



State of Wisconsin
2011 - 2012 LEGISLATURE



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2011 ASSEMBLY BILL 127

May 10, 2011 – Introduced by Representative ZIEGELBAUER. Referred to Joint Committee on Finance.

1 **AN ACT** *to repeal* 111.70 (3) (a) 6., 111.70 (4) (jm) 5. b. and 111.77 (6) (e); *to*
2 *renumber* 111.70 (4) (p); *to renumber and amend* 111.77 (6) (intro.), (a), (b),
3 (c), (f), (g) and (h); *to consolidate, renumber and amend* 111.70 (4) (jm) 5.
4 (intro.) and a. and 111.77 (6) (d) (intro.), 1. and 2.; *to amend* 111.70 (1) (a),
5 111.70 (2), 111.70 (4) (jm) 2. and 111.77 (3); and *to create* 111.70 (1) (ck), 111.70
6 (1) (q), 111.70 (4) (jm) 4w., 111.70 (4) (jm) 5b., 111.70 (4) (mc) 5., 6., 7. and 8.,
7 111.70 (4) (p) 2., 111.77 (6) (am) and 111.77 (6) (cm) of the statutes; **relating to:**
8 payment by employers of contributions under the Wisconsin Retirement
9 System that are required of public safety employees, arbitration under the
10 Municipal Employment Relations Act, allowing municipal employers choice in
11 health care coverage plan providers and health savings accounts that cover

ASSEMBLY BILL 127

1 public safety employees, and prohibited and permissive subjects of collective
2 bargaining.

Analysis by the Legislative Reference Bureau

The Municipal Employment Relations Act (MERA) grants certain protective occupation participants under the Wisconsin Retirement System (public safety employees) the right to collectively bargain over wages, hours, and conditions of employment. There are three categories of collective bargaining subjects regarding collective bargaining units containing public safety employees. A mandatory subject of bargaining is one primarily related to wages, hours, and conditions of employment; the employer is required to bargain over this subject. A permissive subject of bargaining is one primarily related to the management and direction of the municipal employer; the employer is permitted, but is not required, to bargain over this subject. A prohibited subject of bargaining is one that would violate a law if the parties bargained over it; there may be no bargaining over a prohibited subject.

This bill creates a permissive subject of bargaining under MERA by providing that a municipal employer is not required to bargain over any decision whether or not to deduct union dues from the earnings of a public safety employee or over the impact of the decision on the wages, hours, or conditions of employment of the public safety employee.

The bill prohibits bargaining over all of the following, as well as the impact of each on the wages, hours, or conditions of employment of the public safety employee: 1) the decision to contract with any person who is not a municipal employee for the performance of services; 2) the decision to contract with any other municipal employer for the performance of services; 3) the decision to contract with any other municipal employer to consolidate services or units of government; or 4) the decision to permit individuals who perform services without payment of wages to perform services for the municipality that would otherwise be performed by municipal employees.

The bill prohibits bargaining over the selection of health care coverage plans by municipal employers for their public safety employees, including the option for the municipal employer to offer a health savings account that complies with federal law instead of, or in addition to, a health care coverage plan. The bill prohibits bargaining over the employer's share of premium costs for health care coverage under a plan or the employer's contribution to a health savings account, as long as the total employer share of premium costs is at least 75 percent of the total premium costs of a health care coverage plan or, if the plan includes a health savings account, at least 90 percent of the total premium cost. In addition, the bill prohibits bargaining over any requirement that the employer pay, on the behalf of a public safety employee, the first 5.8 percent of earnings that the employee is required to pay as contributions under the Wisconsin Retirement System.

Under MERA, if a dispute involving public safety employees that relates to the terms of a proposed collective bargaining agreement goes to arbitration, the

ASSEMBLY BILL 127

arbitrator must give weight to different factors, depending on whether the dispute involves members of a police department employed by a first class city or employees of a fire department or a city or county law enforcement agency. This bill requires that an arbitrator of a dispute relating to the terms of a proposed collective bargaining agreement between a municipal employer and a public safety employee must give greater weight to the following factors than the arbitrator gives to other factors: 1) the local economic conditions and the municipality's budget; 2) the probability that the proposal will require service cuts; 3) the ability of the proposal to limit fringe benefit increases to the cost-of-living increases; and 4) the ability of the proposal to reflect cost-of-living adjustments in the increases and decreases in wages and fringe benefits that are not prohibited or permissive subjects of collective bargaining (total compensation). In addition, this bill prohibits an arbitrator from giving any weight either to the total compensation given to employees of similar organizations in communities with different economic conditions and costs of living or to any reserve funds held by the municipality.

MERA does not currently limit collective bargaining agreements to any specific maximum expenditures or increases in expenditures. Under this bill, no final offer or position involving public safety employees that is submitted to the Wisconsin Employment Relations Commission for interest arbitration may proceed to arbitration if the offer or position requires the annual expenditure for total compensation per employee to be more than the amount spent in the previous year increased by more than 1 percent over the average annual percentage change of the consumer price index for the previous three years.

Because this bill relates to public employee retirement or pensions, it may be referred to the Joint Survey Committee on Retirement Systems for a report to be printed as an appendix to the bill.

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

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

1 **SECTION 1.** 111.70 (1) (a) of the statutes, as affected by 2011 Wisconsin Act 10,
2 is amended to read:

3 111.70 (1) (a) "Collective bargaining" means the performance of the mutual
4 obligation of a municipal employer, through its officers and agents, and the
5 representative of its municipal employees in a collective bargaining unit, to meet and
6 confer at reasonable times, in good faith, with the intention of reaching an
7 agreement, or to resolve questions arising under such an agreement, with respect to

ASSEMBLY BILL 127**SECTION 1**

1 wages, hours, and conditions of employment for public safety employees and with
2 respect to wages for general municipal employees, and with respect to a requirement
3 of the municipal employer for a municipal employee to perform law enforcement and
4 fire fighting services under s. 61.66, except as provided in sub. (4) (mb) ~~and~~, (mc), and
5 (p) and s. 40.81 (3) and except that a municipal employer shall not meet and confer
6 with respect to any proposal to diminish or abridge the rights guaranteed to any
7 public safety employees under ch. 164. Collective bargaining includes the reduction
8 of any agreement reached to a written and signed document.

9 **SECTION 2.** 111.70 (1) (ck) of the statutes is created to read:

10 111.70 (1) (ck) “Consumer price index average adjustment” means the average
11 annual percentage change in the consumer price index for all urban consumers, U.S.
12 city average, as determined by the bureau of labor statistics of the federal
13 department of labor, for the 3 years immediately preceding the current date.

14 **SECTION 3.** 111.70 (1) (q) of the statutes is created to read:

15 111.70 (1) (q) “Total compensation” means wages and fringe benefits and
16 excludes any item that is a permissive or prohibited subject of collective bargaining.

17 **SECTION 4.** 111.70 (2) of the statutes, as affected by 2011 Wisconsin Act 10, is
18 amended to read:

19 111.70 (2) RIGHTS OF MUNICIPAL EMPLOYEES. Municipal employees have the right
20 of self-organization, and the right to form, join, or assist labor organizations, to
21 bargain collectively through representatives of their own choosing, and to engage in
22 lawful, concerted activities for the purpose of collective bargaining or other mutual
23 aid or protection. Municipal employees have the right to refrain from any and all
24 such activities. A general municipal employee has the right to refrain from paying
25 dues while remaining a member of a collective bargaining unit. A public safety

ASSEMBLY BILL 127

1 employee, however, may be required to pay dues in the manner provided in a
2 fair-share agreement; subject to sub. (4) (p) 2., a fair-share agreement covering a
3 public safety employee ~~must~~ may contain a provision requiring the municipal
4 employer to deduct the amount of dues as certified by the labor organization from the
5 earnings of the public safety employee affected by the fair-share agreement and to
6 pay the amount deducted to the labor organization. A fair-share agreement covering
7 a public safety employee is subject to the right of the municipal employer or a labor
8 organization to petition the commission to conduct a referendum. Such petition must
9 be supported by proof that at least 30% of the public safety employees in the collective
10 bargaining unit desire that the fair-share agreement be terminated. Upon so
11 finding, the commission shall conduct a referendum. If the continuation of the
12 agreement is not supported by at least the majority of the eligible public safety
13 employees, it shall terminate. The commission shall declare any fair-share
14 agreement suspended upon such conditions and for such time as the commission
15 decides whenever it finds that the labor organization involved has refused on the
16 basis of race, color, sexual orientation, creed, or sex to receive as a member any public
17 safety employee of the municipal employer in the bargaining unit involved, and such
18 agreement is subject to this duty of the commission. Any of the parties to such
19 agreement or any public safety employee covered by the agreement may come before
20 the commission, as provided in s. 111.07, and ask the performance of this duty.

21 **SECTION 5.** 111.70 (3) (a) 6. of the statutes, as affected by 2011 Wisconsin Act
22 10, is repealed.

23 **SECTION 6.** 111.70 (4) (jm) 2. of the statutes is amended to read:

24 111.70 (4) (jm) 2. The commission shall conduct a hearing on the petition, and
25 upon a determination that the parties have reached an impasse on matters relating

ASSEMBLY BILL 127**SECTION 6**

1 to wages, hours and conditions of employment or other matters subject to arbitration
2 under subd. 4. on which there is no mutual agreement, the commission shall ensure
3 that neither party's position requires an expenditure for wages and fringe benefits
4 per employee in any year of the contract that exceeds the amount spent per employee
5 in the previous year by more than 1 percent over the consumer price index average
6 adjustment. If the commission determines that a party's position requires greater
7 expenditure, the commission shall require that party to revise its position before
8 submitting it again. Once both positions do not require greater expenditure, the
9 commission shall appoint an arbitrator to determine those terms of the agreement
10 on which there is no mutual agreement. The commission may appoint any person
11 it deems qualified, except that the arbitrator may not be a resident of the city which
12 is party to the dispute.

13 **SECTION 7.** 111.70 (4) (jm) 4w. of the statutes is created to read:

14 111.70 (4) (jm) 4w. In determining the proper compensation to be received by
15 members of the police department under subd. 4., the arbitrator shall give greater
16 weight to the following factors than to factors under subd. 5.:

17 a. The local economic conditions and the budget of the 1st class city, which may
18 include a comparison between the proposed total compensation of the municipal
19 employees and similar factors in the private sector in the 1st class city.

20 b. The probability that the proposal would require service cuts.

21 c. The ability of the proposal to limit any increase in fringe benefits since the
22 previous adjustment to any increase in the cost of living since the previous
23 adjustment.

ASSEMBLY BILL 127

1 d. The ability of the proposal to reflect any increase or decrease in the cost of
2 living since the previous adjustment in the increase or decrease of the total
3 compensation since the previous adjustment.

4 **SECTION 8.** 111.70 (4) (jm) 5. (intro.) and a. of the statutes are consolidated,
5 renumbered 111.70 (4) (jm) 5. and amended to read:

6 111.70 (4) (jm) 5. In determining the proper compensation to be received by
7 members of the police department under subd. 4., in addition to the factors under
8 subd. 4w., the arbitrator shall utilize: ~~a.~~ The ~~the~~ most recently published U.S.
9 bureau of labor statistics “Standards of Living Budgets for Urban Families,
10 Moderate and Higher Level”, as a guideline to determine the compensation
11 necessary for members to enjoy a standard of living commensurate with their needs,
12 abilities, and responsibilities; ~~and.~~

13 **SECTION 9.** 111.70 (4) (jm) 5. b. of the statutes is repealed.

14 **SECTION 10.** 111.70 (4) (jm) 5b. of the statutes is created to read:

15 111.70 (4) (jm) 5b. In determining the proper compensation to be received by
16 members of the police department under subd. 4., the arbitrator may not consider the
17 following factors:

18 a. The total compensation given to employees in municipalities other than the
19 1st class city that is subject to the arbitration decision.

20 b. Any reserve fund held by the 1st class city.

21 **SECTION 11.** 111.70 (4) (mc) 5., 6., 7. and 8. of the statutes are created to read:

22 111.70 (4) (mc) 5. Any requirement that the employer pay, on behalf of a public
23 safety employee, the first 5.8 percent of earnings that are required to be paid as
24 employee-required contributions under s. 40.05 (1) (a) 3. or 4., and the impact of this

ASSEMBLY BILL 127**SECTION 11**

1 requirement on the wages, hours, or conditions of employment of the public safety
2 employee.

3 6. a. The selection of a health care coverage plan, or the decision to offer a health
4 savings account under 26 USC 223 instead of, or in addition to, a health care coverage
5 plan, by the municipal employer for public safety employees as long as the municipal
6 employer, if offering only a health care coverage plan, offers to enroll the public safety
7 employees in a health care coverage plan that complies with the requirements under
8 s. 40.51 (8) for health care coverage plans offered by the state.

9 b. If the municipal employer offers only a health care coverage plan, the
10 determination by the municipal employer of the municipal employer's share of the
11 premium costs for health care coverage under the plan if the municipal employer
12 contributes at least 75 percent of the total cost of the coverage. If the municipal
13 employer offers a health savings account under 26 USC 223 instead of, or in addition
14 to, a health care coverage plan, the determination by the municipal employer of the
15 municipal employer's share of premium costs for health care coverage under the plan
16 and the amount contributed by the municipal employer to the health savings account
17 if the municipal employer contributes at least 90 percent of the total cost of the
18 coverage.

19 c. The impact of the health care coverage plan or health savings account under
20 26 USC 223 and the impact of the determination of the municipal employer's and the
21 public safety employee's shares of premium costs or health savings account
22 contributions on the wages, hours, or conditions of employment of the public safety
23 employee.

24 7. The municipal employer's decision to permit individuals who perform
25 services without payment of wages to perform services for the municipality that

ASSEMBLY BILL 127

1 would otherwise be performed by public safety employees, or the impact of any such
2 decision on the wages, hours, or conditions of employment of the public safety
3 employees.

4 8. The municipal employer's decision to contract with any person who is not a
5 public safety employee for the performance of municipal services, to contract with
6 any other municipal employer for the performance of municipal services, or to
7 contract with any other municipal employer to consolidate municipal services or
8 units of government, or the impact of any such decision on the wages, hours, or
9 conditions of employment of the public safety employees.

10 **SECTION 12.** 111.70 (4) (p) of the statutes, as affected by 2011 Wisconsin Act 10,
11 section 210, is renumbered 111.70 (4) (p) 1.

12 **SECTION 13.** 111.70 (4) (p) 2. of the statutes is created to read:

13 111.70 (4) (p) 2. A municipal employer is not required to bargain collectively
14 with a public safety employee a decision as to whether the employer will deduct labor
15 organization dues from the earnings of a public safety employee or the impact of the
16 decision on the wages, hours, or conditions of employment of its public safety
17 employees.

18 **SECTION 14.** 111.77 (3) of the statutes is amended to read:

19 111.77 (3) Where the parties have no procedures for disposition of a dispute and
20 an impasse has been reached, either party may petition the commission to initiate
21 compulsory, final and binding arbitration of the dispute. If in determining whether
22 an impasse has been reached the commission finds that any of the procedures set
23 forth in sub. (1) have not been complied with and that compliance would tend to
24 result in a settlement, it may require such compliance as a prerequisite to ordering
25 arbitration. If after such procedures have been complied with or the commission has

ASSEMBLY BILL 127**SECTION 14**

1 determined that compliance would not be productive of a settlement and the
2 commission determines that an impasse has been reached, it the commission shall
3 ensure that neither party's position requires an expenditure for total compensation
4 per employee in any year of the contract that exceeds the amount spent per employee
5 in the previous year by more than 1 percent over the consumer price index average
6 adjustment. If the commission determines that a party's position requires greater
7 expenditure, the commission shall require that party to revise its position before
8 submitting it again. Once both positions do not require greater expenditure, the
9 commission shall issue an order requiring arbitration. The commission shall in
10 connection with the order for arbitration submit a panel of 5 arbitrators from which
11 the parties may alternately strike names until a single name is left, who shall be
12 appointed by the commission as arbitrator, whose expenses shall be shared equally
13 between the parties. Arbitration proceedings under this section shall not be
14 interrupted or terminated by reason of any prohibited practice charge filed by either
15 party at any time.

16 **SECTION 15.** 111.77 (6) (intro.), (a), (b), (c), (f), (g) and (h) of the statutes are
17 renumbered 111.77 (6) (bm) (intro.), 1., 2., 3., 6., 7. and 8., and 111.77 (6) (bm) (intro.),
18 as renumbered, is amended to read:

19 111.77 (6) (bm) (intro.) In reaching a decision, in addition to the factors under
20 par. (am), the arbitrator shall give weight to the following factors:

21 **SECTION 16.** 111.77 (6) (am) of the statutes is created to read:

22 111.77 (6) (am) In reaching a decision, the arbitrator shall give greater weight
23 to the following factors than to the factors under par. (bm):

ASSEMBLY BILL 127

1 1. The local economic conditions and the budget of the municipality, which may
2 include a comparison between the proposed total compensation of the municipal
3 employees and similar factors in the private sector in the municipality.

4 2. The probability that the proposal would require service cuts.

5 3. The ability of the proposal to limit any increase in fringe benefits since the
6 previous adjustment to any increase in the cost of living since the previous
7 adjustment.

8 4. The ability of the proposal to reflect any increase or decrease in the cost of
9 living since the previous adjustment in the increase or decrease of total
10 compensation since the previous adjustment.

11 **SECTION 17.** 111.77 (6) (cm) of the statutes is created to read:

12 111.77 **(6)** (cm) In reaching a decision, the arbitrator may not give any weight
13 to any of the following factors:

14 1. The total compensation given to employees in municipalities other than the
15 municipality that is subject to the arbitration decision.

16 2. Any reserve fund held by a municipality.

17 **SECTION 18.** 111.77 (6) (d) (intro.), 1. and 2. of the statutes are consolidated,
18 renumbered 111.77 (6) (bm) 4. and amended to read:

19 111.77 **(6)** (bm) 4. Comparison of the ~~wages, hours and conditions of~~
20 ~~employment~~ total compensation of the employees involved in the arbitration
21 proceeding with the ~~wages, hours and conditions of employment~~ total compensation
22 of other employees performing similar services and with other employees generally:
23 ~~1. In in public employment in comparable communities. 2. In and with similar~~
24 ~~factors of private employment in comparable communities~~ the same community.

25 **SECTION 19.** 111.77 (6) (e) of the statutes is repealed.

ASSEMBLY BILL 127

1 **SECTION 20. Initial applicability.**

2 (1) This act first applies to employees who are covered by a collective bargaining
3 agreement under subchapter IV of chapter 111 of the statutes that contains
4 provisions inconsistent with those sections on the day on which the agreement
5 expires or is terminated, extended, modified, or renewed, whichever occurs first.

6 (END)