



Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #331

QEO-Related Provisions (Employment Relations Commission)

[LFB 2009-11 Budget Summary: Page 241, #6, #7, and #8]

CURRENT LAW

Duration of Collective Bargaining Agreements for School District Employees. Under current law, the duration of collective bargaining agreements between school district employers and their professional teaching staff must be a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year. Collective bargaining agreements covering other municipal employees, if mutually agreed to, may not exceed three years.

Combining Collective Bargaining Units of School District Employees. Under current law, subject to certain statutory provisions, the Wisconsin Employment Relations Commission (WERC) is authorized to determine an appropriate collective bargaining unit for the purpose of bargaining and may provide an opportunity for municipal employees concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. However, a collective bargaining unit is defined under the Municipal Employment Relations Act (MERA) as a unit consisting of municipal employees who are school district professional employees or of municipal employees who are not school district professional employees that is determined by WERC to be appropriate for the purpose of collective bargaining. Further, MERA prohibits WERC from deciding that any group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both municipal employees who are school district professional employees and municipal employees who are not school district professional employees.

Weighting of Factors Considered in Arbitration Awards for School District Employees. An arbitrator or arbitration panel in rendering arbitration awards involving school district professional employees must give greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on

expenditures that may be made or revenues that may be collected by a municipal employer. The arbitrator or arbitration panel must give greater weight (than that given to the factors below) to economic conditions in the jurisdiction of the municipal employer. After giving consideration to the factors described above that must be accorded greatest and greater weight, an arbitrator is required to give weight to the following:

- a. The lawful authority of the municipal employer.
- b. The stipulations of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. A comparison of wages, hours, and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing similar services, with other employees generally in public employment in the same community and in comparable communities, and with other employees in private employment in the same community and in comparable communities.
- e. The cost-of-living.
- f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances while arbitration proceedings are pending.
- h. Other factors normally and traditionally considered in collective bargaining in the public service or in private employment.

GOVERNOR

Duration of Collective Bargaining Agreements for School District Employees. Delete the current law provision limiting the duration of collective bargaining agreements between school district employers and their professional teaching staff to a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year. Allow a collective bargaining agreement for any collective bargaining unit consisting of school district employees to be for a term of up to four years.

Combining Collective Bargaining Units of School District Employees. Provide that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion. Require the Commission to combine two or more collective bargaining units consisting of school

district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement in force.

Weighting of Factors Considered in Arbitration Awards for School District Employees. Modify the weighting of the factors that must be considered by an arbitrator or arbitration panel in rendering arbitration awards involving school district employees. Exempt decisions involving a collective bargaining unit consisting of school district employees from the current law provisions specifying that an arbitrator: (a) give greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer, and (b) give greater weight to economic conditions in the jurisdiction of the municipal employer. Under the bill, the greatest and greater weights would continue to apply to decisions involving collective bargaining units for other general municipal employees who are not school district employees, and the other current law weighting factors would still apply to decisions involving any municipal employees, including school district employees.

Specify that the modifications in all three areas would first apply to petitions for arbitration that relate to collective bargaining agreements that cover periods on or after July 1, 2009, and that are filed for interest arbitration on the effective date of the bill.

DISCUSSION POINTS

The provisions discussed in this paper are related to the Governor's proposal to repeal current law relating to qualified economic offers (QEO). Each provision will be discussed separately and each has its own set of alternatives.

Duration of Collective Bargaining Agreements for School District Employees

1. Prior to mid-1993 (when QEO law became effective), except as the parties otherwise agreed, every collective bargaining agreement covering most municipal employees, including school district employees, were for a term of two years; however, if the parties agreed, the collective bargaining agreement could be for a term not exceeding three years. Under current law, this same provision continues to apply to most municipal employees, except school district professional employees.

Since enactment of QEO, the duration of collective bargaining agreements between school district employers and their professional teaching staff must be a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year. This period coincides with the state's fiscal year.

2. The proposal under the bill would allow a collective bargaining agreement for any collective bargaining unit consisting of school district employees to be for a term of up to four years. Therefore, the provision differs from current law applicable to other municipal employees and from the treatment of school district employees under pre-QEO law.

3. The Wisconsin Education Association Council (WEAC) has testified that "... allowing school districts to negotiate longer term collective bargaining agreements (up to 4 years) will dramatically reduce the legal and administrative costs associated with collective bargaining." The Governor's budget staff has made the same argument, stating that the provision would promote efficiency in bargaining and could result in some cost savings. Based on these arguments, the Committee could adopt the Governor's recommendation to provide the option for four-year collective bargaining agreements for school district employees. [Alternative A1]

4. However, it may be difficult for a school district to negotiate a four-year contract given the potential variability of revenue caps and state school aids funding from one biennium to the next. A four-year contract would likely include pay adjustments in the third and fourth years of the contract that could be difficult for a school district to meet, if aids are reduced.

5. It can also be argued that municipal employees under MERA should be treated in the same manner to the extent possible. While there are differences under MERA in how collective bargaining and dispute resolution are treated for protective occupation employees versus general employees, it may be desirable, to maintain equity among general municipal employees, including school district employees.

6. If the Committee believes that contract durations of up to four-years is not desirable, it could modify the bill to conform the contract duration provisions to the current law provisions affecting other general municipal employees. [Alternative A2] This would mean that, except as the parties otherwise agreed, every collective bargaining agreement covering these municipal employees, including school district employees, would be for a term of two years; however, if the parties agreed, the collective bargaining agreement could be for a term not exceeding three years.

7. Alternatively, the Committee could provide that collective bargaining agreements between school district employers and their employees (both professional and nonprofessional) must be a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year, coinciding with the state's fiscal year. [Alternative A3]

8. Finally, if the committee chooses not to repeal QEO law, it should delete the provision and maintain current law. [Alternative A4]

Combining Collective Bargaining Units of School District Employees

9. Under current law, partly as a result of the QEO provisions, school district professional employees and non-professional, educational support personnel employees are organized into separate collective bargaining units. This separation allows the negotiation of collective bargaining agreements for teachers under the QEO provisions (which do not apply to educational support personnel employees).

Under pre-QEO law, there was no distinction made between professional and nonprofessional school district employees or other general municipal employees. A collective bargaining unit was defined as the unit determined by WERC to be appropriate for the purpose of

collective bargaining. Further, WERC could not decide that any other group of municipal employees constitutes an appropriate collective bargaining unit if the group includes both professional employees and nonprofessional employees, unless a majority of the professional employees vote for the inclusion of nonprofessional employees in the unit. This latter requirement (requiring a majority vote of professional employees to include nonprofessional employees in the same bargaining unit) continues, under current law, to apply to non-school district municipal employees.

According to WERC officials, collective bargaining units combining professional school district employees (primarily teachers) and nonprofessional school district employees was not a common occurrence prior to the enactment of the QEO provisions.

10. The provisions under AB 75 would modify current law in two ways. First, it would provide that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion. This would conform the treatment of school district employees with the current law treatment of other municipal employees. The provision would also return the treatment of school district employees to the pre-QEO law provisions relating to such combinations.

11. Second, the bill would require the Commission to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement. This provision does not have precedent in current law for other municipal workers or in pre-QEO law. The provision would allow the combining into a single collective bargaining unit of school district employees working for different school districts.

In testimony on AB 75 provided to the Committee, WEAC views the provision as allowing school district employees to "... join together for collective bargaining (both within and across districts)..." and that school districts "... will be afforded new ways to share costs, pool purchases and resources, and take advantage of greater economies of scale." Administration officials indicate that they view the provision as "another potential efficiency and cost savings measure."

The Committee could adopt the Governor's recommendations to provide that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion, and to require the Commission to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement. [Alternative B1]

12. Officials with the WERC indicate that this capacity to organize a single collective bargaining unit to collectively bargain a labor contract with more than one employer would likely generate some unique issues for collective bargaining law in Wisconsin.

For example, it is not entirely clear how bargaining would proceed with more than one

employer, representing different electorates, engaged in the negotiation of a collective bargaining agreement, particularly if the affected school districts have differing priorities and fiscal situations. WERC officials indicate that the required process would likely need to be worked out over time and may require Commission rulings and the development of case law in this area.

13. The Committee may want union and school board officials to assess the concept of a single collective bargaining unit negotiating with multiple school district employers more thoroughly before authorizing this proposal. The Committee could delete this provision, but include the provision that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion. [Alternative B2]

14. The Committee could also delete both provisions. [Alternative B3] Arguably, the repeal of QEO for professional school district employees does not require any law change relating to the authorization of collective bargaining units. This alternative would maintain current law, which does not allow WERC to authorize a collective bargaining unit that combines school district professional employees and nonprofessional school district employees. Again, the combination of school district professional employees and nonprofessional employees into a single collective bargaining unit was rarely done under pre-QEO law. Further, under current law, WERC would not be required to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement in force.

Weighting of Factors Considered in Arbitration Awards for School District Employees

15. Current law specifies the factors that must be considered by an arbitrator in making a decision under interest arbitration procedures. Further, one factor (limitations on the municipality's revenue and expenditures), must be given the greatest weight in arbitration decisions, and a second factor (economic conditions in the municipality's jurisdiction), must be given greater weight than the remaining factors. This weight-factor approach applies to all interest arbitration actions relating to teaching and nonteaching general municipal employees.

16. Certain revenue and expenditure limitations on school districts and other municipal governments were instituted, on a temporary basis, under the 1993-95 state budget (1993 Wisconsin Act 16) and were modified and made permanent in the 1995-97 state budget (1995 Act 27). In the case of school districts, under revenue limits, the amount of revenue a district can raise from general school aids, computer aid, and property taxes is restricted. The greatest- and greater-weight factors for interest arbitration decisions were also enacted under 1995 Wisconsin Act 27 and reflect the revenue and expenditure limitations being imposed on municipalities at that time.

17. Under the bill, this weight-factor approach would be maintained for interest arbitration proceedings relating to all general municipal employees, except school district employees. The bill would exempt decisions involving a collective bargaining unit consisting of school district employees from the requirement that greatest-weight or greater-weight be applied to

these factors. Only the remaining "other factors" would be required as considerations by the arbitrator for interest arbitration proceedings relating to school district employees. [Only these "other factors" were considered under pre-QEO law for all general municipal employees.]

Administration officials indicate that the proposed weight-factor change was made due to the proposal to repeal QEO and were not intended to address other general municipal employees. The Committee can adopt the Governor's provision to exclude school district arbitration from the greatest- and greater-weight factors by approving Alternative C1.

18. School board representatives have expressed concerns that the exclusion of school district arbitration from the greatest- and greater-weight factors will tip the balance in collective bargaining in favor of the unions. They have also expressed concerns that, given revenue limitations and potential cuts in school aids, it is even more important to now maintain the greatest- and greater-weight factors under current law for school district arbitration.

19. In addition to these concerns, it could also be argued that it is not clear why school district employees should be treated differently than other general municipal employees. As noted above, it can be argued that municipal employees under MERA should be treated in the same manner to the extent possible. It may be desirable to maintain equity by applying the same factors to be considered in arbitration rulings to both school district employees and other general municipal employees. If the Committee shares the concerns of school board representatives, and/or wants to maintain equity between all general employees under MERA with respect to factors to be considered in arbitration procedures, it could delete this provision. [Alternative C4] Under this alternative, current law would be maintained and all municipal general employees, including professional school district employees would be subject to the greatest- and greater-weight factors to be used in arbitration determinations.

20. The bill's provision, as it applies to school district arbitration, would eliminate the requirement that arbitrators give greatest and greater weight to certain factors; however, it would not necessarily prevent arbitrators from considering such factors as revenue and expenditure limitations and the economic conditions of the community. It appears that such factors could still be considered, but the arbitrator would not be required to give a factor greatest or greater weight consideration. Indeed, such factors could likely be considered by an arbitrator under the "other factors" provided under law. For example, one of the other factors is "The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement." In addition, the last factor listed (Other factors normally and traditionally considered in collective bargaining in the public service or in private employment) would also likely accommodate these considerations.

Arguably, if arbitrators can consider the revenue and expenditure limitations and the economic conditions of the community under these other factors, the Committee could eliminate the greatest and greater weight factors entirely and have all arbitration proceedings subject only to the "other factors" specified in law. This would return the situation to pre-1995 law under which all general municipal employee arbitrations were subject to a variety of factors, but none were required

to be given greater weight than the other factors. This approach would also maintain uniformity in the treatment of all general municipal employees engaged in interest arbitration. [Alternative C2]

21. Finally, another alternative would be to eliminate the greatest- and greater-weight factors for all general municipal employees, but include the consideration of the revenue and expenditure limitations and the economic conditions of the community as additions to the list of other factors to be considered by an arbitrator. This approach would more explicitly keep the revenue and expenditure limitations and the economic conditions factors under consideration, which may provide some reassurance to school district employers. This alternative would also maintain uniformity in the treatment of all general municipal employees engaged in interest arbitration. [Alternative C3]

ALTERNATIVES

A. Duration of Collective Bargaining Agreements for School District Employees

1. Approve the Governor's recommendation to delete the current law provision limiting the duration of collective bargaining agreements between school district employers and their professional teaching staff to a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year. Allow a collective bargaining agreement for any collective bargaining unit consisting of school district employees to be for a term of up to four years.

2. Conform the contract duration provisions for school district employees to the current law provisions affecting other general municipal employees. [Under this Alternative, except as the parties otherwise agreed, every collective bargaining agreement covering municipal employees, including school district employees, would be for a term of two years; however, if the parties agreed, the collective bargaining agreement could be for a term not exceeding three years.

3. Provide that collective bargaining agreements between school district employers and their employees be for a uniform two-year duration, from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year, coinciding with the state's fiscal year.

4. Delete provisions.

B. Combining Collective Bargaining Units of School District Employees

1. Approve the Governor's recommendation to provide that professional and nonprofessional employees of a school district could be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion. Require the Commission to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement in force.

2. Delete the provision to require WERC to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement in force. [Under this alternative, the provision to allow professional and nonprofessional employees of a school district to be combined into a single collective bargaining unit, if a majority of the professional employees vote for inclusion, would be approved.]

3. Delete provision.

C. Weighting of Factors Considered in Arbitration Awards for School District Employees

1. Approve the Governor's recommendation to exempt decisions involving a collective bargaining unit consisting of school district employees from the current law provisions specifying that an arbitrator: (a) give greatest weight to any state law or directive lawfully issued by a state legislative or administrative officer, body, or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer, and (b) give greater weight to economic conditions in the jurisdiction of the municipal employer.

2. Eliminate the greatest and greater weight factors for arbitration determinations. Provide that all arbitration proceedings for general municipal employees (both school district and other municipal collective bargaining units) be subject to the "other factors" specified in current law.

3. Eliminate the greatest- and greater-weight factors for all general municipal employees, but include the consideration of the revenue and expenditure limitations and the economic conditions of the community in the list of other factors to be considered by an arbitrator.

4. Delete provision. [This alternative would maintain current law: all municipal general employees, including professional school district employees would be subject to the greatest- and greater weight factors to be used in arbitration determinations.]

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