State and Local Government Employment Relations Law

(Under 2011 Acts 10 and 32)

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CHAPTER 1

THE DEVELOPMENT OF WISCONSIN EMPLOYMENT RELATIONS LAW

The purpose of this paper is to describe the modifications to employment relations law in Wisconsin that were made in the 2011 legislative session, specifically under 2011 Wisconsin Acts 10 and 32. These modifications significantly affected most public employees with respect to: (a) collective bargaining; (b) municipal labor dispute resolutions; (c) public employee retirement requirements; and (d) required health insurance contributions (for state and certain municipal employees). The changes affected both municipal and state public employees, and both represented employees (who may be represented by collective bargaining units in labor negotiations) and nonrepresented employees (who are not authorized to be represented by collective bargaining units).

The majority of these changes were made to: (a) the Municipal Employment Relations Act (MERA), codified as Subchapter IV of Chapter 111 of the statutes; (b) the State Employment Labor Relations Act (SELRA), codified as Subchapter V of Chapter 111 of the statutes; and (c) the Wisconsin Retirement System (WRS), codified under Subchapter II of Chapter 40 of the statutes. [Parallel retirement provisions were also made to the separate retirement systems of the City of Milwaukee and Milwaukee County.]

The Acts 10 and 32 provisions will be discussed in detail in the following chapters relating to collective bargaining (Chapter 2), municipal dispute resolution (Chapter 3), and retirement and employee health insurance changes (Chapter 4). This introduction will focus on the development of public worker labor relations law in the 52 years prior to the 2011 legislative session.

The development of employment relations law in Wisconsin differs for local units of government and the state. Municipal employment law must address labor relations that operate in hundreds of differing contexts. Municipalities are separate employers that vary in size, function, governing bodies, and local characteristics. Currently, in Wisconsin, there are approximately 2,600 municipalities, including counties, cities, towns, villages, school districts, special purpose districts, technical colleges, and cooperative educational service agencies. The development of a uniform employment system for such a diverse group of employers would be problematic.

Wisconsin law allows any city, county, village, or town to establish a civil service system (with few specific requirements in statute) and requires civil service systems for the City of Milwaukee and Milwaukee County (with detailed requirements for these systems in state law). Municipal labor relations law attempts to set parameters for workplace decision making that includes a role for collective bargaining of pay and working conditions for certain types of employees, and procedures for addressing disagreement and conflict arising from the collective bargaining process. Within this legal context there is a degree of diversity in how employment relations operate in each municipality.

State labor relations law developed in a different context. While the functions performed by the state are complex and carried out by a large number of separate agencies, each of which may be considered an employer, it is still possible to view the state as a single, distinct employer, given that it has one executive, the Governor, and a single governing body, the Legislature. Under

this framework, a more uniform approach to labor relations was possible. Collective bargaining has been authorized for certain state employees and over time a formal and fully developed civil service system emerged that sets strong parameters for state employment relations.

Given these elements and the fact that municipal and state employment relations law are codified under separate subchapters of Chapter 111, the evolution of municipal and state employment relations law will be described separately in the following sections.

Municipal Employment Relations

Prior to 2011, development of employment relations law occurred in Wisconsin under a number of significant legislative enactments. Under Chapter 509, Laws of 1959, Wisconsin first provided the right to certain municipal employees to organize and join labor organizations. The law created Subchapter IV of Chapter 111 of the statutes, which defined a municipal employer as any city, county, village, town, metropolitan sewerage district, school district, or any other political subdivision of the state. A municipal employee, for the purposes of collective bargaining, was defined as an employee of a municipal employer, except city and village police officers, sheriff's deputies, and county traffic officers.

The law provided that: "Municipal employees shall have the right of self-organization, to affiliate with labor organizations of their own choosing and the right to be represented by labor organizations of their own choice in conferences and negotiations with their municipal employers or their representatives on questions of wages, hours and conditions of employment, and such employees shall have the right to refrain from any and all such activities." However, the new law did not provide any framework by which collective bargaining disputes that might arise could be resolved.

In Chapter 663, Laws of 1961, the Wisconsin Employment Relations Board (later to be designated a commission) was created with authority to function first as a mediator and then, if necessary, to convene a fact-finding process to address labor disputes. Chapter 663 also expressly prohibited strikes by municipal employees.

Mediation is a voluntary process whereby a neutral third party (a "mediator") endeavors to serve as a catalyst to bring the deadlocked parties together to settle their dispute. Generally, mediation is a consensual process aimed at achieving a final, signed agreement between the parties. The parties, not the mediator, make the decisions regarding the final agreement. Further, the mediator possesses no authority to impose a settlement.

Under fact-finding, a neutral fact-finder reviews the bargaining positions of the parties and issues written, nonbinding recommendations for achieving an agreement. The parties are then free to accept or to reject the fact-finder's recommendations as part of their effort to achieve a voluntary settlement. Fact finding is a more formal, structured process than mediation, but both are non-binding procedures.

Subchapter IV was significantly modified in the 1971 legislative session. Under Chapter 124, Laws of 1971, MERA was expanded to: (a) provide detailed definitions of various employment relations terms, including "collective bargaining"; (b) authorize fair-share agreements requiring that all members included in a bargaining unit pay their proportionate share of a labor organization's costs to bargain and administer contracts through a payroll deduction of labor organization dues; (c) enumerate additional prohibited practices for both employers and employees; (d) authorize the Wisconsin Employment Relations Commission (WERC) to provide, if requested, grievance arbi-

tration of disputes pertaining to existing collective bargaining agreements; and (e) provide more structure to mediation and fact-finding procedures to address disputes relating to labor negotiations.

Chapter 124 also modified the definition of municipal employee, as it relates to collective bargaining rights, to remove the exclusion of city and village police officers, sheriff's deputies, and county traffic officers and, instead, exclude an independent contractor, supervisor, or confidential, managerial or executive employee. With this change, collective bargaining rights were provided to local law enforcement employees. Finally, Chapter 124 officially designated Subchapter IV Wisconsin's Municipal Employment Relations Act.

The 1971 legislative session also enacted, on a temporary basis, Milwaukee police binding arbitration procedures (Chapter 246) and a binding arbitration process for police and fire fighters in other municipalities with a population of 5,000 or more (Chapter 247). Under binding arbitration, an arbitrator's decision must be adopted by both parties. These provisions were made ongoing (the sunset dates were repealed) under Chapter 64 and 65, Laws of 1973. In addition, Chapter 64 modified the minimum municipal population to apply police and fire fighter arbitration from 5,000 to 2,500.

Therefore, between 1959 and the early-1970s, legislative action resulted in the creation and expansion of public employee collective bargaining rights and the development of procedures to handle labor disputes. These developments were generally aimed at avoiding public employee labor unrest and strikes. Public employees do not have the right to strike unless such a right is explicitly provided for in statute; Wisconsin had specifically prohibited such strikes. However, through the years being described here, illegal public employee strikes were not uncommon.

The period 1969-71 saw the occurrence of a number of illegal fire and police strikes. The most significant was the Milwaukee police strike in 1971, for which the work stoppage came to be known as the "blue flu." In the years prior to 1978, WERC reported the occurrence of 99 strikes. In the 1973-74 school year, the Hortonville teachers' strike resulted in the termination and eventual replacement of 95 striking teachers.

Commentators of the period make clear that the dispute resolution procedures developed in the 1960s and early 1970s were intended to substitute for, or supplant, the right to engage in strikes. However, labor unrest was still a concern, as evidenced by these strikes and other forms of work stoppage.

It was in this context that the state took the next step in the development of municipal employment relations law in an effort to reduce or eliminate illegal strikes, while maintaining labor peace. Under Chapter 178, Laws of 1977, a mediation and binding arbitration process was established for general municipal employees, including teachers. The mediation-arbitration procedures under Chapter 178 were originally subject to an October 31, 1981 sunset date; however, the sunset was extended twice and eventually removed.

Specifically, Chapter 178 created s. 111.70(4)(cm) of the statutes (often referred to as the state's "mediation-arbitration" or "med-arb" law). This new law assigned both the mediation and arbitration functions to a single, appointed neutral third party who was given authority to resolve an impasse through binding arbitration (which required the arbitrator to adopt without modification the final offer of one of the parties), but only in the event that voluntary methods of settlement first proved to be unsuccessful. In making any decision under the arbitration procedures specified in Chapter 178, the mediator-arbitrator was required to give weight to a number of factors, specified in statute, relating to the

interests of each party, the public, and to various economic measures.

In addition, Chapter 178 authorized strikes for general municipal employees under specific and limited circumstances, created an injunctive relief process to address such strikes, and revised penalties for both labor organizations and individuals in violation of the limited strike provisions.

With the passage of 1985 Wisconsin Act 318, the requirement that an arbitrator first seek to resolve an impasse through mediation efforts before proceeding to final and binding arbitration was repealed. As a result of eliminating the mandatory initial mediation stage prior to commencing arbitration, the dispute resolution statute was more accurately termed "interest arbitration"; however, the old med-arb law designation continued to enjoy currency in some quarters. Act 318 also repealed the scheduled sunset date for the interest-arbitration statute, thereby making the law permanent.

In general, it appears that labor organizations and represented employees tended to support the concept of binding arbitration, while public employers tended to be dissatisfied with the approach. However, it should be noted that the number of final offers adopted in arbitrator decisions tended to be about equally split between labor and management. In addition, the development of mediation-arbitration procedures and then interest arbitration appears to have mitigated illegal public employee strikes. According to WERC records, between 1978 and 1981, there were 11 strikes, but after 1981, only one strike (in 1997) occurred.

Nevertheless, binding arbitration changed the dynamics of labor relations. The threat of having to go to arbitration may have resulted in voluntary settlements which may have been unsatisfactory for one or both sides. When final arbitration did occur, decisions were imposed on the parties, in contrast with mediation or fact-finding procedures that attempt to arrive at consensual, voluntary agreements. Labor and management, as well as legal commentators in this period were also aware that the option of final, binding arbitration had effects on the collective bargaining process itself, and likely diminished the effectiveness of mediation and fact-finding procedures. As a result, municipal labor relations continued to operate in a state of tension that would lead to changes in the 1993 legislative session.

The 1993 Legislature made a number of important modifications to the interest arbitration law with the enactment of 1993 Wisconsin Act 16. The Act 16 changes applied only to collective bargaining agreements involving municipal professional employees who were school teachers and were originally to apply only through June 30, 1996. During that period, any school district employer could avoid interest arbitration altogether on economic issues if the employer made a "qualified economic offer" (QEO) to its represented professional teaching employees.

In general, Act 16 defined a QEO as a school district employer offer which: (a) maintained both the existing employee fringe benefits package and the employer's percentage contribution to fringe benefits costs; (b) maintained the existing employee salary schedule structure; (c) provided a total annual increase in salary items (including the costs of a mandatory one-step, seniority-based increase and any promotion-related increases for each employee eligible for such adjustments) at least equal to 2.1% of total compensation and fringe benefits costs; and (d) funded the total annual increase in current fringe benefit cost items, including an increased new funding commitment from the employer that does not exceed 1.7% of total compensation and fringe benefits costs.

Act 16 contained sunset provisions that would have repealed both the new QEO language applicable to school teachers and the entire remaining interest arbitration law applicable to all other

nonprotective municipal employees, effective July 1, 1996. Upon repeal of these provisions, the dispute resolution law in effect prior to the enactment of Chapter 178, Laws of 1977, would have been reinstated as the applicable dispute resolution procedure for all Wisconsin nonprotective municipal employees. However, provisions of 1995 Wisconsin Act 27 subsequently eliminated the sunset language contained in 1993 Wisconsin Act 16. As a result, these Act 27 changes made permanent the QEO provisions applicable to school district professional teaching employees and retained unchanged the existing interest arbitration law for all other nonprotective municipal employees.

Provisions of 1997 Wisconsin Act 237 further modified the definition of a QEO by requiring school district employers to add the amount of any "fringe benefits savings" to the employer's salary offer. Fringe benefits savings represent the amount by which 1.7% of total compensation and fringe benefits costs (the fringe benefits component of a QEO) exceeds the actual costs of providing and maintaining fringe benefits for professional school teacher employees.

Finally, provisions of 1999 Wisconsin Act 9 made three additional changes governing QEOs, first applicable to contracts starting after June 30, 2001:

First, the costs associated with salary increases due to promotion or the attainment of increased professional qualifications ("lane movement") were no longer included under the salary cost component that must be funded under a QEO. Since the school district employer was contractually required to fund any costs of lane movements under the existing salary schedule, any such amounts were deemed to represent additional costs to the employer outside of the QEO.

Second, the listing of items that constitute "economic issues" was changed from an illustrative listing of such items to an exclusive listing of such issues. As a result, only those economic issues expressly enumerated were no longer subject to interest arbitration when a QEO was made.

Third, with respect to the contracting or subcontracting of work that would otherwise be performed by school teachers, an impasse over the impact of such contracting or subcontracting on wages, hours or the conditions of employment was subject to interest arbitration, regardless of whether a QEO has been made or not.

The QEO provisions were consistently opposed by teachers and their labor organizations as an infringement on the binding arbitration process. School districts tended to view the QEO provisions as addressing, if only partially, their concerns with the arbitration process.

Under 2009 Wisconsin Act 28 (the 2009-11 biennial budget act) the QEO provisions affecting teacher and school district collective bargaining and arbitration were repealed, effective July 1, 2009. As a result, with one exception, the dispute resolution procedures for teachers were the same as the procedures controlling disputes involving other general municipal employees. The exception was that certain "greatest" and "greater" weight factors that must be considered in arbitration decisions for other general municipal employees did not apply to arbitration decisions affecting school district employees (although certain other statutory weight factors did apply to arbitration decisions for general employees, including school district employees).

State Employment Relations

Employees of the state were first granted collective bargaining rights under Chapter 612, Laws of 1965, which created Subchapter V of Chapter 111, the State Employment Labor Relations Act. The Chapter 612 provisions also in-

cluded grievance arbitration of disputes pertaining to existing collective bargaining agreements, and mediation and fact-finding procedures to address disputes relating to labor negotiations. Strikes by state employees were deemed a prohibited practice.

As noted above for MERA, the 1971 legislative session produced some significant changes. Under Chapter 270, Laws of 1971, relating to SELRA, the following provisions were enacted: (a) specific collective bargaining units were defined in law with one unit for each of 14 occupational groups; (b) fair-share agreements and payroll deduction of labor organization dues were authorized; (c) grievance arbitration, mediation, and fact-finding processes were continued with some modifications; (d) management rights were specified; and (e) tentative collective bargaining agreements were required to be submitted to the Joint Committee on Employment Relations (JCOER) for approval, first by the Committee and then by the Legislature.

[It was under Chapter 270 that JCOER was created. The Committee is comprised of eight members, including the President and the majority and minority leaders of the Senate, the Speaker and the majority and minority leaders of the Assembly, and the Senate and Assembly Co-chairs of the Joint Committee on Finance.]

Table 1 lists the 14 collective bargaining units enumerated under Chapter 270, Laws of 1971.

These same units remain specified in statute today, except that the name Clerical and Related has been changed to Administrative Support. Additional collective bargaining units have also been authorized over the years, as described below.

Despite this 1971 legislation, labor unrest was present at the state level, as well as the local level. Approximately 20,000 state employees engaged in a 14-day strike in 1976. Such activity required the Legislature and Governor at that time to further address the labor relations issue.

Table 1: Initial State Employee Collective Bargaining Units Created in Chapter 270, Laws of 1971

1. Clerical and related
2. Blue collar and nonbuilding trades
3. Building trades crafts
4. Security and public safety
5. Technical

Professional

6. Fiscal and staff services
7. Research, statistics and analysis
8. Legal
9. Patient treatment
10. Patient care
11. Social services
12. Education
13. Engineering
14. Science

The 1977 legislative session also included major changes affecting state employee labor relations. Chapter 196, Laws of 1977, created a separate employment relations chapter in the statutes (Chapter 230) in which a civil service system for state employment was further enumerated (continuing a long-standing civil service tradition in Wisconsin). A new Department of Employment Relations, including a Division of Personnel and a Council on Affirmative Action were created. An existing Personnel Board was revised with rule making and investigative powers. A new Personnel Commission was also created to conduct hearings on certain appeals, to serve as the final-step arbiter in state employee grievance arbitrations, and to review and act on hearing officer decisions on bargaining disputes relating to policies and procedures of the state's civil service merit system. The changes under Chapter 196 reflected the development of an enhanced civil service system focused on merit and nondiscrimination.

It should be noted that in the 1977 legislative session, a binding arbitration option was first

provided to represented municipal employees, as described above. Binding arbitration has never been provided as a dispute resolution option for represented state employees.

Beginning with the 1985 legislative session, additional collective bargaining units have been authorized to represent other types of state employees. Under 1985 Act 42, project, program, and teaching assistants in the UW System were provided collective bargaining rights, the first of several such authorizations for unclassified employees. Assistant district attorneys were authorized to be represented by a collective bargaining unit under 1989 Act 31. This coincided with the conversion of assistant district attorneys from being county employees to being unclassified state employees. Unclassified assistant state public defenders were also authorized to be represented by a collective bargaining unit under 1995 Act 324.

The 1995 session, under Act 251, created a separate collective bargaining unit for law enforcement employees, previously represented by the security and public safety unit created in Chapter 270, Laws of 1971. Finally, under 1995 Act 27, additional bargaining units were created for classified employees of the newly created University of Wisconsin Hospitals and Clinics Board. Five units were authorized for the following occupational groups: (a) clerical and related; (b) blue collar and nonbuilding trades; (c) building trades crafts; (d) security and public safety; and (e) technical.

Under 2001 Act 16, a collective bargaining unit was authorized for instructional staff employed by the Board of Regents of the UW System who provide services for a charter school established under a contract associated with the University of Wisconsin-Parkside.

Collective bargaining units under Subchapter IV of Chapter 111 were further expanded in 2009 Act 28, under which research assistants in the UW System were provided collective bargaining rights. As noted above, project, program, and teaching assistants in the UW System were provided collective bargaining rights under 1985 Act 42.

Finally, 2009 Act 28 provided unclassified faculty and academic staff of the University of Wisconsin System (UW System) with the right to collectively bargain over wages, hours, and conditions of employment. At that point in time, faculty and academic staff constituted approximately 19,700 FTE positions. This was the most extensive expansion of collective bargaining rights since the inception of collective bargaining for state employees in the 1965 legislative session. University System faculty and academic staff collective bargaining rights were codified as Subchapter VI of Chapter 111 and, with some exceptions, was comparable to the provisions of SELRA.

Summary

The development of employment relations law in Wisconsin, from 1959 to 2011, was carried out in the context of providing collective bargaining rights to a large proportion of governmental employees and developing support mechanisms around collective bargaining to first ensure a successful process for negotiating economic and workplace issues, and second avoid disruptions to public services that would result from strikes, lockouts or other work-stoppage activities. At the municipal level, the solutions to do this centered around "dispute resolution" processes that were scaled to allow as much voluntary settlement as possible, but, increasingly, to authorize procedures that would mandate a resolution.

At the state level, collective bargaining rights were extensive, but mandated resolutions like

binding arbitration were never authorized. Rather, a sophisticated civil service system was developed that set clear labor relations standards and offered protection to both employees and state-agency employers. This system also provided consistent policies that ensured a high degree of parity between represented and unrepresented state workers.

The development of labor relations law, at both the local and state level did result in the elimination of illegal strikes. However, labor-management tensions remained, particularly at the local level. While final offer, binding arbitration for municipal dispute resolution was generally favored by labor organizations and generally resisted by municipal employers, both labor and management were often less than satisfied with the arbitration approach. The threat of arbitration or actual arbitration did, however, result in the settlement of disputes.

Nevertheless, from a policy point of view, arbitration has been inherently controversial. The enactment of the QEO mechanism in 1993 was a major limitation on binding arbitration for teachers and represented a significant pushback in this area of labor relations. The situation was completely reversed in the 2009 legislative session with the repeal of the QEO provisions and the extension of collective bargaining rights to UW faculty and academic staff.

After 52 years of development prior to the 2011 legislative session, state employment relations law generally supported collective bargaining for many public employees at the state and local levels. Despite difficulties, the system functioned. However, tensions have always existed in this system; this is reflected in the diverse legislative changes that have been made over this entire period of time.

The following chapters describe the significant changes to employment relations law made in the 2011 legislative session.

CHAPTER 2

MODIFICATIONS TO COLLECTIVE BARGAINING UNDER 2011 ACTS 10 AND 32

As described in Chapter 1, beginning in 1959, collective bargaining rights had been provided to a large proportion of governmental employees, both state and local, permitting bargaining on questions of wages, hours and conditions of employment. Chapter 2 will focus on the changes made to the employment relations system in the 2011 legislative session relating to modifications of collective bargaining rights for both state and local employees. Chapter 3 will describe the changes made to municipal dispute resolution processes for general employees and the municipal dispute resolution processes that remain in place for police and firefighting personnel. Chapter 4 will summarize the additional changes made under 2011 Acts 10 and 32 to employee benefit provisions affecting Wisconsin's three public employee retirement systems and certain health care insurance requirements.

Certain legal challenges have been brought relating to the Act 10 provisions. Both federal and state courts have upheld the constitutionality of Act 10. The descriptions of law changes provided in Chapters 2 through 4 of this paper reflect the provisions of Acts 10 and 32 as enacted. Chapter 5 will discuss the various legal challenges.

As described in Chapter 1, prior to the 2011 legislative session, a collective bargaining process was well established for represented public employees at both the local and state levels. Labor organizations representing employee collective bargaining units were authorized to negotiate a wide range of economic issues and working conditions on behalf of members. This capacity was supported by a statutory framework that not only permitted collective bargaining, but sustained the institutional stability of collective bargaining units and the labor organizations representing these units.

Act 10 bifurcated represented public employees into two classifications for the purposes of collective bargaining: public safety employees and general employees. For public safety employees, collective bargaining rights, the scope of bargaining, and the statutory supports for collective bargaining units and labor organizations remained largely unchanged. For general employees, the scope of collective bargaining was significantly reduced and certain statutory supports for collective bargaining units and labor organizations were removed.

Represented Employee Classifications. At the municipal level, Act 10 defines a public safety employee as any municipal employee who is employed in a position classified as a protective occupation participant who is a police officer, a fire fighter, a deputy sheriff, a county traffic police officer, a person employed by a village to provide police and fire protection services, or a comparable position under the provisions of a county (Milwaukee) or city (Milwaukee) retirement system.

Act 32, the 2011-13 biennial budget act, made two modifications to these provisions. First, Act 32 provides that emergency medical service providers employed by a county emergency medical services department, are included in the definition of public safety employee. Therefore, such emergency medical service providers retain prior-law collective bargaining rights.

Second, Act 32 provides that WERC is required to determine that any municipal employee is a "transit" employee if the Commission deter-

mines that the municipal employer who employs the municipal employee would lose federal transit funding available under 49 USC 5333 (b), if the municipal employee is not so defined. An employee determined to be a transit employee remains under the prior law collective bargaining provisions. [In addition, general employee interest arbitration provisions, except certain strike provisions, under prior law are retained for transit employees only. As discussed in the next chapter, Act 10 repealed these arbitration procedures for other general employees.]

At the state level, a public safety employee is defined as a member of the state traffic patrol or a state motor vehicle inspector.

In summary, Acts 10 and 32 create certain classes of employees (public safety and transit) for whom collective bargaining and the statutory supports for a collective bargaining system, with one exception, remain largely unchanged from the provisions that applied before 2011. The exception is an Act 32 provision that specifies that a municipal employer is prohibited from bargaining collectively with respect to the design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee. The provision first applies to a public safety employee who is covered by a collective bargaining agreement under MERA when the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first. This provision was further modified by 2013 Act 20 to clarify that municipal employers may not bargain with public safety employees regarding the costs and payments associated with health care coverage plans (in addition to the prohibition on bargaining regarding the design and selection of health care coverage plans), except for employee premium contributions.

Under Act 10, all other represented municipal and state public employees, including school teachers and employees of the Wisconsin Technical College System, are defined as general employees for the purposes of collective bargaining and are subject to the following collective bargaining modifications.

Prohibited Subjects of Collective Bargaining. Act 10 prohibits any municipal employer under MERA, or the state under SELRA, from bargaining collectively with a collective bargaining unit containing a general employee with respect to any factor or condition of employment except wages. Wages are defined to include only total base wages and exclude any other compensation, including, but not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Further, unless approved by referendum (as described below), any increase in base wages that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the increase in the consumer price index is prohibited. [The consumer price index is specified as the U.S. consumer price index for all urban consumers, U.S. city average, as determined by the federal Department of Labor.]

Act 32 clarified two issues relating to these provisions: (a) if there is a decrease or no change in the consumer price index, the employer is prohibited from bargaining for any change in total base wages; and (b) WERC is required to provide, upon request, to a municipal employer or to any representative of a collective bargaining unit containing a general municipal employee, the consumer price index change during any 12-month period.

If a municipality wishes to increase the total base wages of its general municipal employees in an amount that exceeds these CPI limits, the governing body of the local governmental unit must

adopt a resolution to that effect. The resolution must specify the amount by which the proposed total base wages increase will exceed the CPI limit.

The resolution may not take effect unless it is approved in a referendum called for that purpose. The statutes specify the wording of the referendum question. The referendum must occur in November for collective bargaining agreements that begin the following January 1. The results of a referendum apply to the total base wages only in the next collective bargaining agreement. These referendum provisions would also apply to elementary and secondary school districts, except that the referendum would occur in April for collective bargaining agreements that begin in July of that year. For state employees, a statewide referendum would be required, but there is no specification of the timing of the referendum or the required ballot language.

To recap, for represented general employees at both the state and municipal levels, collective bargaining is limited, under Act 10, to total base wages only. These limitations first apply to employees who are covered by a collective bargaining agreement, under either MERA or SELRA, that contains provisions inconsistent with these new provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first. All other issues that were subject to bargaining prior to enactment of Act 10 (a wide range of economic issues, hours, and working conditions) are now at the discretion of the employer and will be specified in compensation plans and employee handbooks, rather than in collective bargaining agreements.

It should be noted that employers may retain or create additional pay adjustment mechanisms outside the base wage structure, such as overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions. For example, Act 10 does not prevent school districts from maintaining "step" (seniority-based) increases and "lane progression" schedules (relating to pay adjustments for increased professional qualifications). Act 10 does not, however, permit bargaining over these types of compensation adjustments.

Despite the initial applicability provisions of Act 10, Act 32 provided that a school district and the representative of a collective bargaining unit containing employees of that school district, or a technical college district board and the representative of a collective bargaining unit containing employees of that technical college district, were permitted to enter into one memorandum of understanding (MOU) that reduces the cost of compensation or fringe benefits requirements in a collective bargaining agreement that was entered into before February 1, 2011, and that is in effect on July 1, 2011.

A modification under such an MOU is not a modification of the collective bargaining agreement that would make the provisions of Act 10 immediately applicable. Act 32 also required that no such MOU may be entered into later than September 29, 2011 (90 days after the effective date of the act). The MOU remains effective for the duration of the current collective bargaining agreement and continues to be effective after the collective bargaining agreement expires until a new collective bargaining agreement takes effect except that, if the memorandum contains a provision addressing a subject that, at the expiration of the collective bargaining agreement, becomes a prohibited subject of bargaining, that provision is no longer effective.

Finally, 2011 Act 65 allows all municipal employers under MERA to execute one MOU under the same conditions provided in Act 32, but specifies that no such MOU may be entered into later than February 22, 2012.

With respect to prior-law statutory supports for public employee collective bargaining units

and their associated labor organizations, Act 10 made modifications in two areas that affect the units for general employees: (a) the required certification of collective bargaining unit representatives; and (b) requirements relating to labor organization dues.

Certification of Collective Bargaining Unit Representatives. Prior to Act 10, a collective bargaining unit was established by WERC for municipal employees, or by statute for state employees. The members of a collective bargaining unit were allowed to select a labor organization as its representative when a majority of the employees in that collective bargaining unit who were actually voting elected the labor organization as its representative. The labor organization remained the representative unless a minimum percentage of members of the collective bargaining unit supported a petition for a new election and subsequently voted to decertify the representative. Once established, and absent an affirmative action to change a collective bargaining representative, a labor organization continued to represent the collective bargaining unit over time without limitation.

These prior-law provisions are retained under Act 10 for public safety employees and transit workers. For general employees, the following modifications have been made.

Under MERA, WERC is required to conduct an annual election to certify the representative of the collective bargaining unit that contains a general municipal employee. The election is required to occur no later than December 1 for a collective bargaining unit containing school district employees and no later than May 1 for a collective bargaining unit containing general municipal employees who are not school district employees. [Act 32 provides that, notwithstanding the standard annual dates provided for collective bargaining unit certification under Act 10, the initial unit certification vote must be held in the third month beginning after the effective date of Act 32. The Act 32 effective date was July 1, 2011; therefore, initial certification was required in October, 2011.]

The Commission is required to certify any representative that receives at least 51 percent of the votes of all of the general municipal employees in the collective bargaining unit. If no representative receives at least 51 percent of the eligible votes, at the expiration of the collective bargaining agreement, WERC is required to decertify the current representative and the general municipal employees are nonrepresented. If a representative is decertified the affected general municipal employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification.

Acts 10 and 32, did not modify state statute which specified that if a collective bargaining unit had been unrepresented, a general employee union needed to win a simple majority of votes cast at the election in order to be initially recognized or certified to represent the collective bargaining unit. Provisions of 2015 Act 55, however, changed the law to provide that local general employee unions seeking initial recognition to represent a collective bargaining unit must now receive at least 51% of the votes of all of the employees of the collective bargaining unit in order to be initially certified to represent the collective bargaining unit.

Prior to the effective date of Act 55, from January 1, 2015, through July 12, 2015, there were 42 initial certification elections under MERA, and the union won the right to represent the collective bargaining unit in all 42 elections. After the passage of Act 55 with its new voting requirements, from July 13, 2015, through November 23, 2016, there were 32 initial certification elections under MERA, and the union won the right to represent the collective bargaining unit in 24 of the 32 elections. In the absence of Act 55, the union would have won all 32 initial certification elections that occurred on or after July 13,

2015.

For SELRA collective bargaining units, WERC is required (under Act 32) to hold the initial unit certification vote in the third month beginning after the effective date of Act 32 (again, October, 2011), and (under Act 10) no later than December 1, of each subsequent year, to certify the representative of a collective bargaining unit that contains a general employee. It is required that the ballot include the names of all labor organizations having an interest in representing the general employees participating in the election. The Commission is allowed to exclude from the ballot one who, at the time of the election, stands deprived of his or her rights under labor law by reason of a prior adjudication of his or her having engaged in an unfair labor practice.

The Commission is required to certify any representative that receives at least 51 percent of the votes of all of the general employees in the collective bargaining unit. If no representative receives at least 51 percent of the eligible votes, at the expiration of the collective bargaining agreement WERC is required to decertify the current representative and the general employees are nonrepresented. If a representative is decertified, the affected general employees may not be included in a substantially similar collective bargaining unit for 12 months from the date of decertification. The WERC's certification of the results of any election are conclusive unless reviewed as provided under administrative and procedure review law.

Again Acts 10 and 32 did not modify state statute which specified that if a collective bargaining unit had been unrepresented, a general employee union needed to win a simple majority of votes cast at the election in order to be initially recognized or certified to represent the collective bargaining unit. As with local employee unions, provisions of 2015 Act 55 changed the law to provide that state general employee unions seeking initial recognition to represent a collective bargaining unit must now receive at least 51% of the votes of all of the employees of the collective bargaining unit in order to be initially certified to represent the collective bargaining unit.

As of November, 2016, 403 municipal and school district collective bargaining units had sought to certify their bargaining representatives under the Act 10 provisions for an additional year. Of these, 377 (94%) of the units had successfully certified their representatives.

For state employees, three of 18 collective bargaining units that were authorized under SELRA sought to certify their bargaining representatives under the Act 10 provisions in November, 2016, for an additional year. All three representatives were successfully certified to represent their bargaining units: (a) Wisconsin State Building Trades Negotiating Committee, AFL-CIO (workers in the state building trades collective bargaining unit); (b) Wisconsin State Attorneys Association (classified state agency attorneys in the legal collective bargaining unit); and (c) Wisconsin Association of State Prosecutors (unclassified assistant district attorneys). [Table 2 lists all collective bargaining units authorized under SELRA. These authorized collective bargaining units may or may not be certified under the Act 10 provisions.]

Labor Organization Dues. A second feature of the employment relations law, prior to the 2011 legislative session, that helped to sustain the institutional stability of collective bargaining units and the labor organizations that represented each unit, were provisions relating to the payroll deduction of labor organization dues. Under prior law, a fair-share agreement between the employer and a labor organization was permitted under which all of the employees in a collective bargaining unit (either municipal or state) were required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members. The agree-

ments included a required payroll deduction for the payment of these dues.

For a fair-share agreement under SELRA to be authorized, at least two-thirds of the eligible employees voting in a referendum needed to vote in favor of the agreement. In addition, under SELRA, a second option was available under certain circumstances: a maintenance-of-membership agreement. A maintenance-of-membership agreement is an agreement between the employer and a labor organization representing employees that specifies that all of the employees who authorize dues to be deducted from earnings at the time the agreement takes effect must continue to have dues deducted for the duration of the agreement and that dues must be deducted from the earnings of all employees who are hired on or after the effective date of the agreement. For a maintenance-of-membership agreement to be authorized, at least a majority of the eligible employees voting in a referendum must vote in favor of the agreement. Also, in a referendum on a fair-share agreement, if less than two-thirds but more than one-half of the eligible employees vote in favor of the agreement, a maintenance-of-membership agreement is authorized.

These fair-share agreements (and maintenance-of-membership agreements under SELRA) and the associated direct deduction of organizational dues from employee earnings provided each labor organization with an assured revenue stream to finance the organization's activities, including not only contract bargaining and administration, but political activities.

Under Act 10, the authorization for such agreements remains unchanged for public safety employees and transit workers, but is removed for general employees. Under both MERA and SELRA, Act 10 prohibits the public employer from deducting labor organization dues from the earnings of a general municipal employee. Act 10 further provides that a general municipal or state employee has the right to refrain from paying labor organization dues while remaining a member of a collective bargaining unit.

Finally, in addition to the above provisions, Acts 10 and 32 made further changes to employment relations law as it pertains to collective bargaining, as described in the following:

Term of Agreements. Under prior law, except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, every collective bargaining agreement covering municipal employees was required to be for a term of two years, but in no case could a collective bargaining agreement consisting of municipal employees other than school district employees be for a term exceeding three years, nor could a collective bargaining agreement for any collective bargaining unit consisting of school district employees be for a term exceeding four years. These limitations applied to all municipal employees, including police and fire personnel. For represented state employees, prior law specified that agreements must coincide with the fiscal year or biennium.

Act 10 provided that, except for the initial collective bargaining agreement between the parties, every collective bargaining agreement covering general municipal employees must be for a term of one year and may not be extended. For state general employees the same one-year term is specified and the agreement must coincide with the state fiscal year. For state public safety employees, agreements must coincide with the fiscal year or biennium. For transit workers, under Act 32, the prior-law provisions for the term of the agreements (up to a maximum of three years) apply. Under the Act 10 and 32 changes, the statues no longer specify the terms of collective bargaining agreements for local police and fire personnel.

University of Wisconsin System Faculty and Academic Staff. As noted in Chapter 1, 2009 Act 28 provided faculty and academic staff of the

UW System with the right to collectively bargain over wages, hours, and conditions of employment under a newly-created Subchapter VI of Chapter 111. With some exceptions, the provisions of Subchapter VI were comparable to the provisions of SELRA.

Act 10 repealed Subchapter VI, thus removing the right of UW System faculty and academic staff to collectively bargain over wages, hours, and conditions of employment. Because the rights provided under 2009 Act 28 had only recently passed, no collective bargaining agreements had been negotiated with faculty or academic staff prior to the passage of Act 10.

UW System Personnel Authority. 2011 Act 32 authorized the Board of Regents to establish a personnel system for UW employees other than UW-Madison employees and authorized UW-Madison to establish a personnel system for UW-Madison employees. These personnel systems were required to include a civil service system, a grievance procedure, and provisions that address employee discipline and workplace safety. Both personnel systems required approval by JCOER before they could be implemented.

The UW and UW-Madison personnel systems were approved by JCOER in April, 2014, and, pursuant to 2013 Act 20, took effect on July 1, 2015. On that date, all classified UW employees were transferred from the state personnel system to the new UW and UW-Madison personnel systems and the UW System became exempt from all Chapter 230 provisions. All UW employees who were transferred to the new personnel systems maintained their employment rights. Employees hired after July 1, 2015, have the protections, privileges, and rights afforded to them by the UW and UW-Madison personnel systems.

Through the new personnel systems, the Board of Regents and UW-Madison are responsible for specifying the duties, authority, and responsibilities of each position and assigning each position to a job classification. The Board of Regents and UW-Madison may also assign and reassign job classifications to salary ranges and establish policies for the recruitment and hiring of all positions. Base salary adjustments for all UW positions remain subject to JCOER approval as part of the compensation plan for UW employees.

Effective July 1, 2015, separate collective bargaining units were created under SELRA for UW System employees other than UW-Madison employees and for UW-Madison employees. These collective bargaining units mirror existing statewide collective bargaining units. No faculty or academic staff members may be assigned to these bargaining units.

The Board of Regents is required to bargain as the employer with UW System employees other than UW-Madison employees who are members of bargaining units and UW-Madison is required to bargain as the employer with UW-Madison employees who are members of bargaining units. Under Act 10, bargaining is limited to increases in base wages. Both UW System and UW-Madison contracts require approval by JCOER and the full Legislature, consistent with contracts negotiated by the Division of Personnel Management for state employees under SELRA.

The collective bargaining units authorized in statute for state employees are listed in Table 2. As described above, Act 10 requires the members of each unit to certify annually (before December 1st) a representative in order to engage in collective bargaining. The units that have certified a representative, as of January, 2017, are also indicated in Table 2.

Table 2: State Employee Collective Bargaining Units Authorized in Statute Effective October 7, 2016

Classified Non-University Employees	
Administrative support Blue collar and nonbuilding trades Building trades crafts* Law enforcement Security and public safety Technical	Professional: Fiscal and staff services Research, statistics and analysis Legal* Patient treatment Patient care Social services Education Engineering Science Public safety employees

Unclassified Non-University Employees
Assistant district attorneys* Attorneys in the Office of the State Public Defender

UW System Employees, Excluding UW-Madison	
Administrative support Blue collar and nonbuilding trades Building trades crafts* Law enforcement Security and public safety Technical Program, project and teaching assistants of the University of Wisconsin-Milwaukee Program, project and teaching assistants of the Universities of Wisconsin-Eau Claire, Green Bay, La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior and Whitewater Instructional staff employed by the Board of Regents who provide services for a charter school established under a contract associated with the University of Wisconsin-Parkside Research assistants of the University of Wisconsin-Milwaukee Research assistants of the Universities of Wisconsin-Eau Claire, Green Bay, La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior, and Whitewater The program, project, and teaching assistants of the University of Wisconsin-Extension Research assistants of the University of Wisconsin-Extension.	Professional: Fiscal and staff services Research, statistics, and analysis Legal Patient treatment Patient care Social services Education Engineering Science

UW-Madison Employees	
Administrative support Blue collar and nonbuilding trades Building trades crafts* Law enforcement Security and public safety Technical The program, project, and teaching assistants of the University of Wisconsin-Madison Research assistants of the University of Wisconsin-Madison	Professional: Fiscal and staff services Research, statistics, and analysis Legal Patient treatment Patient care Social services Education Engineering Science

*Unit has certified representative, as of January, 2017.

Under Wisconsin law, there are different forms of dispute resolution procedures that apply to general municipal employees, Milwaukee police personnel, police and firefighting employees of other larger municipalities, and police and firefighting personnel in small communities. These procedures, and how they were modified by Acts 10 and 32, are discussed in this Chapter.

General Municipal Employees

As discussed in Chapter 1, under Chapter 178, Laws of 1977, a mediation and binding arbitration process was established for general municipal employees, including teachers. With the passage of 1985 Wisconsin Act 318, the requirement that an arbitrator first seek to resolve an impasse through mediation efforts before proceeding to final and binding arbitration was repealed. As a result, the dispute resolution statute was more accurately termed "interest arbitration." Under both approaches, however, if a two-party agreement could not be reached, it was possible for an arbitrator to impose a final and binding resolution of the dispute.

Interest arbitration for general municipal employees, as established in law prior to 2011, was the last step in a process to address an impasse in collective bargaining. The statutes set forth, in step-by-step fashion, the procedures that must be followed by all parties involved in any collective bargaining negotiating process, including disputes. Under Act 10, only grievance arbitration (relating to disputes over the meaning and application of existing collective bargaining agreements), certain requirements for the commencement and initial negotiation of agreements, and mediation of disputes were retained for general municipal employees. Act 10 repealed binding arbitration in its entirety for general municipal employees, including teachers. Subsequent to Act 10, collective bargaining agreements for general municipal employees are limited to addressing general wage adjustments.

As noted in Chapter 2, Act 32 requires WERC to determine that any municipal employee is a "transit" employee if the Commission determines that the municipal employer who employs the municipal employee would lose federal transit funding available under 49 USC 5333 (b), if the municipal employee is not so defined. Under Act 32, these transit workers remain under the prior law collective bargaining provisions, including the dispute resolution process that includes binding arbitration. With two exceptions (relating to strikes and arbitration weight factors), the transit worker dispute resolution procedures are materially identical to the procedures that applied to all other general municipal employees prior to Act 10.

Dispute Resolution For General Municipal Employees

As noted above, grievance arbitration, certain requirements for the commencement and initial negotiation of collective bargaining agreements, and mediation of disputes were retained for all represented general municipal employees. These features are discussed in the following sections.

Grievance Arbitration. Labor disputes may arise over an existing collective bargaining agreement. For this situation, termed grievance arbitration, MERA specifies that the parties to a

dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have WERC or any other appropriate agency serve as arbitrator, or may designate any other competent, impartial and disinterested person to serve as an arbitrator. This grievance arbitration provision is retained, under Acts 10 and 32, for all general municipal employees, including transit workers. If WERC is used for the resolution of a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Initial Notice of Commencement of Bargaining. Whenever either party to a binding collective bargaining agreement requests the other party to reopen negotiations to develop a successor contract, or whenever the parties begin negotiations where no previous agreement exists, the party requesting the negotiations must immediately notify WERC in writing of the request. If the requesting party fails to notify WERC, the other party may notify the Commission. The notice to WERC must provide all the following information:

- Date on which the party filing the notice notified the other party;

- Name of the municipal employer and its principal representative (including his or her name, title, address and telephone number);

- Name of the labor organization or other representative involved (including his or her name, title, address and telephone number);

- General description of the collective bargaining unit involved and the approximate number of employees in the unit;

- Effective date and termination date of the existing agreement, if any, and the date on which notice to open negotiations must be served on the other party;

- Statement indicating whether the parties have agreed to voluntary impasse resolution procedures; and

- Name, title and signature of the person filing the notice, and the date on which the notice was executed.

Initial Bargaining Proposals. Following the filing of this notice with the WERC, the bargaining sessions held for the purpose of presenting and exchanging the parties' initial bargaining proposals and supporting rationales must be open to the public. The materials exchanged in these sessions must be set forth in writing.

Mediation. There may also be disputes in the negotiation or renegotiation of collective bargaining agreements. The initial dispute resolution step is mediation, which is a voluntary process whereby a neutral third party (a "mediator") endeavors to serve as a catalyst to bring the deadlocked parties together to settle their dispute. Generally, mediation is a consensual process aimed at achieving a final, signed agreement between the parties. The parties, not the mediator, make the decisions regarding the final agreement. Further, the mediator possesses no authority to impose a settlement. The statutes require WERC or its designee to function as mediator in labor disputes involving general municipal employees, including transit workers, at the request of one or both of the parties, or upon initiation of the Commission. If mediation is requested, a $400 filing fee is required to be paid to WERC by each party to the dispute.

Dispute Resolution for Municipal Transit Workers

The following summarizes the dispute resolution provisions that, under current law, now apply only to municipal transit employees. As noted, with two exceptions, this is the same process that applied to all represented general municipal employees under prior-law. The exceptions will be noted at the appropriate points in the summary.

Voluntary Impasse Resolution Procedures. In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties may agree at any time, in writing, as a permissive subject of bargaining, to utilize any other mutually acceptable dispute settlement procedure. Such an agreement may include binding arbitration. A copy of any such supplemental agreement must be filed with the WERC. [Under prior law, which applied to all represented general municipal employees, the voluntary agreement could also authorize the option of a strike by municipal employees. This option is not provided to transit employees under current law because Act 10 provides that nothing contained in Wisconsin labor law constitutes a grant of the right to strike by any municipal employee or labor organization and such strikes are expressly prohibited.]

In addition to any voluntary impasse resolution agreement that is made, the statutes also specify binding arbitration procedures for transit workers. These are described in the following sections.

Petition for WERC Intervention. Either or both of the parties may petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. However, neither prior mediation efforts by the WERC nor use of any other settlement procedure is required before proceeding to the binding arbitration stage. The petition for WERC intervention requires that each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

Preliminary Final Offers. When a petition to initiate arbitration is filed with WERC, the petitioning party must attach its written preliminary final offer on all disputed issues. The nonpetitioning party then has 14 calendar days in which to respond in writing with its preliminary final offer on those same issues. Where the parties have instead jointly stipulated to initiate arbitration, both parties' written preliminary final offers must be exchanged either before or at the time the stipulation is submitted to the WERC.

Withdrawal of a Petition or Stipulation. Any petition may be withdrawn by the petitioner, and any stipulation may be withdrawn by the parties with the consent of the Commission, if such actions would lead to a settlement of the matters in dispute.

WERC Investigation. Upon receipt of a petition from either or both parties for binding arbitration, WERC must conduct an investigation of the dispute to determine whether the parties are deadlocked in their negotiations and arbitration should begin. The Commission may use either informal investigations or formal hearings in making these determinations. However, if, during any prior mediation by a Commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing.

Final Offers. Prior to the close of these informal investigations or following the filing of a stipulation to initiate arbitration, the parties must submit to WERC their final written offers on all issues in dispute. The parties must also submit a written stipulation on all matters agreed upon to be included in a new or a successor collective bargaining agreement. The Commission may not close an investigation until it is satisfied that neither party, having knowledge of the contents of the other party's final offer, would amend any proposal contained in its final offer. Following the close of the WERC investigation, a party may modify its final offer only with the consent of the

other party.

Only mandatory subjects of bargaining (that is, matters involving wages, hours and conditions of employment) may be included in the final offers. Proposals that do not relate primarily to wages, hours and conditions of employment ("permissive" subjects of bargaining) may be included in a party's final offer only if the other party does not object to their inclusion. Where permissive subjects of bargaining are included in a final offer, they are then treated as mandatory subjects of bargaining for the remainder of the arbitration process.

If a question arises whether a proposal is a mandatory or permissive subject of bargaining, the WERC is required to resolve the matter by issuing a declaratory ruling within 15 days of receipt of final arguments regarding the issue. Any arbitration proceedings must be delayed until the Commission issues its decision. However, if the WERC's ruling is then appealed to the courts, the arbitration proceeding will not be further delayed pending the court's decision. If the courts subsequently reverse a WERC decision on mandatory subjects of bargaining, any arbitration award that has included the item is automatically amended to delete the provision.

Appointment of an Arbitrator. If the Commission certifies that binding arbitration is required because of a deadlock in negotiations, the Commission must submit a list of seven arbitrators to the parties (unless there is formal agreement for another method of arbitrator selection). Except as otherwise mutually agreed to in writing, the list may include only arbitrators who are residents of Wisconsin. The parties alternatively strike names from the list until only a single name remains. That person is then appointed by the WERC as the arbitrator. Alternatively, if both parties agree, WERC may submit a list of seven arbitrators from which each party strikes one name. The Commission then selects the arbitrator by lot from the remaining list of five names. If requested by both parties, a third alternative is available that permits a three-member arbitration panel to be selected by WERC. Any such tripartite panel consists of one member selected by each of the parties and a neutral member designated by WERC who also serves as chairperson. Unless the parties have mutually agreed otherwise in writing, the chairperson must be a resident of Wisconsin.

The Commission then forwards the final offers submitted by the parties to the arbitrator or arbitration panel. These final offers are considered public documents and are available from the Commission.

Public Hearing. If a petition is signed by at least five citizens residing in the area served by the municipal employer and is filed with WERC within 10 days of the appointment of the arbitrator, the arbitrator must schedule and conduct a public hearing. The public hearing is designed to afford both parties the opportunity to explain and to justify their final offers. The hearing also gives the public an opportunity to offer comments and suggestions.

Arbitration Hearing. Within 10 days of appointment, the arbitrator must establish a time and place for a public arbitration hearing. The purpose of the hearing is to allow the parties to present information that will allow the arbitrator to make a compulsory, final and binding arbitration award. With the approval of the arbitrator, the parties may agree to waive the actual convening of the arbitration hearing, the preparation of transcripts, or the filing of briefs.

The parties' final offers, as transmitted from WERC to the arbitrator, serve as the basis for continuing negotiations. In addition, at any time prior to the actual arbitration hearing, either party, with the consent of the other, may modify its original final offer in writing.

[It should be noted here that, under prior law, which applied to all represented general municipal employees, before the arbitration hearing, ei-

ther party could, within a time limit established by the arbitrator, withdraw its final offer and any mutually agreed upon modifications. The party was required to immediately provide written notice of such withdrawal to the other party, the arbitrator and WERC. If both parties withdrew their final offers and any mutually agreed upon modifications, the labor organization, after giving 10 days' written advance notice to the municipal employer and WERC, was permitted to strike. These provisions were repealed under Act 10 and the option to strike was not provided to transit employees under current law. As noted above, Act 10 provides that nothing contained in Wisconsin labor law constitutes a grant of the right to strike by any municipal employee or labor organization and such strikes are expressly prohibited.]

Arbitration Award. Following the receipt of the parties' final arguments and briefs, if any, the arbitrator must issue the arbitration award in writing as expeditiously as possible. If the award is made by a tripartite panel, it must be signed by each member of the panel, whether affirming or dissenting to the final award. In making the arbitration decision, the arbitrator must adopt the entire final offer of either one of the parties, including any previously agreed to modifications. The award is final and binding on both parties and must be incorporated into the written collective bargaining agreement.

Factors Considered in Making the Arbitration Award. The statutes also establish a variety of factors that the arbitrator must consider in arriving at the arbitration award decision for transit workers. The arbitrator must first give "greatest weight" to the economic conditions in the jurisdiction of the municipal employer. The arbitrator is required to provide a written accounting in the final arbitration decision of the consideration given to this "greatest weight" factor in making the award. The arbitrator must next give "greater weight" to those state legislative and administrative directives that impose spending or revenue collection limitations on the municipal government. Lastly, the arbitrator must give "weight" to a series of additional factors; however, there is no rank-ordering of these elements in terms of their relative importance. These statutory factors are listed in Table 3.

Table 3: Factors That Must Be Considered by an Arbitrator in Rendering Arbitration Awards to Transit Employees

Factor To Be Given "Greatest Weight"

- The economic conditions in the jurisdiction of the municipal employer.

Factor To Be Given "Greater Weight"

- State legislative and administrative directives that limit municipal employer spending or revenue collection.

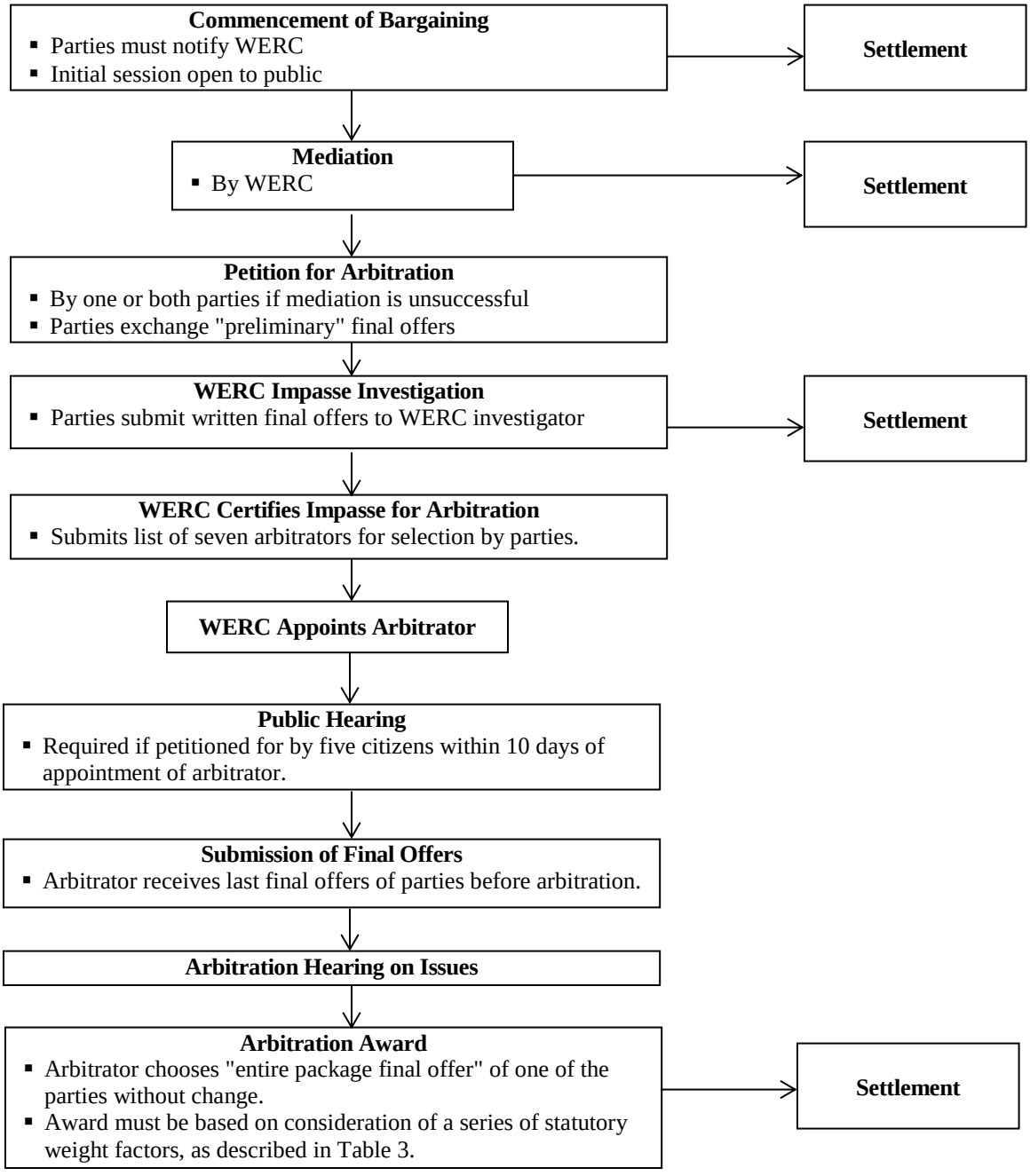
Factors To Be Given "Weight"

- 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 any proposed settlement.
- 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: (1) other employees performing similar services; (2) other employees generally in public employment in the same community and in comparable communities; and (3) other employees in private employment in the same community and in comparable communities.
- Changes in the cost-of-living.
- The overall compensation presently received by the transit 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.
- Changes in any of the foregoing circumstances while arbitration proceedings are pending.
- Other factors normally and traditionally considered in the collective bargaining process in the public service or in private employment.

[It should be noted that, under prior-law provisions, which applied to all represented general municipal employees, the "greatest" and "greater" weight factors were reversed from those now applied to transit workers. That is, the arbitrator was required to first give "greatest weight" to those state legislative and administrative directives that impose spending or revenue collection limitations on the municipal government, and second, to give "greater weight" to the economic conditions in the jurisdiction of the municipal employer.]

Table 4 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses as they apply to municipal transit employees.

Table 4: Bargaining and Impasse Resolution Steps for Municipal Transit Employees



City of Milwaukee Police Officers

The second distinct statutory dispute resolution process for public employees in Wisconsin concerns City of Milwaukee police officers. These procedures are established under s. 111.70(4)(jm) of the statutes. These provisions set forth the compulsory, final and binding arbitration procedures that apply to City of Milwaukee employees with the power of arrest (exclusive of personnel with confidential, managerial or executive responsibilities). These arbitration procedures apply when the employee representatives and the City are unable to reach agreement over the terms of a proposed new collective bargaining agreement. In general, the provisions governing collective bargaining impasses affecting City of Milwaukee police are not as elaborate and detailed as those established for nonprotective municipal transit employees.

The dispute resolution procedures for City of Milwaukee police officers were not affected by Act 10. However, Act 32 modified the guidelines that the arbitrator must utilize in determining an award. This change is summarized below. The following is a summary of these statutory procedures. Table 5 provides a schematic outline of the steps established to resolve collective bargaining impasses as they apply to City of Milwaukee police officers.

Preliminary Impasse Resolution Procedures

Initial Notice of Commencement of Bargaining. There are no statutory provisions comparable to those applying to nonprotective municipal transit employees which govern the presentation of initial proposals.

Grievance Arbitration. Under the general statutory procedures setting forth methods for the peaceful settlement of disputes, the parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC, or by any other appropriate person. If WERC is used for the resolution of a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Mediation by the WERC. Under these same general dispute settlement procedures, the WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Binding Arbitration Procedures

Petition for WERC Intervention. If an impasse has been reached, either or both of the parties may petition the WERC for the appointment of an arbitrator to determine the terms of the collective bargaining agreement affecting wages, hours and conditions of employment or any other matter subject to arbitration. At the time the WERC is petitioned to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

During the period between the filing of the petition and the execution of a final arbitration award, neither party may unilaterally alter any existing contract term governing the wages, hours and conditions of employment of the members of the City of Milwaukee Police Department.

WERC Investigation and Determination of Impasse. The Commission must conduct either an

informal investigation or a formal hearing, as it determines, on the petition to ascertain whether an impasse actually exists. During the course of these investigations or hearings, the WERC or its agent may continue mediation efforts on the issues in dispute. Prior to the close of the WERC's investigation or hearing, either party may amend its position on any matter in issue. The parties may also agree to file a stipulation to waive the informal investigation or formal hearing.

If the WERC ultimately determines that an impasse has been reached on matters relating to wages, hours and conditions of employment or any other matter subject to arbitration, it shall then select an arbitrator. The WERC may choose any individual whom it deems qualified, except that the arbitrator may not be a resident of the City of Milwaukee.

Following the close of the investigation, a party may modify its proposal on any of the subjects in dispute when the investigation was closed without the consent of the other party, unless and until the arbitrator declares otherwise. However, following the close of the investigation, a party shall not submit to the arbitrator a proposal on a subject not in dispute when the investigation was closed without the written consent of the other party.

Arbitration Hearing. Within 14 days of the arbitrator's appointment, a hearing must be conducted to determine the terms of the agreement relating to wages, hours and conditions of employment or any other matter subject to arbitration. The arbitrator may subpoena witnesses and take sworn testimony. The arbitrator may enter into the record all economic and social data presented by the parties deemed relevant to the wages, hours and conditions of employment of the members of the City of Milwaukee Police Department. The parties have the opportunity to examine and respond to any of the data presented.

Arbitration Award. The statutes authorize the arbitrator to determine or set an award on any of the following matters, without restriction because of enumeration:

- All items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, life insurance, pension programs (including the amount of pension, relative contributions of employees and the employer, and eligibility conditions), terms and conditions of overtime compensation and compensatory time, vacation eligibility and pay, sick pay, uniform allowances, and any other similar item of compensation;

- Working hours, overtime standards, and the criteria for the assignment and scheduling of work;

- Seniority issues, promotional programs, criteria and procedures for merit increases, and work rules (except those work rules created by law);

- Any educational programs for police officers deemed appropriate;

- A system for resolving disputes under the contract, including final and binding arbitration;

- The duration of the contract;

- A system for administration of the collective bargaining agreement between the parties by an employee of the Police Department who is not directly accountable to the Chief of Police or the Milwaukee Board of Fire and Police Commissioners in matters relating to that administration; and

- A system for conducting interrogations of members of the police department that is limited to the hours between 7 a.m. and 5 p.m. on working days, if the interrogations could lead to disciplinary action, demotion, or dismissal, but one

that does not apply if the interrogation is part of a criminal investigation.

The arbitrator may determine each matter in dispute as he or she sees fit and need not adopt the bargaining position of either party. This procedure is in contrast to awards involving nonprotective municipal transit employees, where the arbitrator must adopt the entire final offer of one of the parties to the dispute.

Factors Considered in Making the Arbitration Award. The statutes set guidelines that the arbitrator must utilize in determining the award. For compensation matters, these criteria are the following:

• In determining the proper compensation to be received by members of the police department, the arbitrator must first give greater weight to the economic conditions in the City of Milwaukee than the arbitrator gives to other factors that must be considered, as listed below. The arbitrator must also give an accounting of the consideration of this factor in the arbitrator's decision. [This "greater weight" factor was enacted under Act 32 and first applies to a petition for arbitration that is filed on July 1, 2011.]

In addition to this "greater weight" factor, the arbitrator must utilize:

• U. S. Bureau of Labor Statistics standard household budget levels as they relate to determining the compensation necessary for City of Milwaukee police officers to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and

• Changes in the Consumer Price Index ("cost of living") since the last compensation adjustment.

For noneconomic matters, the arbitrator must consider the following:

• Prevailing contract settlement patterns between technical and professional employees and their employers in both the public and private sectors.

Implementation of Award. Within 30 days after the arbitration hearing, the arbitrator must issue a written decision stating the reasons for the arbitrator's determination on each issue in dispute. Within 14 days of the arbitrator's decision, the parties must execute a written contract implementing the arbitration award unless one of the parties seeks judicial review of the award.

A limited appeal of the award may be made within 60 days to circuit court in Milwaukee County. If the award was made within the statutory subject matter jurisdiction of the arbitrator, the court must enforce the decision (unless the court finds by a preponderance of the evidence that the decision was procured by fraud, bribery or collusion). The court is prohibited from reviewing the sufficiency of any of the evidence used by the arbitrator in making the award. Within 30 days of any final court judgment, the parties must execute a written contract, as modified by any court ordered changes. The parties are also required to bear equally all costs of the arbitration proceedings.

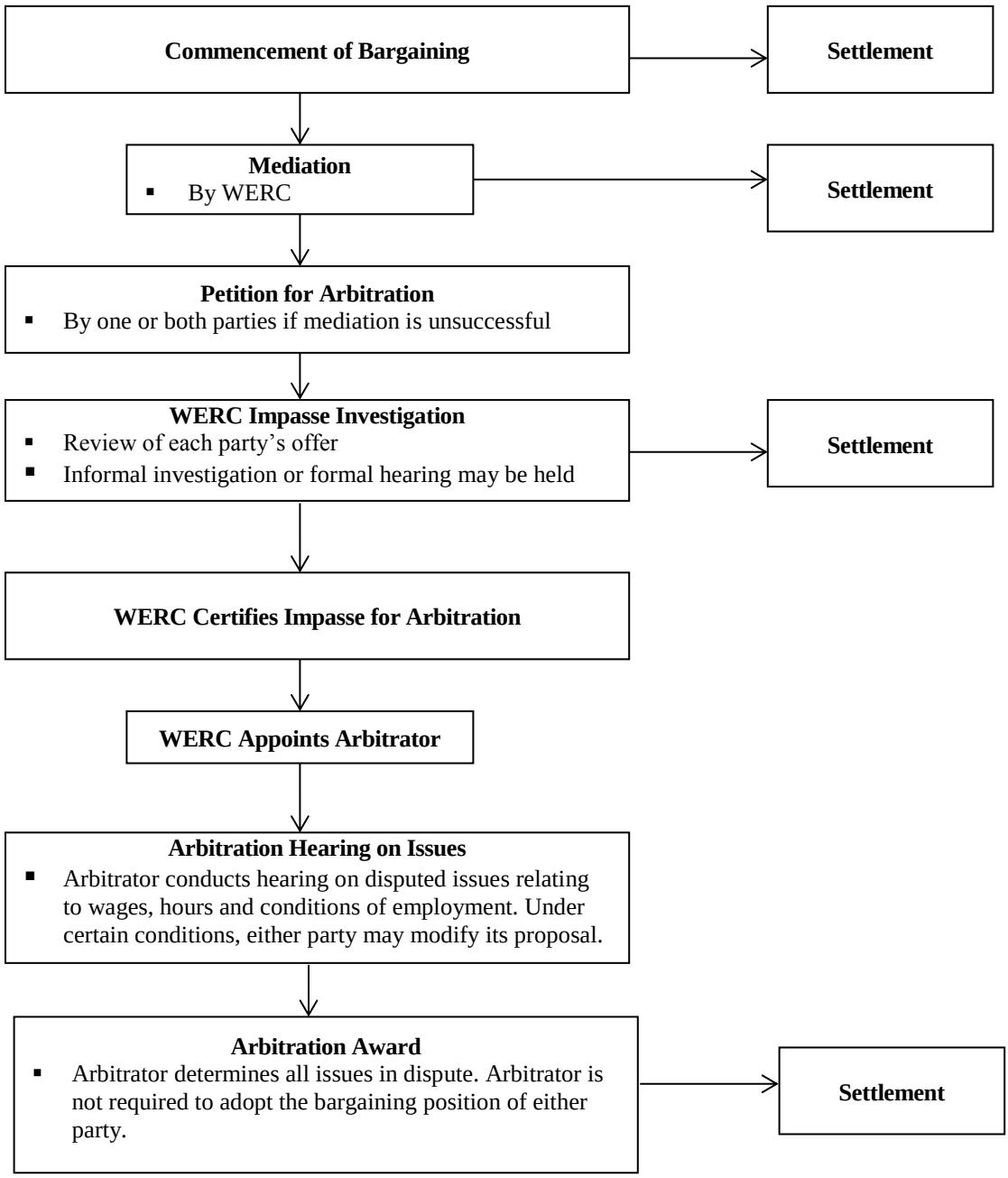
Summary

Table 5 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses as they apply to City of Milwaukee police officers.

Police Officers and Firefighting Personnel in Counties, Large Cities, Towns, and Villages

Dispute resolution procedures for police officers (other than those in the City of

Table 5: Bargaining and Impasse Resolution Steps for City of Milwaukee Police Officers



Milwaukee) and fire fighters in counties, large cities, towns and villages are established under s. 111.77 of the statutes. "Large" cities, towns and villages are defined as those municipalities having a population of 2,500 or more. Covered under these dispute resolution procedures are those employees who either have the power of arrest or are engaged in active fire suppression. Except for law enforcement supervisors employed by Milwaukee County, these provisions do not apply to police and firefighting personnel with confidential, managerial or executive responsibilities.

The dispute resolution procedures for these police and firefighting personnel were not affected by Act 10. However, as was the case for City of Milwaukee police arbitrations, Act 32 modified the guidelines that the arbitrator must utilize in determining an award for police and fire fighters in large communities other than the City of Milwaukee. This change is summarized below. Table 6 provides a schematic outline of the steps established to resolve collective bargaining impasses that apply to police and fire fighters in large communities other than the City of Milwaukee.

Under the general statutory procedures setting forth methods for the peaceful settlement of disputes, the parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC or by any other appropriate person. If the WERC is used for the resolution of a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Where collective bargaining disputes involving police and firefighting personnel have reached an impasse, s. 111.77 authorizes compulsory, final and binding arbitration in two distinct forms. The arbitrator may either:

- Determine or set all issues relating to wages, hours and conditions of employment ["Form 1" arbitration]; or

- Adopt the "entire package" final offer of one of the parties ["Form 2" arbitration].

These forms are discussed in more detail below.

Preliminary Impasse Resolution Procedures

Initial Notice of Commencement of Bargaining. Where a collective bargaining agreement is in effect, neither party may terminate or modify the contract unless the party wishing the change provides notice according to the following schedule.

The party requesting the new negotiations must notify the other party in writing 180 days prior to the scheduled expiration date of the contract. If there is no set expiration date to the current contract, the notice must be given 60 days prior to the time the new proposals would modify or terminate any aspect of the contract. In addition, the WERC must be notified within 90 days of the notice of the existence of any dispute between the parties.

Required Actions Following Initial Notice. During the applicable 60- or 180-day period, the party seeking modifications to the existing collective bargaining contract must:

- Offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

- Continue all terms of the existing contract in full force and effect without strike or lockout for the applicable 60- or 180-day period;

- Participate in mediation sessions by the WERC or it representatives, if requested to do so by the WERC; and

• Participate in procedures, including binding arbitration, agreed to by the parties.

Mediation by the WERC. Under these same general dispute settlement procedures, the WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Alternative Dispute Resolution Procedures

In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties are permitted to utilize other dispute settlement procedures that are mutually acceptable to them.

Binding Arbitration Procedures

Petition for WERC Intervention. If an impasse has been reached and the parties have no other established procedure for resolving the dispute, either or both of the parties may petition the WERC for the appointment of an arbitrator to initiate compulsory, final and binding arbitration. Where a contract already exists, the statutes require that the parties participate in binding arbitration to resolve their differences. At the time the parties petition the WERC to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

WERC Investigation and Determination of Impasse. Upon receipt of a petition for binding arbitration, the WERC must determine whether an impasse exists. The WERC must also ascertain whether the procedures that are required following the initial notice of commencement of bargaining have been met. The Commission may conduct a formal hearing if it chooses. At any time prior to the close of the investigation or formal hearing, either party may amend its position with respect to any matter at issue. Further, under WERC administrative rules, if, during any prior mediation by a commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing.

If the WERC finds that the required initial actions have not been complied with and that compliance with them would likely produce a settlement, the Commission may order compliance as a prerequisite to ordering arbitration. If the required initial actions have been complied with or the Commission finds that compliance would have little effect on reaching a settlement and that a deadlock exists, the WERC must issue a certification of impasse and order arbitration.

Where the form of arbitration requires that entire package final offer arbitration be used ["Form 2" arbitrations], the final offers must be attached to the certification at this stage.

Appointment of an Arbitrator. If the WERC certifies that binding arbitration procedures are required because of an impasse, the Commission must submit a list of five arbitrators to the parties. The parties alternatively strike names from the list until only a single name remains. That person is then appointed by the WERC as the arbitrator. The parties, by mutual agreement, are also authorized under the Commission's administrative rules to use a three-member arbitration panel.

Arbitration Hearing. Following the appointment of an arbitrator or panel, an arbitration hearing must be set. After the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification

must be in writing, supported by a written statement signed by the representative of the other party.

Form of Arbitration and Arbitration Award. The statutes authorize two different types of arbitration for dispute settlement.

• **Form 1.** Under "Form 1" arbitration, the arbitrator has the power to determine all issues in dispute involving wages, hours, and conditions of employment. These arbitration procedures are the same as those authorized for use in disputes involving City of Milwaukee police officers.

• **Form 2.** Under "Form 2" arbitrations, the WERC appoints an investigator (arbitrator) to determine the nature of the impasse. The investigator advises the WERC in writing of each issue in dispute and describes each party's final offer as known to the investigator at the time the investigation is closed. Neither party may amend its final offer at this stage, except by mutual consent. The arbitrator is then required to adopt the "entire package" final offer of one of the parties.

Arbitration proceedings must follow Form 2 unless the parties agree prior to the arbitration hearing that they will use Form 1. To date, all proceedings under this statute have been Form 2 arbitrations.

Factors Considered in Making the Arbitration Award. In arriving at the arbitration award decision, the statutes establish factors that the arbitrator must utilize.

First, in reaching a decision, the arbitrator must give greater weight to the economic conditions in the jurisdiction of the municipal employer than the arbitrator gives to other factors that must be considered. The arbitrator must also give an accounting of the consideration of this factor in the arbitrator's decision. [This "greater weight" factor was enacted under Act 32 and first applies to a petition for arbitration that is filed on July 1, 2011.]

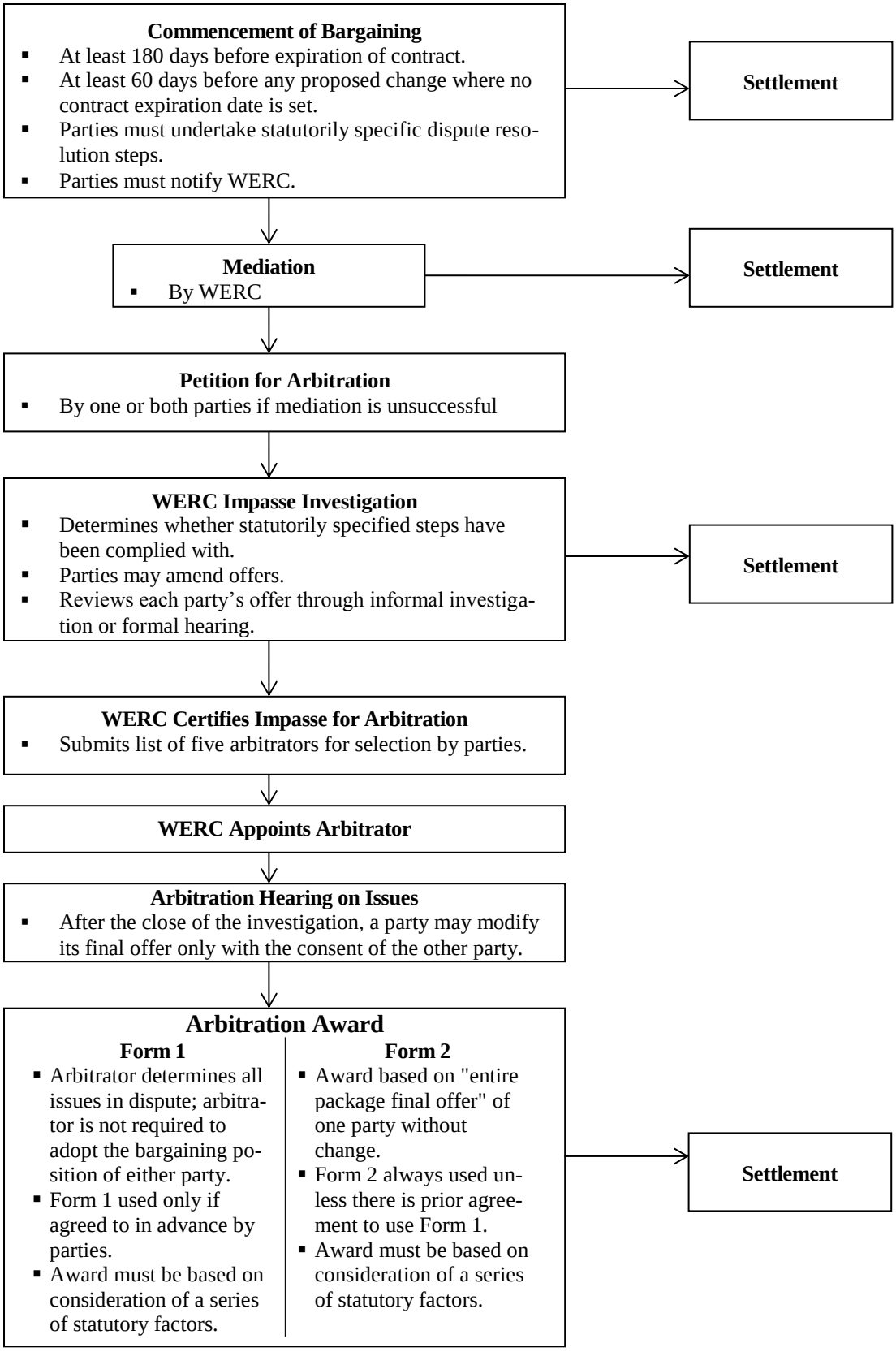
The remaining factors that must be considered are the same ones to which an arbitrator must give "weight" when resolving impasses affecting municipal transit employees, as shown in Table 3. [Note that the "greatest weight" and "greater weight" factors shown in Table 3 that an arbitrator must use for awards in the case of municipal transit employees, do not apply when making awards governing police officers and fire fighters in large municipalities other than the City of Milwaukee.]

As with other arbitration proceedings, the statutes require the parties to the dispute to share equally in the costs.

Summary

Table 6 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses involving police officers (other than City of Milwaukee police officers) and fire fighters in large municipalities.

Table 6: Bargaining and Impasse Resolution Steps for Police Officers and Firefighting Personnel in Large Municipalities



Police Officers and Firefighting Personnel in Small Cities, Towns, and Villages

Police officers and firefighting personnel in cities, towns and villages with populations under 2,500 are specifically excluded from the binding dispute resolution procedures of the Municipal Employment Relations Act that apply to other municipal law enforcement or firefighting personnel. Consequently, there are no compulsory, final and binding arbitration mechanisms available for the resolution of collective bargaining impasses for police officers or fire fighters in small municipalities. Rather, the non-binding dispute resolution procedures established under s. 111.70(4)(c) of the statutes apply to such personnel.

The modifications made to s. 111.70(4)(c) of the statutes under Acts 10 and 32 did not affect the dispute resolution provisions that apply to labor disputes in small municipalities. Table 7 provides a schematic outline of the steps established to resolve collective bargaining impasses as they apply to these municipalities.

Preliminary Impasse Resolution Procedures

Grievance Arbitration. The parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC, or by any other appropriate person. If the WERC is used to resolve the grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Mediation by the WERC. The WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Alternative Dispute Resolution Procedure

In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties are permitted to utilize other dispute settlement procedures that are mutually acceptable to them.

Fact-Finding Procedures

Petition for WERC Intervention. If a dispute has not been settled after a reasonable period of negotiation and after any settlement procedures established by the parties have been exhausted, either or both of the parties may petition the WERC to initiate fact-finding and to make recommendations to resolve the impasse. At the time the parties petition the WERC to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC for mediation services in the same dispute, in which case no additional fee is required.

WERC Investigation. If petitioned, the WERC must undertake an investigation to determine whether the negotiations are deadlocked. The investigation may consist either of an informal investigation or a formal hearing, or both.

Appointment of a Fact-finder or Panel. If the WERC certifies the existence of a deadlock, fact-finding will be initiated. The WERC must appoint either a qualified, neutral third party or, if jointly requested by the parties, a three-member fact-finding panel.

Fact-finding Hearing. The fact-finder may conduct a hearing to determine the nature of the impasse. The fact-finder may have witnesses subpoenaed, may administer oaths and may

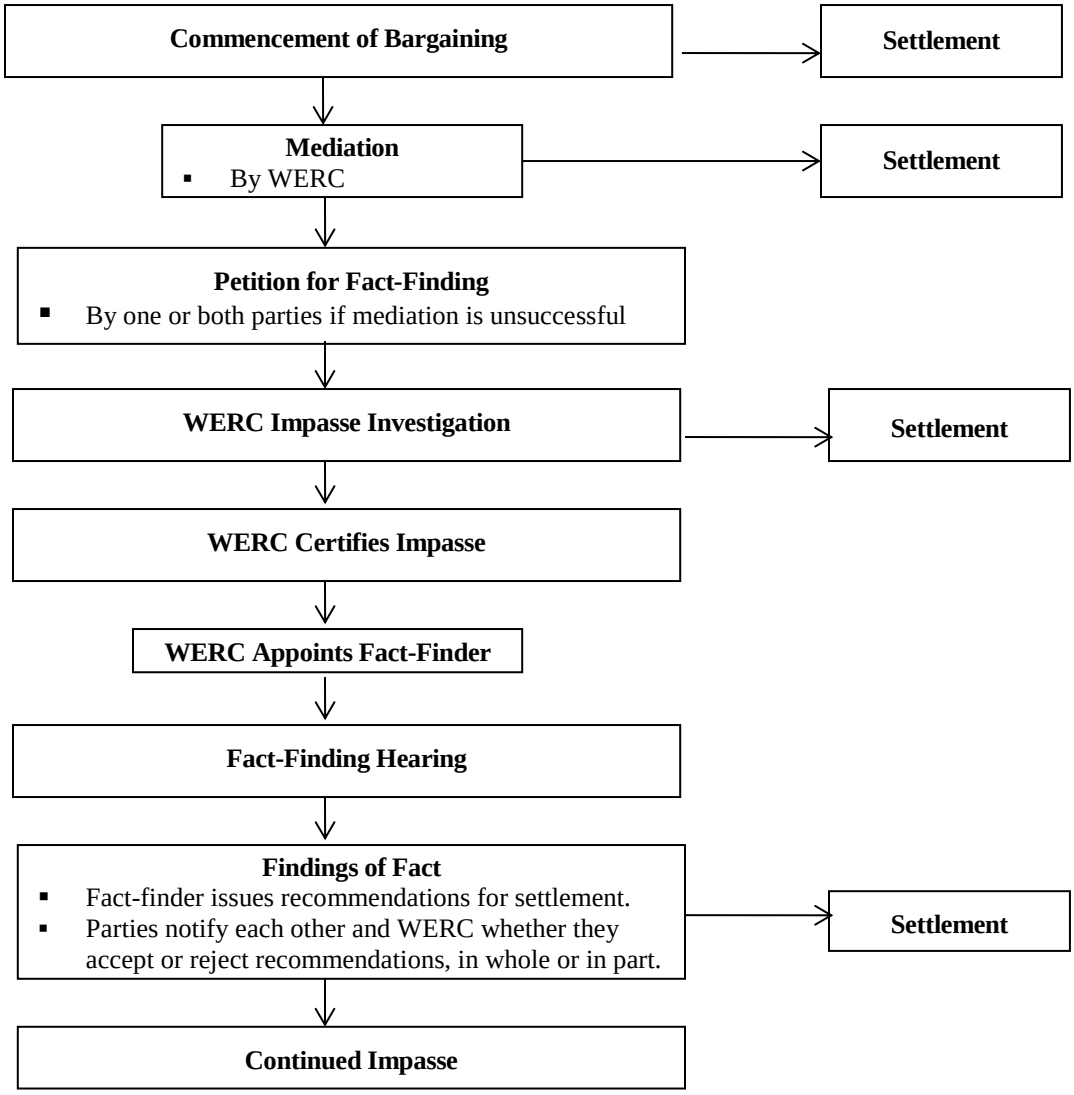
endeavor to mediate the dispute.

Findings of Fact. Upon completion of the hearing, the fact-finder must make written findings of fact and recommendations for settlement of the dispute. These documents are provided to the parties and to the WERC. Within a period mutually agreed to by the parties, or within 30 days of receipt of the fact-finder's recommendations, each party must advise the other and the WERC in writing whether it accepts or rejects, in whole or in part, the fact-finder's recommendations for settlement. The parties are also required to bear equally all costs of the fact-finding proceedings.

Summary

Table 7 provides a schematic outline of the impasse resolution procedures applicable to police officer and firefighting employees in small municipalities.

Table 7: Bargaining and Impasse Resolution Steps for Police Officers and Firefighting Personnel in Small Municipalities



Local Government Civil Service Systems

The Legislature, under Act 10, sought to address the need to maintain basic local procedures regarding day-to-day labor problems. Act 10 required the development of minimal grievance procedures at the municipal level.

In provisions that are codified in general municipality law, rather than under MERA, Act 10 requires a local governmental unit (a political subdivision of the state, a special purpose district in the state, an agency or corporation, of a political subdivision or special purpose district, or a combination or subunit of any of the foregoing) that does not have a civil service system on June 29, 2011, to establish a grievance system not later than October 1, 2011. To comply with the required grievance system, a local governmental unit may: (a) establish either a civil service system under any provision authorized by law, to the greatest extent practicable, if no specific provision for the creation of a civil service system applies to that local governmental unit; or (b) establish a grievance procedure as follows.

Under Act 10, any civil service system that is established under any provision of law, and any grievance procedure that is created under the above provisions, must contain at least all of the following provisions: (a) a grievance procedure that addresses employee terminations; (b) employee discipline; and (c) workplace safety.

If a local governmental unit creates a grievance procedure under these provisions, the procedure must contain at least all of the following elements: (a) a written document specifying the process that a grievant and an employer must follow; (b) a hearing before an impartial hearing officer; and (c) an appeal process in which the highest level of appeal is the governing body of the local governmental unit.

Act 10 also provides that, if an employee of a local governmental unit is covered by a civil service system on June 29, 2011, and if that system contains provisions that address the above provisions, the provisions that apply to the employee under his or her existing civil service system continue to apply to that employee.

CHAPTER 4

MODIFICATIONS TO PUBLIC EMPLOYEE RETIREMENT AND HEALTH INSURANCE CONTRIBUTION REQUIREMENTS UNDER 2011 ACTS 10 AND 32

In addition to the significant changes made to public sector employment relations law in the areas of collective bargaining and labor dispute resolution, 2011 Acts 10 and 32 made important changes to: (a) how retirement benefits for public employees in Wisconsin are funded; and (b) how health care premium costs are funded for state employees and certain local employees that participate in a group health insurance program offered by the state.

Prior to Act 10, the employer/employee sharing of contributions for retirement and health insurance premium costs was a subject of collective bargaining for represented employees. [Generally, equivalent contribution provisions were provided to nonrepresented employees.] Act 10 largely removed these subjects from the bargaining process and imposed new contribution requirements for public employee retirement benefits and, for certain employees, health insurance premium contributions. These actions, then, represent another significant change in employment-relations practice in Wisconsin. This chapter will discuss these changes.

The retirement funding changes under Act 10 relate to provisions that require most public employees to pay, out-of-pocket, a share of the required contributions needed to fund future retirement benefits. This discussion will focus primarily on the Wisconsin Retirement System (WRS), but, as explained in the text, the Act 10 changes also apply to the separate retirement systems of the City of Milwaukee and Milwaukee County. These retirement funding changes will be summarized before discussing the changes relating to health care contributions by certain employees.

Note that many of the WRS contribution modifications described below, as well as other changes affecting the WRS under Acts 10 and 32, are discussed in the Legislative Fiscal Bureau's informational paper entitled "Wisconsin Retirement System." That paper provides a detailed description of the structure, funding, and benefits of the WRS.

Retirement Contributions

The financing of the operation of the WRS is based on the funds generated from three distinct sources (employee contributions, employer contributions, and investment earnings). Together these revenues must be sufficient to meet all of the present and long-term future retirement benefit commitments of the system.

Retirement Contributions under Act 10

Under prior law, total WRS contributions were comprised of three components: (a) participant (active employee) contributions; (b) employer contributions; and (c) benefit adjustment contributions. [The benefit adjustment contribution, which was a separate employee-required contribution, was instituted under 1983 Wisconsin Act 141 to fund increases in retirement benefits of that act.] The contribution rates for these components, expressed as a percentage of earnings, also varied by the participant's employment classification. These classifications are: (a) gen-

Table 8: Prior-Law WRS Contributions in 2011

	General Participants	Executives and Elected Officials	Protective Occupation With Social Security	Protective Occupation Without Social Security
Employer-Required Contribution	5.1%	9.4%	8.9%	12.2%
Benefit Adjustment Contribution	1.5	0.0	0.0	0.0
Employee-Required Contribution	5.0	3.9	5.8	4.8
Total Contribution	11.6%	13.3%	14.7%	17.0%

eral employees; (b) elected officials and state executives; (c) protective occupation employees who receive social security coverage; and (d) protective occupation employees without social security, which includes only fire fighters employed by local governments. Table 8 shows the pre-Act 10 WRS contribution rates for 2011, by contribution component and the participant's employment classification.

In addition, under prior law, the statutes authorized, but did not require, WRS employers to pay, on behalf of the employee, all or a part of any employee-required contributions. Over time, state and local public employee groups had negotiated, or were provided, an employer "pickup" of some or all of the employee-required contributions.

These contribution pickups could vary by employer. Prior to the passage of Act 10, under the state's compensation plan for nonrepresented employees and the pickup provisions under collective bargaining agreements with represented state employees, the state payment for the employee-required retirement contributions equaled 5% of earnings. Under these provisions, the employee would be required to pay any required contribution amount above 5%. Therefore, state protective occupation employees covered under Social Security, with an employee-required contribution rate of 5.8% in 2011, were required to pay the 0.8% of earnings that was not paid by the state.

In addition, as shown in the table, the benefit adjustment contribution (BAC) prior to Act 10 applied to general employees only. In 2011, the BAC rate was 1.5% of gross salary. For state employees subject to the BAC, the state paid up to 1.3% of earnings. Therefore, general employees were required to contribute 0.2% of earnings to the WRS in 2011, prior to Act 10 becoming law.

In summary, under prior law, both the employer and employee components of the total contribution rate were specified on an annual basis and, in practice, WRS employers paid all or most of the employee share of the contributions.

Under Act 10, the prior-law authority for WRS employers (both the state and local employers) to pay all or part of the contributions required of participating employees was repealed, except as follows: contribution pickups by the employer may still be made if required in a collective bargaining agreement with represented local police, local fire fighters, state troopers, or state inspectors (termed public safety employees). As noted in Chapter 2, public safety employees retained collective bargaining rights, including the ability to bargain a pickup of the employee-required retirement contribution. Act 32 also retained these collective bargaining rights for emergency medical service providers and certain municipal transit workers.

Act 10 also provided that a WRS general participant and an elected official or state executive participant are required to make an employee contribution to the WRS in an amount equal to one-half of all actuarially-required contributions, as approved by the Employee Trust Funds (ETF) Board. In addition, WRS participants who are protective occupation employees (both those who

are and are not covered by social security) are required to contribute the same percentage of earnings paid by general participants. [However, if the protective occupation participant is defined as a public safety employee, an employer pickup of some or all of the employee-required contribution may be negotiated and authorized in a collective bargaining agreement.]

Further, Act 10 repealed: (a) the benefit adjustment contribution component of the WRS contribution rate; and (b) the authority of the ETF Board, on the advice of the actuary, to modify the various components of the contribution rate to reflect overall increases or decreases in the rate over time. Under prior law, the ETF Board and its consulting actuary could approve the overall contribution rates for the WRS. Additional statutory provisions specified how increases or decreases in the rates each year are to be allocated to the employer and employee components of the rates. These latter adjustment provisions were deleted from law under Act 10, but the ETF Board retains its authority to modify overall contribution rates each year.

Finally, Act 10 provided that, in the retirement systems operated by the City of Milwaukee and Milwaukee County, the City and County are not allowed to pay, on behalf of an employee, any of the employee's share of the actuarially required contributions, except as otherwise provided in a collective bargaining agreement entered into with represented local public safety employees. Also, the participants in these systems are required to pay one-half of all actuarially required contributions for funding benefits under these retirement systems. [With respect to the City, this contribution is termed "all employee required" contributions to utilize terminology more consistent with the provisions of the City of Milwaukee Retirement System.]

Retirement Contributions under Act 32

Several modifications to these new retirement contribution requirements were made in Act 32. These include: (a) the pre-tax treatment of the employee contributions; (b) requiring retirement contributions for public safety employees initially hired on or after July 1, 2011; and (c) the treatment of nonrepresented public safety employees. Each of these modifications is discussed below.

Pre-Tax Treatment of Employee Contributions. When Act 10 was passed by the Legislature, it was understood that the increased retirement contributions by state and local employees would be made from the employee's after-tax income, and that the employee's liability for FICA taxes and federal and state income taxes would not be impacted. It was subsequently learned that it would be possible for local governing bodies to implement the retirement contributions in a way that allows contributions to be made from the employee's pre-tax income for federal and state income tax purposes.

In response to this situation, the Legislature included in Act 32 the requirement that the employee-required contributions to the WRS required under Act 10 must be made by a reduction in salary and, for tax purposes, must be considered employer contributions under section 414(h)(2) of the Internal Revenue Code. Act 32 also provided that a participating employee may not elect to have employee-required retirement contributions paid directly to the employee or to make a cash or deferred election with respect to the contributions.

Under these provisions, the WRS employee-required contributions are required to be deducted from the salary of each employee (state and local) on a pre-tax basis. However, the definition of earnings for WRS benefit purposes includes the contributions made by a reduction in salary. These provisions first apply to WRS participating employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is extended, mod-

ified, or renewed, whichever occurs first.

In summary, the required state and local employee retirement contributions are made from the employee's pre-tax income for purposes of federal and state income taxes, but not for federal employment (FICA) taxes. The effect of the provision is to reduce the employee's taxable income and results in a loss of state income tax revenues. However, because the pre-tax reduction amount is still considered earnings for WRS purposes, eventual retirement benefits are not affected by the pre-tax treatment.

Newly Hired Public Safety Employees. Act 32 also included requiring retirement contributions to be paid by new public safety employees (those first hired on or after July 1, 2011). Under these provisions, a municipal employer of law enforcement and fire personnel under the Municipal Employment Relations Act is prohibited from paying, on behalf of any law enforcement or firefighting employee, the employee-required retirement contributions specified in Act 10, if that employee first becomes an employee of the municipality on or after July 1, 2011. Act 32 also provides that the state as the employer of state trooper and motor vehicle inspector personnel under the State Employment Labor Relations Act may not pay, on behalf of any such employee, the employee-required retirement contributions specified in Act 10, if that employee first becomes an employee on or after July 1, 2011.

In addition, if a collective bargaining unit contains a municipal public safety employee who is initially employed on or after July 1, 2011, the municipal employer may not bargain on the requirement that the municipal employer may not pay, on behalf of that public safety employee any employee-required retirement contributions or the employee share of required retirement contributions, and the impact of this requirement on the wages, hours, and conditions of employment of that public safety employee. Further, if a public safety employee is initially employed by a municipal employer before July 1, 2011, this provision does not apply to that employee if he or she is employed as a public safety employee by a successor municipal employer in the event of a combined department that is created on or after that date.

Similarly, for the state, if the collective bargaining unit contains a state trooper or motor vehicle inspector employee initially employed on or after July 1, 2011, the state may not bargain on the requirement that the employer may not pay, on behalf of that public safety employee, any employee-required retirement contributions or the employee share of required retirement contributions and the impact of this requirement on the wages, hours, and conditions of employment of that public safety employee.

Nonrepresented Public Safety Employees. While Act 32 disallowed an employer pickup of employee-required retirement contributions for new public safety employees, it also provided the pickup for certain nonrepresented public safety employees.

First, Act 32 provided that a municipal employer must pay, on behalf of a nonrepresented law enforcement or firefighting managerial employee who was initially employed by the municipal employer before July 1, 2011, the same retirement contributions that are paid by the municipal employer for represented law enforcement or firefighting personnel who were initially employed by the municipal employer before this date.

Second, a municipal employer is required to pay, on behalf of a represented law enforcement or firefighting employee who was initially employed by the municipal employer before July 1, 2011, and who on or after this date becomes employed in a nonrepresented law enforcement or firefighting managerial position with the same municipal employer, or a successor municipal employer in the event of a combined department

Table 9: Current-Law WRS Contributions in 2017

	General Participants	Executives and Elected Officials	Protective Occupation With Social Security	Protective Occupation Without Social Security
Employer-Required Contribution	6.8%	6.8%	10.6%	14.9%
Employee-Required Contribution	6.8	6.8	6.8	6.8
Total Contribution	13.6%	13.6%	17.4%	21.7%

that is created on or after July 1, 2011, the same retirement contributions that are paid by the employer for represented law enforcement or firefighting personnel who were initially employed by a municipal employer before this date.

These municipal provisions apply to municipal employers that participate in the WRS, as well as the City of Milwaukee and Milwaukee County.

For the state, Act 32 requires that the state pay, on behalf of a nonrepresented managerial employee who is a state trooper or a state motor vehicle inspector who was initially employed by the state before July 1, 2011, the same retirement contributions that are paid by the state for represented state trooper and inspector employees who were initially employed by the state before this date. The state is also required to pay, on behalf of a represented employee who is a state trooper or a state motor vehicle inspector who was initially employed by the state before July 1, 2011, and who, on or after this date, becomes employed as a nonrepresented managerial state trooper or a state motor vehicle inspector in a position on or after this date, the same retirement contributions that are paid by the employer for a represented state trooper or a state motor vehicle inspector employee initially employed by the state before this date.

With these changes, employers and employees generally share equally in the contribution costs of retirement benefits. With the exception of public safety employees (represented and nonrepresented) hired before July 1, 2011, public employees must now pay out-of-pocket their share of these contributions. For the WRS, the current-law contribution rates for 2017 are shown in Table 9.

It should be noted that Act 32 also made additional changes to certain features of the WRS, including a five-year vesting period for new employees, a higher eligibility requirement to participate in the WRS, and a change in the multiplier (an element in the calculation of certain retirement annuities) applicable to elected officials and state executive participants. These provisions are structural modifications of the WRS and are not subject to collective bargaining (and would not have been subject to collective bargaining under prior law). While not further described in this paper, these provisions are discussed in detail in the Legislative Fiscal Bureau's informational paper entitled "Wisconsin Retirement System."

Health Insurance Premium Contributions

With respect to health insurance premium contributions, the changes enacted under Acts 10 and 32 are limited to state employees and employees of local governmental units participating in a health insurance plan offered by the state's Group Insurance Board (GIB). It should be noted that, following the expiration of any collective bargaining agreements entered into prior to passage of Act 10, local government employers that do not participate in the GIB plan have great flexibility relating to health plan offerings and em-

ployee-required premium contributions applicable to non-public safety employees. The reason for this is that the features of health insurance coverage and cost sharing requirements are no longer subject to collective bargaining under the provisions of Act 10.

State employees and employees of public authorities created by the state receive health care coverage under plans offered by the GIB. To be eligible for coverage, an individual must be a participant in the WRS. The offered plans are assigned to one of three tiers depending on the cost efficiency of the plan, and employee contributions are scaled to encourage use of the most cost efficient plans (tier-1 plan).

Under prior law, the employer share of premium costs for employees who work more than 1,565 hours a year (75% time or greater) was required to be an amount not less than 80 percent of the average premium costs of tier-1 coverage plans. For employees working less than 1,566 hours per year, the statutes specified that the employer contribution was required to be 50% of the contribution provided for an employee working more than 1,565 hours per year. Under the compensation plan for nonrepresented state employees and the collective bargaining agreements with represented employees, the employer paid the difference between the total premium cost and the employee share of contributions. In practice, the state paid approximately 94% of the premium costs.

The monthly health insurance contributions made by most state employees in 2011 under prior law and under current law, are shown in Table 10. It should be noted that prior to the Act 10 provisions taking effect, some state employees paid health insurance contributions at different rates. Required rates for University teaching and graduate assistants were 50% of the rates shown in Table 10 for 2011. In addition, some represented state employees under certain collective bargaining agreements were paying somewhat lower contribution rates at this time, pending the expiration of the agreements.

The GIB also makes available a health insurance coverage program for local governments to utilize, if they choose to do so. Under prior law, the local government had to be a participating employer in the WRS to qualify for participation in the GIB health insurance coverage program. However, under 2011 Act 133, any municipal employer, including an employer that is not a participating employer in the WRS, may now participate in the GIB program.

As was the case with retirement contribution requirements, Acts 10 and 32 both made modifications to the prior law health insurance contribution provisions.

Health Insurance Contributions under Act 10

Act 10 repealed the prior law requirements relating to the amount that the employer (state) must pay for health insurance for its insured employees. [That is, an amount not less than 80 percent of the average premium costs of tier-1 coverage plans for employees working more than 1,565 hours per year and 50% of this amount for employees working less than 1,566 hours per year.]

Act 10 instead specifies that, except as otherwise provided in a collective bargaining agreement with represented public safety employees, the state must pay for its current insured employees, as follows: (a) for eligible employees who are not part-time employees or university teaching and graduate assistants, an amount not more than 88% of the average premium cost as established annually by the Administrator of the Division of Personnel Management (DPM); and (b) for insured part-time employees (other than University teaching and graduate assistants) who are appointed to work less than 1,566 hours per year, an amount determined annually by the DPM Administrator. For University teaching and grad-

uate assistants, Act 10 specifies that, the DPM Administrator must establish annually the amount that the employer is required to pay for teaching and graduate assistant health care coverage. [To date, University teaching and graduate assistants continue to pay 50% of rate applicable to full-time state employees.]

For local government employers that participate in a health insurance plan offered by the GIB, Act 10 provides that beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement with public safety employees, an employer may not offer the GIB health care coverage plan to its employees if the employer pays more than 88% of the average premium cost of tier-1 plans.

The treatment of these health insurance coverage contribution provisions first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

Health Insurance Contributions under Act 32

Act 32 modified the health insurance provision of Act 10 that applied to part-time employees. Act 32 provided that, for insured part-time employees (other than university teaching and graduate assistants) who are appointed to work less than 1,044 hours per year, employee health insurance contributions would be an amount determined annually by the DPM Administrator. As described above, the threshold was set at 1,566 hours in Act 10. The Act 32 change conformed the prior-law statutes and the statues as modified by Act 10 to the provisions of the state compensation plan for nonrepresented employees, which specified 1,044 hours.

As discussed above, with respect to retirement contributions, Act 32 made provisions to require that contributions from nonrepresented, managerial public safety employees are to conform to the contributions made by represented public safety employees. Analogous provisions are made under Act 32 with respect to health insurance contributions, as described below.

For municipal employers that participate in the GIB local employer health care coverage plans, Act 32 provides that the employer must pay, on behalf of a nonrepresented law enforcement or firefighting managerial employee who was initially employed by the municipal employer before July 1, 2011, the same premium percentage that is paid by the municipal employer for represented law enforcement or firefighting personnel who were initially employed by the municipal employer before this date.

Act 32 also requires that municipal employers that participate in the GIB program must pay, on behalf of a represented law enforcement or firefighting employee, who was initially employed by the municipal employer before July 1, 2011, and who on or after this date, became employed in a nonrepresented law enforcement or firefighting managerial position with the same municipal employer, or a successor municipal employer in the event of a combined department that is created on or after this date, the same premium percentage that is paid by the municipal employer for represented law enforcement or firefighting personnel who were initially employed by the municipal employer before this date.

Further, Act 32 requires the state to pay, on behalf of a nonrepresented managerial employee who is a state trooper or a state motor vehicle inspector initially employed by the state before July 1, 2011, the same health coverage premium contribution rates that are paid by the employer for represented state trooper and inspector employees who were initially employed by the state before this date.

Act 32 also clarifies that the DPM Administrator must annually establish the amount that employees are required to pay for health insur-

ance premiums under the Acts 10 and 32 provisions. Table 10 identifies the pre-Act 10 employee health insurance contribution rates (in 2011) and the rates for similar coverage applicable in 2017 for most state employees working more than 1,040 hours per year with tier-1 or tier-3 plan coverage. For 2017, there are no healthcare providers assigned to tier-2. The premiums for 2017 reflect medical coverage that includes dental benefits.

Table 10: State Employee Monthly Health Insurance Contribution Rates Under Prior Laws for 2011 and in 2017

	Prior Law (2011)		2017	
	Single	Family	Single	Family
Tier 1	$36	$89	$88	$219
Tier 2	79	198	N.A.	N.A.
Tier 3	188	471	266	664

As noted above, University teaching and graduate assistants pay 50% of these rates in 2017. Under the 2013-15 contract between the state and the Wisconsin Law Enforcement Association, state public safety employees (state troopers and motor vehicle inspectors, including their nonrepresented managerial employees), now pay the same health insurance premiums as other state employees identified in Table 10. Finally, part-time state employees who work less than 1,040 hours per year are required to contribute 50% of the total monthly health insurance premium.

One other significant change made in Act 32 was to the scope of collective bargaining for public safety employees. Under Act 32, a municipal employer under the Municipal Employment Relations Act (MERA) is prohibited from bargaining collectively with respect to the design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee. This provision first applies to an employee who is covered by a collective bargaining agreement under MERA when the collective bargaining agreement expires or is extended, modified, or renewed, whichever occurs first.

As noted above, local government employers that do not participate in the GIB plan have great flexibility relating to health plan offerings and employee-required premium contributions applicable to non-public safety employees (because these issues may no longer be collectively bargained). This Act 32 provision provides similar flexibility to municipal employers of public safety employees in the area of health insurance plan design and selection. However, this provision does not affect the ability of public safety employees to negotiate the employee premium contribution for the costs of health insurance coverage.

CHAPTER 5

2011 ACT 10 LITIGATION

The preceding descriptions of the modifications that were made in the 2011 legislative session to state labor law and certain employee benefits reflect the provisions of Acts 10 and 32 as enacted. However, there have been legal challenges to Act 10. This chapter will review the two major Act 10 cases. Some additional litigation relating to an Act 32 provision affecting public safety employee collective bargaining will also be noted.

To begin, Act 10 was enacted on March 11, 2011. Initially, the Circuit Court (Dane County) enjoined Act 10 from being published or implemented, finding that the act was adopted in violation of Wisconsin's open meetings law. On June 14, 2011, this injunction was lifted by the Wisconsin Supreme Court. Following this action, the act was published on June 28, 2011, and took effect on June 29, 2011.

The first case to be discussed is *Wisconsin Education Association et al. v. Scott Walker et al., 824 F. Supp. 2d 856 (2012).* The case was litigated in the United States District Court for the Western District of Wisconsin, with an opinion and order made by District Judge William M. Conley on March 30, 2012. The second case is *Madison Teachers, Inc., et al. v. Scott Walker et al., Case No. 11CV3774*. This is a Circuit Court, Branch 10 (Dane County) decision and order made by Circuit Court Judge Juan B. Colas on September 14, 2012.

Wisconsin Education Association v. Scott Walker. In this case, the plaintiffs (labor organizations) challenged Act 10 provisions relating to general employees, including: (a) the elimination of collective bargaining rights for general employees, except for base wage adjustments; (b) the elimination of mandatory dues and fair-share agreements, and the prohibition on the voluntary withholding of union dues from a general employee's paycheck; and (c) the requirement for annual recertification of collective bargaining unit representatives by an absolute majority of the general employee union membership (as opposed to a simple majority of those actually voting).

First, the District Judge ruled against the plaintiffs on the issue of limiting the collective bargaining rights of general employees, including the right to negotiate fair-share agreements. The District Court also concluded that, because there is a rational basis to its policy, the state may restrict collective bargaining rights to one classification (general employees) and allow full rights to another category (public safety employees).

Second, the ruling declared null and void the provisions of Act 10 relating to the prohibition on the deduction of labor organization dues from the earnings of general employees under MERA and SELRA. The District Court directed that the voluntary deduction of dues be resumed on or before May 31, 2012. In a subsequent clarification, on May 18, 2012, the District Court approved the form to authorize voluntary withholding of dues and to specify how the form may be made available.

Finally, the District Court declared null and void the provisions of Act 10 relating to the annual recertification of general employee collective bargaining unit representatives. Here the Court did not find a rational basis for the distinct treatment of the two classes of employees.

With respect to dues deductions and certification elections, the opinion states:

> The State, however, has not articulated, and the court is now satisfied cannot articulate, a rational basis for picking and choosing from among public unions, those (1) that must annually obtain an absolute majority of its voluntary members to remain in existence or (2) that are entitled to voluntary, assistance with fundraising by automatic deduction, at least not a rational basis that does not offend the First Amendment. So long as the State of Wisconsin continues to afford ordinary certification and dues deductions to mandatory public safety unions with sweeping bargaining rights, there is no rational basis to deny those rights to voluntary general unions with severely restricted bargaining rights.

The defendants (state) appealed the decision to the United States Court of Appeals Seventh Circuit (Chicago). On January 18, 2013, the United States Court of Appeals Seventh Circuit upheld Act 10 in its entirety.

Madison Teachers, Inc. v. Scott Walker. Again, the plaintiffs were labor organizations, in this case representing employees subject to MERA. The plaintiffs were seeking a declaratory judgment and injunctive relief on the following issues: (a) that Act 10 violated the Wisconsin Constitution's provision limiting the scope of special sessions of the Legislature; (b) that certain provisions of Acts 10 and 32 violate the plaintiffs' constitutional rights to free speech, association, and equal protection; and (c) that the application of retirement contribution requirements to the City of Milwaukee's retirement system violates the City's home rule authority, is an impairment of contracts, and deprives plaintiffs of property without due process.

The plaintiffs argued that the passage of Act 10 violated Article IV, Section 11 of the Constitution, which states "The legislature shall meet at the seat of government at such time as shall be provided by law, unless convened by the governor in special session, and when so convened no business shall be transacted except as shall be necessary to accomplish the special purposes for which it was convened." The Circuit Court concluded that the enactment of Act 10 did not violate this provision of the Constitution.

The plaintiffs also contended that certain provisions violate the plaintiffs' constitutional rights to free speech, association, and equal protection. These provisions included: (a) the requirement of municipalities, including school districts, to conduct a referendum to approve any general employee base wage increases exceeding the consumer price index (CPI) limitation imposed under Act 10; (b) the elimination of collective bargaining rights for general employees, except for base wage adjustments; (c) the elimination of mandatory dues and fair-share agreements, and the prohibition on the withholding of union dues from a general employee’s paycheck; and (d) the requirement for annual recertification of collective bargaining unit representatives by an absolute majority of the general employee union membership.

The Circuit Court granted summary judgment in favor of the plaintiffs with respect to the application of these provisions. In its order of September 14, 2012, the Circuit Court concluded that these provisions violate both the Wisconsin and United States Constitutions. The Court declared null and void the Act 10 provisions relating to: (a) the requirement to conduct referenda to approve any general employee base wage adjustments exceeding the CPI limitation; (b) the limitation of fair-share agreements to public safety and transit employees; (c) the prohibition on municipal employers to withhold labor organization dues from the earnings of general employees; (d) the limitation of collective bargaining rights for general employees to base wage adjustments only; and (e) the requirement to annually recertify general employee collective bargaining unit representatives. In a clarification of the ruling, dated October 10, 2012, the Circuit Court Judge also

declared the Act 10 provision specifying that a general employee has the right to refrain from paying labor organization dues while remaining a member of the collective bargaining unit unconstitutional.

Finally, under Act 10, for the City of Milwaukee retirement system, the employer (the City) is prohibited from paying an employee's required retirement contribution. Act 10 specified that the general employees in the City's system must pay all employee-required retirement contributions. The plaintiffs argued that this provision violates the City's home rule authority, impairs contracts, and deprives plaintiffs of property without due process.

The home rule provision, Article XI, Section 3(1) of the Wisconsin Constitution, provides "Cities and villages organized pursuant to state law may determine their local affairs and government, subject only to this constitution and to such enactments of the legislature of statewide concern as with uniformity shall affect every city or every village. The method of such determination shall be prescribed by the legislature."

The Circuit Court found the Act 10 provision affecting the City of Milwaukee retirement system to be a violation of the home rule provision of the Constitution. The provision was deemed null and void by the ruling. The Court also ruled in favor of the plaintiffs that the provision violates the contract clauses of the Constitution. However, the Court did not agree with the plaintiffs' contention that the provision deprives plaintiffs of property without due process.

The defendants (state) requested the Circuit Court Judge to stay his order pending an appeal of the decision. On October 22, 2012, the Judge denied the motion to stay the decision pending appeal.

The defendants (state) appealed the decision to the Wisconsin Court of Appeals. On April 25, 2013, the Wisconsin Court of Appeals certified the appeal of the September, 2012, declaratory judgment to the Supreme Court of Wisconsin. On June 14, 2013, the Supreme Court of Wisconsin accepted certification of the appeal. On July 31, 2014, the Supreme Court of Wisconsin upheld Act 10 in its entirety.

Design and Selection of Health Care Coverage Plans. Finally, it should be noted that several cases have been litigated in state Circuit Court relating to an Act 32 provision regarding the design and selection of health insurance coverage plans for public safety personnel. As noted in both Chapter 2 and Chapter 4, Act 32 provides that a municipal employer under the MERA is prohibited from bargaining collectively with respect to the design and selection of health care coverage plans by the municipal employer for public safety employees, and the impact of the design and selection of the health care coverage plans on the wages, hours, and conditions of employment of the public safety employee.

Because this provision does not define the terms "design" and "selection," several disputes have arisen in collective bargaining negotiations. Labor organizations representing public safety employees in at least three jurisdictions (Eau Claire County, Manitowoc County, and the City of Milwaukee) have brought suits in Circuit Court to address disputes on how the provision is to be interpreted.

While the decisions in these cases are specific to each municipality, the case law developed in these and other cases will, over time, inform public safety employee negotiations in other jurisdictions.

On April 16, 2013, in the City of Milwaukee case, the Wisconsin Court of Appeals found that 2011 Wisconsin Acts 10 and 32, precluded the City from bargaining collectively with respect to the financial impact of the design and selection of health care coverage plans on public safety em-

ployees. However, it should be noted that under 2013 Act 20, the Legislature modified the statutes to explicitly permit municipal employers to collectively bargain with a public safety employee collective bargaining unit regarding the employee premium contribution for health care coverage.