



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-3332/1

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2009 ASSEMBLY BILL 609

December 8, 2009 – Introduced by Representatives KESSLER and A. WILLIAMS, cosponsored by Senator TAYLOR. Referred to Committee on Labor.

1 AN ACT **to amend** 788.04 (2) (e), 788.09, 802.12 (1) (a) 5. and 802.12 (3) (c) (intro.);
2 and **to create** 788.105 of the statutes; **relating to:** vacating an award following
3 arbitration pursuant to a collective bargaining agreement.

Analysis by the Legislative Reference Bureau

Under current law, a court may review an award following arbitration and must vacate the award if the court finds that the award was procured by corruption, fraud, or undue means; that there was partiality or corruption on the part of an arbitrator; that the arbitrator was guilty of misconduct in refusing to postpone the hearing or in refusing to hear relevant evidence or of any other misbehavior by which the rights of any party were prejudiced; or where an arbitrator exceeded his or her powers.

This bill imposes the same standards for vacating an award following arbitration that was conducted pursuant to a collective bargaining agreement, but specifies that an arbitrator exceeds his or her authority if the award requires a party to violate a state statute or constitutional provision or if the arbitrator expressly disregards contractual language governing the dispute. Under the bill, an arbitrator does not exceed his or her authority merely by misinterpreting contractual language or making a mistake of law or fact.

ASSEMBLY BILL 609

Under the bill, a court may not review whether a party to the dispute followed a grievance or arbitration procedure and may not vacate an arbitration award unless it finds one of the grounds listed above for vacation.

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

1 **SECTION 1.** 788.04 (2) (e) of the statutes is amended to read:

2 **788.04 (2) (e)** No member of the panel may participate in any subsequent court
3 proceeding on the action arbitrated as either a counsel or a witness unless the court
4 deems the member's testimony necessary for hearings under s. 788.10, 788.105, or
5 788.11.

6 **SECTION 2.** 788.09 of the statutes is amended to read:

7 **788.09 Court confirmation award, time limit.** At any time within one year
8 after the award is made any party to the arbitration may apply to the court in and
9 for the county within which such award was made for an order confirming the award,
10 and thereupon the court must grant such an order unless the award is vacated,
11 modified or corrected under s. 788.10, 788.105, or 788.11. Notice in writing of the
12 application shall be served upon the adverse party or the adverse party's attorney
13 5 days before the hearing thereof.

14 **SECTION 3.** 788.105 of the statutes is created to read:

15 **788.105 Vacation of award and rehearing by arbitrators; collective
16 bargaining agreements.** (1) In reviewing an award that was made following
17 arbitration pursuant to a collective bargaining agreement, in any of the following
18 cases the court in and for the county where the award was made must make an order
19 vacating the award upon the application of any party to the arbitration:

20 (a) Where the award was procured by corruption, fraud, or undue means.

ASSEMBLY BILL 609

1 (b) Where there was evident partiality or corruption on the part of an
2 arbitrator.

3 (c) Where an arbitrator was guilty of misconduct in refusing to postpone the
4 hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and
5 material to the controversy; or of any other misbehavior by which the rights of any
6 party have been prejudiced.

7 (d) Where an arbitrator exceeded his or her powers, or so imperfectly executed
8 them that a mutual, final, and definite award upon the subject matter submitted was
9 not made. In this paragraph:

10 1. An arbitrator exceeds his or her powers where the award requires a party
11 to violate a state statute or a constitutional provision or where the arbitrator
12 expressly disregards contractual language governing the dispute.

13 2. An arbitrator does not exceed his or her powers where the award is the result
14 of the arbitrator misinterpreting contractual language or making a mistake of law
15 or fact.

16 **(2)** A court may not review whether a party followed a grievance or arbitration
17 procedure.

18 **(3)** A court may not vacate an arbitration award under this section if it does
19 not find one of the factors under sub. (1).

20 **(4)** Where an award is vacated and the time within which the agreement
21 required the award to be made has not expired, the court may, in its discretion, direct
22 a rehearing by the arbitrators.

23 **SECTION 4.** 802.12 (1) (a) 5. of the statutes is amended to read:

24 802.12 **(1)** (a) 5. The award is subject to judicial review under ss. 788.10,
25 788.105, and 788.11.

ASSEMBLY BILL 609

SECTION 5

SECTION 5. 802.12 (3) (c) (intro.) of the statutes is amended to read:

802.12 (3) (c) (intro.) If the parties agree to binding arbitration, the court shall, subject to ss. 788.10, 788.105, and 788.11, confirm the arbitrator's award and incorporate the award into the judgment or postjudgment modification order without subject to all of the following:

(END)