

1985 Assembly Bill 629

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## 1985 Wisconsin Act 318

AN ACT to repeal 111.70 (4) (c) 4. b and 111.70 (7) (b) 2; to renumber 111.70 (4) (cm) 7. e, 111.70 (4) (cm) 7. f, 111.70 (4) (cm) 7. g and h and 111.71 (3); to renumber and amend 111.70 (4) (c) 4. a and 111.70 (7) (b) 1; to amend 111.70 (4) (cm) 6 and 7. (intro.) and d, 111.70 (4) (cm) 8 and 9 and 111.70 (7m) (b); and to create 15.587, 20.425 (1) (h), 111.70 (4) (cm) 7. e, 111.70 (4) (cm) 7. f, 111.70 (4) (cm) 8m and 111.71 (3) to (5) of the statutes; and to affect laws of 1977, chapter 178, section 17 (1) (a); and laws of 1977, chapter 178, section 17 (1) (b), relating to miscellaneous changes in collective bargaining impasse resolution procedures for local government employees other than law enforcement and fire fighting personnel, eliminating the expiration date for these procedures, providing for a study, creating a council on municipal collective bargaining and making an appropriation.

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

SECTION 1. 15.587 of the statutes is created to read:

**15.587 Same; councils.** (1) COUNCIL ON MUNICIPAL COLLECTIVE BARGAINING. There is created in the employment relations commission a council on municipal collective bargaining. The council shall consist of the chairperson of the commission, who shall serve as the nonvoting chairperson of the council, and 5 representatives of municipal employers and 5 representatives of municipal employees bargaining under subch. IV of ch. 111. The municipal employer representatives shall be appointed by the largest state-

wide organizations representing counties, school boards and municipalities, as determined by the commission. The municipal employe representatives shall be appointed by the commission, with the advice of statewide organizations representing municipal employees.

SECTION 1m. 20.425 (1) (h) of the statutes is created to read:

20.425 (1) (h) *Arbitration training.* All moneys received from arbitrators and arbitration panel members, and individuals who are interested in serving in such positions, for the cost of training programs under s. 111. 71 (5).

SECTION 2. 111.70 (4) (c) 4. a of the statutes, as affected by 1985 Wisconsin Act 29, is renumbered 111.70 (4) (c) 4 and amended to read:

111.70 (4) (c) 4. (title) 'Applicability.' ~~Subdivisions 1 to 3 apply~~ This paragraph applies only to municipal employes who are engaged in law enforcement or fire fighting service from January 1, 1978, until July 1, 1991; but after July 1, 1991, apply to all municipal employes, except as provided in subd. 4. b, s. 111.77 (9) or as otherwise expressly provided.

SECTION 3. 111.70 (4) (c) 4. b of the statutes, as created by 1985 Wisconsin Act 29, is repealed.

SECTION 4. 111.70 (4) (cm) 6 and 7. (intro.) and d of the statutes are amended to read:

111.70 (4) (cm) 6. (title) 'Interest arbitration.' If a dispute has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3 and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate ~~mediation-arbitration compulsory, final and binding arbitration~~, as provided in this ~~section~~ paragraph. At the time the petition is filed, the petitioning party shall submit in writing to the other party and the commission its preliminary final offer containing its latest proposals on all issues in dispute. Within 14 calendar days of the date of that submission, the other party shall submit in writing its preliminary final offer on all disputed issues to the petitioning party and the commission. If a petition is filed jointly, both parties shall exchange their preliminary final offers in writing and submit copies to the commission at the time the petition is filed.

a. Upon receipt of a petition to initiate ~~mediation-arbitration arbitration~~, the commission shall make an investigation, with or without a formal hearing, to determine whether ~~mediation-arbitration arbitration~~ should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering ~~mediation-arbitration arbitration~~. The validity of any arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing its single final offer containing its final proposals on all issues in dispute to the commission. Such final offers may include only mandatory subjects of bargaining. ~~Permissive subjects, except that a permissive subject of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation,~~

in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that ~~mediation-arbitration arbitration~~ should be commenced, shall issue an order requiring ~~mediation-arbitration arbitration~~ and immediately submit to the parties a list of ~~5 mediator-arbitrators~~ 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as ~~mediator-arbitrator arbitrator~~. The petitioning party shall notify the commission in writing of the identity of the ~~mediator-arbitrator arbitrator~~ selected. Upon receipt of such notice, the commission shall formally appoint the ~~mediator-arbitrator arbitrator~~ and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single ~~mediator-arbitrator arbitrator~~ and upon request of both parties, the commission shall appoint a tripartite ~~mediation-arbitration arbitration~~ panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. ~~A mediation-arbitration~~ An arbitration panel has the same powers and duties as provided in this section for any other appointed mediator-arbitrator arbitrator, and all arbitration decisions by such panel shall be determined by majority vote. In lieu of selection of the arbitrator by the parties and upon request of both parties, the commission shall establish a procedure for randomly selecting names of arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators to the parties. Each party shall strike one name from the list. From the remaining 5 names, the commission shall randomly appoint an arbitrator. Unless both parties to an arbitration proceeding otherwise agree in writing, every individual whose name is submitted by the commission for appointment as an arbitrator shall be a resident of this state at the time of submission and every individual who is designated as an arbitration panel chairperson shall be a resident of this state at the time of designation.

b. The ~~mediator-arbitrator arbitrator~~ shall, within 10 days of his or her appointment, establish ~~dates and places a date and place~~ for the conduct of ~~mediation-arbitration sessions~~ the arbitration hearing. Upon petition of at least 5 citizens of the jurisdiction served by the municipal employer, filed within 10 days of the date on which the ~~mediator-arbitrator arbitrator~~ is appointed, the arbitrator shall hold a public hearing in the jurisdiction for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their positions and to members of the public to offer their comments and suggestions. The final offers of the parties, as transmitted by the commission to the ~~mediator-arbitrator arbitrator~~, shall serve as the ~~initial~~ basis for ~~mediation and con-~~

tinued negotiations, ~~if any,~~ between the parties with respect to the issues in dispute. ~~During such time, the mediator-arbitrator, and upon his or her request the commission or its designee, shall endeavor to mediate the dispute and encourage a voluntary settlement by the parties. During such period of mediation and continued negotiations~~ At any time prior to the arbitration hearing, either party, with the consent of the other party, may modify its final offer in writing.

c. ~~If the parties have failed to reach a voluntary settlement after a reasonable period for mediation as determined by the mediator-arbitrator, the mediator-arbitrator shall provide written notification to the parties and the commission of his or her intent to resolve the dispute by final and binding arbitration. Thereafter~~ Prior to the arbitration hearing, either party may, within a time limit established by the ~~mediator-arbitrator~~ arbitrator, withdraw its final offer and mutually agreed upon modifications thereof, if any, and shall immediately provide written notice of such withdrawal to the other party, the ~~mediator-arbitrator~~ arbitrator and the commission. If both parties withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' written advance notice to the municipal employer and the commission, may strike. Unless both parties withdraw their final offers and mutually agreed upon modifications, the final offer of neither party shall be deemed withdrawn and the ~~mediator-arbitrator~~ arbitrator shall proceed to resolve the dispute by final and binding arbitration as provided in this paragraph.

d. Before issuing his or her arbitration decision, the ~~mediator-arbitrator acting as~~ arbitrator shall, on his or her own motion or at the request of either party, conduct a meeting open to the public for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their complete offer on all matters to be covered by the proposed agreement. The ~~mediator-arbitrator acting as~~ arbitrator shall adopt without further modification the final offer of one of the parties on all disputed issues submitted under subd. 6. a, except those items that the commission determines not to be mandatory subjects of bargaining and those items which have not been treated as mandatory subjects by the parties, and including any prior modifications of such offer mutually agreed upon by the parties under subd. 6. b, which decision shall be final and binding on both parties and shall be incorporated into a written collective bargaining agreement. The ~~mediator-arbitrator acting as~~ arbitrator shall serve a copy of his or her decision on both parties and the commission.

e. ~~Mediation-arbitration~~ Arbitration proceedings shall not be interrupted or terminated by reason of any prohibited practice complaint filed by either party at any time.

f. The costs of ~~mediation-arbitration~~ arbitration shall be divided equally between the parties. The ~~mediator-arbitrator~~ arbitrator shall submit a state-

ment of his or her costs to both parties and to the commission.

g. If a question arises as to whether any proposal made in negotiations by either party is a mandatory, permissive or prohibited subject of bargaining, the commission shall determine the issue pursuant to par. (b). If either party to the dispute petitions the commission for a declaratory ruling under par. (b), the proceedings under subd. 6. c and d shall be delayed until the commission renders a decision in the matter, but not during any appeal of the commission order. The ~~mediator-arbitrator's~~ arbitrator's award shall be made in accordance with the commission's ruling, subject to automatic amendment by any subsequent court reversal thereof.

7. Factors considered. (intro.) In making any decision under the arbitration procedures authorized by this ~~subsection~~ paragraph, the ~~mediator-arbitrator~~ arbitrator shall give weight to the following factors:

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services ~~and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.~~

SECTION 5. 111.70 (4) (cm) 7. e of the statutes is renumbered 111.70 (4) (cm) 7. g.

SECTION 6. 111.70 (4) (cm) 7. e of the statutes is created to read:

111.70 (4) (cm) 7. e. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

SECTION 7. 111.70 (4) (cm) 7. f of the statutes is renumbered 111.70 (4) (cm) 7. h.

SECTION 8. 111.70 (4) (cm) 7. f of the statutes is created to read:

111.70 (4) (cm) 7. f. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

SECTION 9. 111.70 (4) (cm) 7. g and h of the statutes are renumbered 111.70 (4) (cm) 7. i and j.

SECTION 10. 111.70 (4) (cm) 8 and 9 of the statutes are amended to read:

111.70 (4) (cm) 8. Rule-making. The commission shall adopt rules for the conduct of all ~~mediation-arbitration~~ arbitration proceedings under subd. 6, including, but not limited to, rules for ~~the~~

a. ~~The appointment of tripartite mediation-arbitration arbitration panels when requested by the parties; the.~~

b. ~~The expeditious rendering of arbitration decisions, such as waivers of briefs and transcripts, and proceedings.~~

c. ~~The removal of individuals who have repeatedly failed to issue timely decisions from the commission's list of qualified arbitrators.~~

d. ~~Proceedings for the enforcement of arbitration decisions of the mediator-arbitrator. Chapter 788 does not apply to such arbitration proceedings.~~

9. Application. a. ~~Chapter 788 does not apply to arbitration proceedings under this paragraph.~~

b. ~~This paragraph does not apply to labor disputes involving law enforcement and fire fighting personnel.~~

SECTION 10m. 111.70 (4) (cm) 8m of the statutes is created to read:

111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for the initial collective bargaining agreement between the parties and except as the parties otherwise agree, collective bargaining agreements covering municipal employees subject to this paragraph shall be for a term of 2 years. No collective bargaining agreement shall be for a term exceeding 3 years. No arbitration award may contain a provision for reopening of negotiations during the term of a collective bargaining agreement, unless both parties agree to such a provision. The requirement for agreement by both parties does not apply to a provision for reopening of negotiations with respect to any portion of an agreement that is declared invalid by a court or administrative agency or rendered invalid by the enactment of a law or promulgation of a federal regulation.

SECTION 11. 111.70 (7) (b) 1 of the statutes, as affected by 1985 Wisconsin Act 29, is renumbered 111.70 (7) (b) and amended to read:

111.70 (7) (b) ~~Paragraph (a) This subsection applies only to municipal employees who are engaged in law enforcement or fire fighting service from January 1, 1978, until July 1, 1991; but after July 1, 1991, applies to all municipal employees, except as provided in subd. 2 or as otherwise expressly provided.~~

SECTION 12. 111.70 (7) (b) 2 of the statutes, as created by 1985 Wisconsin Act 29, is repealed.

SECTION 13. 111.70 (7m) (b) of the statutes is amended to read:

111.70 (7m) (b) *Injunction; threat to public health or safety.* At any time after a labor organization gives advance notice of a strike under sub. (4) (cm) which is expressly authorized under sub. (4) (cm), the municipal employer or any citizen directly affected by such strike may petition the circuit court to enjoin the strike. If the court finds that the strike poses an imminent threat to the public health or safety, the court shall, within 48 hours of the receipt of the petition but after notice to the parties and after holding a hearing,

issue an order immediately enjoining the strike, and in addition shall order the parties to submit a new final offer on all disputed issues to the commission for final and binding arbitration as provided in sub. (4) (cm). The commission, upon receipt of the final offers of the parties, shall transmit them to the ~~mediator-arbitrator who is acting as~~ arbitrator or a successor designated by the commission. ~~The mediator-arbitrator acting as~~ arbitrator shall omit preliminary steps and shall commence immediately to arbitrate the dispute.

SECTION 14. 111.71 (3) of the statutes is renumbered 111.71 (6).

SECTION 15. 111.71 (3) to (5) of the statutes are created to read:

111.71 (3) The council on municipal collective bargaining shall provide advice to the commission on the operation of this subchapter and may make recommendations relating to the law. The commission may refer to the council for its study and advice any matter having to do with the collective bargaining between municipal employers and municipal employees under this subchapter.

(4) The commission shall collect on a systematic basis information on the operation of the arbitration law under s. 111.70 (4) (cm). The commission shall report on the operation of the law to the legislature on an annual basis. The report shall be submitted to the chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

(5) The commission shall, on a regular basis, provide training programs to prepare individuals for service as arbitrators or arbitration panel members under s. 111.70 (4) (cm). The commission shall engage in appropriate promotional and recruitment efforts to encourage participation in the training programs by individuals throughout the state, including at least 10 residents of each congressional district. The commission may charge a reasonable fee for participation in the programs.

SECTION 15v. Laws of 1977, chapter 178, section 17 (1) (a), as last affected by 1985 Wisconsin Act 29, is renumbered section 17 (1) and amended to read:

(Laws of 1977, chapter 178) Section 17 (1) Section 111.70 (1) (nm), (3) (a) 7 and (b) 6, (4) (cm) and (7m) of the statutes, as created by this act, shall be in effect from January 1, 1978, until July 1, 1991, and after that date are void, ~~except as provided in paragraph (b) and except that any collective bargaining negotiations and any petition, action or proceeding in respect to such negotiations pending on July 1, 1991, shall continue to be subject to such provisions, until finally settled between the parties or adjudicated by arbitration, the employment relations commission or a court of competent jurisdiction shall continue in effect.~~

SECTION 15w. Laws of 1977, chapter 178, section 17 (1) (b), as created by 1985 Wisconsin Act 29, is repealed.

SECTION 16. **Nonstatutory provisions; collective bargaining study.** The employment relations commis-

sion shall conduct or contract for a comprehensive evaluation of the arbitration law under section 111.70 (4) (cm) of the statutes to determine its effect on collective bargaining in the state. The evaluation shall include a review of the operation of the law and its administration by the commission, including an economic analysis, the role of arbitrators, relevant court and commission decisions and the impact of the law on work stoppages. The commission shall make a

report on the results of the evaluation to the legislature by March 1, 1991.

**SECTION 18. Initial applicability.** The impasse resolution procedures set forth in section 111.70 (4) (cm) 6 of the statutes, as affected by this act, apply to negotiations commencing on or after the effective date of this SECTION.

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