WERC) to initiate compulsory, final, and binding arbitration of the dispute. If WERC determines that an impasse exists, it must issue an order requiring arbitration. Pursuant to this order, WERC is required to submit to the parties a panel of five arbitrators from which the parties alternately strike names until the name of a single arbitrator remains. WERC is required to appoint this person as the arbitrator. The arbitrator must select the final offer of one of the parties and issue an award incorporating that offer without modification, except when the parties agree to allow the arbitrator to determine all issues in a dispute involving wages, hours, and conditions of employment.

This bill creates a new arbitration procedure for law enforcement officers employed by a county having a population of 500,000 or more, which is a procedure that is virtually identical to the one used by members of a police department of a first

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class city (currently, only the city of Milwaukee). Under this new procedure, if the representative of law enforcement officers employed by a county having a population of 500,000 or more and representatives of the county reach an impasse on the terms of the collective bargaining agreement, either the representative of the law enforcement officers or the representative of the county may petition WERC for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours, and working conditions of the law enforcement officers and any other matters that are subject to arbitration. Upon a determination by WERC that the parties have reached an impasse on matters relating to wages, hours, and conditions of employment or any other matters subject to arbitration on which there is no mutual agreement, WERC must appoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. Within 14 days of the arbitrator's appointment, the arbitrator must conduct a hearing to determine the terms of the agreement relating to wages, hours, and working conditions and any other matters subject to arbitration.

In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, the arbitrator has the power to:

1. Set all items of compensation, including base wages, longevity pay, health, accident, and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation and compensatory time, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances, and any other similar item of compensation.

2. Determine regular hours of work, what activities shall constitute overtime work, and all standards and criteria for the assignment and scheduling of work.

3. Determine a seniority system, and how seniority shall affect wages, hours, and working conditions.

4. Determine a promotional program.

5. Determine criteria for merit increases in compensation and the procedures for applying the criteria.

6. Determine all work rules affecting the law enforcement officers, except those work rules created by law.

7. Establish any educational program for the law enforcement officers that is appropriate, together with a mechanism for financing the program.

8. Establish a system for resolving all disputes under the agreement, including final and binding third party arbitration.

9. Determine the duration of the agreement and the law enforcement officers to which it shall apply.

10. Establish a system for administration of the collective bargaining agreement between the parties by a law enforcement officer who is not directly accountable to the sheriff in matters relating to that administration.

Under the bill, in determining the law enforcement officer compensation, the arbitrator must use the most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level," as

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a guideline, as well as increases in the cost of living as measured by the average annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those officers. In addition, in determining all noncompensatory working conditions and relationships, the arbitrator must consider the patterns of employee-employer relationships generally prevailing between technical and professional employees and their employers in both the private and public sectors of the economy where those relationships have been established by a collective bargaining agreement.

Under the bill, within 30 days after the close of the hearing, the arbitrator must issue a written decision determining the terms of the agreement between the parties that were not the subject of mutual agreement and on which the parties negotiated in good faith to impasse. Within 14 days of the arbitrator's decision, the parties must reduce to writing the total agreement composed of those items mutually agreed to between the parties and the determinations of the arbitrator, unless either party seeks judicial review of the determination. Within 60 days of the arbitrator's decision, either party may petition the circuit court for Milwaukee County to set aside or enforce the arbitrator's decision. If the decision was within the subject matter jurisdiction of the arbitrator, the court must enforce the decision, unless the court finds by a clear preponderance of the evidence that the decision was procured by fraud, bribery, or collusion. The court may not review the sufficiency of the evidence supporting the arbitrator's determination of the terms of the agreement. Within 30 days of a final court judgment, the parties must reduce the agreement to writing and with the arbitrator execute the agreement.

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

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

- 1           **SECTION 1.** 111.70 (4) (jr) of the statutes is created to read:
- 2           111.70 (4) (jr) *Binding arbitration, counties having a population of 500,000 or*
- 3 *more.* If the representative of law enforcement officers employed by a county having
- 4 a population of 500,000 or more, as determined under par. (d), and representatives
- 5 of the county reach an impasse on the terms of the collective bargaining agreement,
- 6 the dispute shall be resolved in the following manner:
- 7           1. Either the representative of the law enforcement officers or the
- 8 representative of the county may petition the commission for appointment of an

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1 arbitrator to determine the terms of the agreement relating to the wages, hours, and  
2 working conditions of the law enforcement officers and other matters that are subject  
3 to arbitration under subd. 4.

4       2. The commission shall conduct a hearing on the petition, and upon a  
5 determination that the parties have reached an impasse on matters relating to  
6 wages, hours, and conditions of employment or other matters subject to arbitration  
7 under subd. 4. on which there is no mutual agreement, the commission shall appoint  
8 an arbitrator to determine those terms of the agreement on which there is no mutual  
9 agreement. The commission may appoint any person it considers to be qualified,  
10 except that the arbitrator may not be a resident of the county that is party to the  
11 dispute.

12       3. Within 14 days of the arbitrator's appointment, the arbitrator shall conduct  
13 a hearing to determine the terms of the agreement relating to wages, hours, and  
14 working conditions and other matters subject to arbitration under subd. 4. The  
15 arbitrator may subpoena witnesses at the request of either party or on the  
16 arbitrator's own motion. All testimony shall be given under oath. The arbitrator  
17 shall take judicial notice of all economic and social data presented by the parties that  
18 is relevant to the wages, hours, and working conditions of the law enforcement  
19 personnel or other matters subject to arbitration under subd. 4. The other party shall  
20 have an opportunity to examine and respond to such data. The rules of evidence  
21 applicable to a contested case, as defined in s. 227.01 (3), shall apply to the hearing  
22 before the arbitrator.

23       4. In determining those terms of the agreement on which there is no mutual  
24 agreement and on which the parties have negotiated to impasse, as determined by

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1 the commission, the arbitrator, without restriction because of enumeration, shall  
2 have the power to:

3 a. Set all items of compensation, including base wages, longevity pay, health,  
4 accident, and disability insurance programs, pension programs, including amount  
5 of pension, relative contributions, and all eligibility conditions, the terms and  
6 conditions of overtime compensation and compensatory time, vacation pay, and  
7 vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance,  
8 uniform allowances, and any other similar item of compensation.

9 b. Determine regular hours of work, what activities shall constitute overtime  
10 work, and all standards and criteria for the assignment and scheduling of work.

11 c. Determine a seniority system, and how seniority shall affect wages, hours,  
12 and working conditions.

13 d. Determine a promotional program.

14 e. Determine criteria for merit increases in compensation and the procedures  
15 for applying the criteria.

16 f. Determine all work rules affecting the law enforcement officers, except those  
17 work rules created by law.

18 g. Establish any educational program for the law enforcement officers that is  
19 appropriate, together with a mechanism for financing the program.

20 h. Establish a system for resolving all disputes under the agreement, including  
21 final and binding 3rd party arbitration.

22 i. Determine the duration of the agreement and the law enforcement officers  
23 to which it shall apply.

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1           j. Establish a system for administration of the collective bargaining agreement  
2 between the parties by a law enforcement officer who is not directly accountable to  
3 the sheriff in matters relating to that administration.

4           5. In determining the proper compensation to be received by law enforcement  
5 officers under subd. 4., the arbitrator shall use all of the following:

6           a. The most recently published U.S. bureau of labor statistics "Standards of  
7 Living Budgets for Urban Families, Moderate and Higher Level," as a guideline to  
8 determine the compensation necessary for law enforcement officers to enjoy a  
9 standard of living commensurate with their needs, abilities, and responsibilities.

10          b. Increases in the cost of living as measured by the average annual increases  
11 in the U.S. bureau of labor statistics "Consumer Price Index" since the last  
12 adjustment in compensation for those officers.

13          6. In determining all noncompensatory working conditions and relationships  
14 under subd. 4., including methods for resolving disputes under the labor agreement,  
15 the arbitrator shall consider the patterns of employee-employer relationships  
16 generally prevailing between technical and professional employees and their  
17 employers in both the private and public sectors of the economy where those  
18 relationships have been established by a collective bargaining agreement between  
19 the representative of those employees and their employer.

20          7. All subjects described in subd. 4. shall be negotiable between the  
21 representative of the law enforcement officers and the county.

22          8. Within 30 days after the close of the hearing, the arbitrator shall issue a  
23 written decision determining the terms of the agreement between the parties that  
24 were not the subject of mutual agreement and on which the parties negotiated in  
25 good faith to impasse, as determined by the commission, and that were the subject

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1 of the hearing under this paragraph. The arbitrator shall state the reasons for each  
2 determination. Each proposition or fact accepted by the arbitrator must be  
3 established by a preponderance of the evidence.

4 9. Subject to subds. 11. and 12., within 14 days of the arbitrator's decision, the  
5 parties shall reduce to writing the total agreement composed of those items mutually  
6 agreed to between the parties and the determinations of the arbitrator. The  
7 document shall be signed by the arbitrator and the parties, unless either party seeks  
8 judicial review of the determination pursuant to subd. 11.

9 10. All costs of the arbitration hearing, including the arbitrator's fee, shall be  
10 borne equally by the parties.

11 11. Within 60 days of the arbitrator's decision, either party may petition the  
12 circuit court for Milwaukee County to set aside or enforce the arbitrator's decision.  
13 If the decision was within the subject matter jurisdiction of the arbitrator as set forth  
14 in subd. 4., the court must enforce the decision, unless the court finds by a clear  
15 preponderance of the evidence that the decision was procured by fraud, bribery, or  
16 collusion. The court may not review the sufficiency of the evidence supporting the  
17 arbitrator's determination of the terms of the agreement.

18 12. Within 30 days of a final court judgment, the parties shall reduce the  
19 agreement to writing and with the arbitrator execute the agreement pursuant to  
20 subd. 9.

21 13. After the filing of a petition before the commission pursuant to subd. 1. and  
22 before the execution of an agreement pursuant to subd. 9., neither party may  
23 unilaterally alter any term of the wages, hours, and working conditions of the law  
24 enforcement officers or any other matter subject to arbitration under subd. 4.

25 **SECTION 2.** 111.70 (8) (a) of the statutes is amended to read:

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1           111.70 (8) (a) This section, except subs. (1) (nm), (4) (cm) and (7m), applies to  
2 law enforcement supervisors employed by a 1st class city. This section, except subs.  
3 (1) (nm), (4) (cm) ~~and, (jm), and (jr),~~ and (7m), applies to law enforcement supervisors  
4 employed by a county having a population of 500,000 or more. For purposes of such  
5 application, the term “municipal employee” includes such a supervisor.

6           **SECTION 3.** 111.71 (2) of the statutes is amended to read:

7           111.71 (2) The commission shall assess and collect a filing fee for filing a  
8 complaint alleging that a prohibited practice has been committed under s. 111.70 (3).  
9 The commission shall assess and collect a filing fee for filing a request that the  
10 commission act as an arbitrator to resolve a dispute involving the interpretation or  
11 application of a collective bargaining agreement under s. 111.70 (4) (c) 2. or (cm) 4.  
12 The commission shall assess and collect a filing fee for filing a request that the  
13 commission initiate fact-finding under s. 111.70 (4) (c) 3. The commission shall  
14 assess and collect a filing fee for filing a request that the commission act as a  
15 mediator under s. 111.70 (4) (c) 1. or (cm) 3. The commission shall assess and collect  
16 a filing fee for filing a request that the commission initiate compulsory, final and  
17 binding arbitration under s. 111.70 (4) (cm) 6. ~~or, (jm), or (jr)~~ or 111.77 (3). For the  
18 performance of commission actions under ss. 111.70 (4) (c) 1., 2. and 3., (cm) 3., 4. and  
19 6. ~~and, (jm), and (jr)~~ and 111.77 (3), the commission shall require that the parties to  
20 the dispute equally share in the payment of the fee and, for the performance of  
21 commission actions involving a complaint alleging that a prohibited practice has  
22 been committed under s. 111.70 (3), the commission shall require that the party filing  
23 the complaint pay the entire fee. If any party has paid a filing fee requesting the  
24 commission to act as a mediator for a labor dispute and the parties do not enter into  
25 a voluntary settlement of the dispute, the commission may not subsequently assess



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1 or collect a filing fee to initiate fact-finding or arbitration to resolve the same labor  
2 dispute. If any request for the performance of commission actions concerns issues  
3 arising as a result of more than one unrelated event or occurrence, each such  
4 separate event or occurrence shall be treated as a separate request. The commission  
5 shall promulgate rules establishing a schedule of filing fees to be paid under this  
6 subsection. Fees required to be paid under this subsection shall be paid at the time  
7 of filing the complaint or the request for fact-finding, mediation or arbitration. A  
8 complaint or request for fact-finding, mediation or arbitration is not filed until the  
9 date such fee or fees are paid, except that the failure of the respondent party to pay  
10 the filing fee for having the commission initiate compulsory, final and binding  
11 arbitration under s. 111.70 (4) (cm) 6. ~~or, (jm), or (jr)~~ or 111.77 (3) shall not prohibit  
12 the commission from initiating such arbitration. The commission may initiate  
13 collection proceedings against the respondent party for the payment of the filing fee.  
14 Fees collected under this subsection shall be credited to the appropriation account  
15 under s. 20.425 (1) (i).

16 **SECTION 4.** 111.77 (8) (b) of the statutes is amended to read:

17 111.77 (8) (b) This section shall not apply to members of a police department  
18 employed by a 1st class city and to law enforcement officers employed by a county  
19 having a population of 500,000 or more, nor to any city, village, or town having a  
20 population of less than 2,500.

21 **SECTION 5. Initial applicability.**

22 (1) This act first applies to petitions for arbitration that are submitted to the  
23 employment relations commission under subchapter IV of chapter 111 of the statutes

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1 on the effective date of this subsection to resolve disputes affecting law enforcement  
2 officers employed by a county having a population of 500,000 or more.

3 (END)