1999 SENATE BILL 166

May 20, 1999 – Introduced by Senators SHIBILSKI, ERPENBACH, CLAUSING, MOORE, RISSER, BRESKE, GEORGE, DECKER, MOEN, BAUMGART and JAUCH, cosponsored by Representatives WOOD, SINICKI, REYNOLDS, MILLER, BALOW, COLON, BERCEAU, BOCK, RYBA, YOUNG, BLACK, PLOUFF, J. LEHMAN, RICHARDS, BOYLE, LASSA, SCHNEIDER, WASSERMAN, LA FAVE, TRAVIS and MEYERHOFER. Referred to Committee on Labor.

AN ACT ***to repeal*** 111.70 (1) (dm), 111.70 (1) (fm), 111.70 (1) (nc), 111.70 (4) (cm) 5s., 111.70 (4) (cm) 7., 111.70 (4) (cm) 7g., 111.70 (4) (cm) 8m. b., 111.70 (4) (cm) 8p. and 111.70 (4) (cn); ***to renumber and amend*** 111.70 (4) (cm) 7r.; ***to consolidate, renumber and amend*** 111.70 (4) (cm) 8m. a. and c.; and ***to amend*** 111.70 (1) (b), 111.70 (4) (cm) 5., 111.70 (4) (cm) 6. a., 111.70 (4) (cm) 6. am., 111.70 (4) (cm) 8s. and 111.70 (4) (d) 2. a. of the statutes; **relating to:** dispute settlement procedures in local government employment other than law enforcement and fire fighting employment.

Analysis by the Legislative Reference Bureau

This bill does all of the following:

1. Under current law, in local government employment other than law enforcement and fire fighting employment, if a dispute relating to the terms of a proposed collective bargaining agreement has not been settled after a reasonable period of negotiation and after mediation by the Wisconsin employment relations commission (WERC), either party, or the parties jointly, may petition WERC to initiate compulsory, final and binding arbitration with respect to any dispute relating to wages, hours and conditions of employment. If WERC determines, after investigation, that an impasse exists and that arbitration is required, WERC must

submit to the parties a list of seven arbitrators, from which the parties alternately strike names until one arbitrator is left. As an alternative to a single arbitrator, WERC may provide for an arbitration panel that consists of one person selected by each party and one person selected by WERC. As a further alternative, WERC may also provide a process that allows for a random selection of a single arbitrator from a list of seven names submitted by WERC. Under current law, an arbitrator or arbitration panel must adopt the final offer of one of the parties on all disputed issues, which is then incorporated into the collective bargaining agreement.

Under current law, however, this process does not apply to a dispute over economic issues involving a collective bargaining unit consisting of school district professional employes if WERC determines, subsequent to an investigation, that the employer has submitted a qualified economic offer (QEO). Under current law, a QEO consists of a proposal to maintain the percentage contribution by the employer to the employes' existing fringe benefit costs and the employes' existing fringe benefits and to provide for an annual average salary increase having a cost to the employer at least equal to 2.1% of the existing total compensation and fringe benefit costs for the employes in the collective bargaining unit plus any fringe benefit savings. Fringe benefit savings is that amount, if any, by which 1.7% of the total compensation and fringe benefit costs for all municipal employes in a collective bargaining unit for any 12–month period covered by a proposed collective bargaining agreement exceeds the increased cost required to maintain the percentage contribution by the municipal employer to the municipal employes' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employes.

This bill eliminates the qualified economic offer exception from the compulsory, final and binding arbitration process.

2. Current law provides that in reaching a decision, the arbitrator or arbitration panel must give weight to many factors, including the lawful authority of the municipal employer, the stipulations of the parties, the interest and welfare of the public and the financial ability of the unit of government to meet the costs of the proposed agreement, comparison of wages, hours and conditions of employment with those of other public and private sector employes, the cost of living, the overall compensation and benefits that the employes currently receive and other similar factors. But, under current law, the arbitrator is required to give greater weight to economic conditions in the jurisdiction of the employer and the greatest weight to any state law or directive that places expenditure or revenue limitations on an employer.

This bill eliminates the authorization for the arbitrator or arbitration panel to give any weight to economic conditions in the jurisdiction of the employer or to any state law or directive that places expenditure or revenue limitations on an employer.

3. Under current law, every collective bargaining agreement covering school district professional employes must expire on June 30 of the odd–numbered years. For all other local government employes, the term of a collective bargaining agreement must be two years, except for an initial agreement and except as the parties otherwise agree, and in no case may exceed three years. This bill treats the terms of collective bargaining agreements for school district professional employes the same as those of other local government employes.

4. Finally, under current law, school district professional employes are required to be placed in a collective bargaining unit that is separate from the units of other school district employes. This bill eliminates this requirement.

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:

SECTION 1. 111.70 (1) (b) of the statutes is amended to read:

111.70 **(1)** (b) "Collective bargaining unit" means a unit ~~consisting of municipal employes who are school district professional employes or of municipal employes who are not school district professional employes~~ that is determined by the commission to be appropriate for the purpose of collective bargaining.

SECTION 2. 111.70 (1) (dm) of the statutes is repealed.

SECTION 3. 111.70 (1) (fm) of the statutes is repealed.

SECTION 4. 111.70 (1) (nc) of the statutes is repealed.

SECTION 5. 111.70 (4) (cm) 5. of the statutes is amended to read:

111.70 **(4)** (cm) 5. 'Voluntary impasse resolution procedures.' In addition to the other impasse resolution procedures provided in this paragraph, a municipal employer and labor organization may at any time, as a permissive subject of bargaining, agree in writing to a dispute settlement procedure, including authorization for a strike by municipal employes or binding interest arbitration, which is acceptable to the parties for resolving an impasse over terms of any collective bargaining agreement under this subchapter. A copy of such agreement shall be filed by the parties with the commission. If the parties agree to any form of binding interest arbitration, the arbitrator shall give weight to the factors enumerated under ~~subds.~~ subd. 7.~~, 7g. and 7r.~~

SECTION 6. 111.70 (4) (cm) 5s. of the statutes is repealed.

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

111.70 **(4)** (cm) 6. a. If in any collective bargaining unit a dispute ~~relating to one or more issues, qualifying for interest arbitration under subd. 5s. in a collective bargaining unit to which subd. 5s. applies,~~ 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 compulsory, final and binding arbitration, as provided in this 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 after 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.

SECTION 8. 111.70 (4) (cm) 6. am. of the statutes is amended to read:

111.70 **(4)** (cm) 6. am. Upon receipt of a petition to initiate arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether 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 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 to the commission its single final offer containing its final proposals on all issues in dispute that are subject to interest arbitration under this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s. applies~~. If a party fails to submit a single, ultimate final offer, the commission shall close the investigation based on the last written position of the party. ~~The municipal employer may not submit a qualified economic offer under subd. 5s. after the close of the investigation.~~ Such final offers may include only mandatory subjects of bargaining, 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 arbitration should be commenced, shall issue an order requiring arbitration and immediately submit to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as arbitrator. The petitioning party shall notify the commission in writing of the identity of the arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the 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 arbitrator and upon request of both parties, the commission shall appoint a tripartite 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. An arbitration panel has the same powers and duties as provided in this section for any other appointed 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.

SECTION 9. 111.70 (4) (cm) 7. of the statutes is repealed.

SECTION 10. 111.70 (4) (cm) 7g. of the statutes is repealed.

SECTION 11. 111.70 (4) (cm) 7r. of the statutes is renumbered 111.70 (4) (cm) 7., and 111.70 (4) (cm) 7. (intro.), as renumbered, is amended to read:

111.70 **(4)** (cm) 7. (title) '~~Other factors~~ Factors considered.' (intro.) In making any decision under the arbitration procedures authorized by this paragraph, the arbitrator or arbitration panel shall ~~also~~ give weight to the following factors:

SECTION 12. 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated, renumbered 111.70 (4) (cm) 8m. and amended 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, every collective bargaining agreement covering municipal

employes subject to this paragraph ~~other than school district professional employes~~ shall be for a term of 2 years~~. No~~, but in no case may a collective bargaining agreement for any collective bargaining unit consisting of municipal employes ~~subject to this paragraph other than school district professional employes shall~~ be for a term exceeding 3 years. ~~c.~~ 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 13. 111.70 (4) (cm) 8m. b. of the statutes is repealed.

SECTION 14. 111.70 (4) (cm) 8p. of the statutes is repealed.

SECTION 15. 111.70 (4) (cm) 8s. of the statutes is amended to read:

111.70 **(4)** (cm) 8s. 'Forms for determining costs.' The commission shall prescribe forms for calculating the total increased cost to the municipal employer of compensation and fringe benefits provided to school district professional employes. The cost shall be determined based upon the total cost of compensation and fringe benefits provided to school district professional employes who are represented by a labor organization on the 90th day before expiration of any previous collective bargaining agreement between the parties, or who were so represented if the effective date is retroactive, or the 90th day prior to commencement of negotiations if there is no previous collective bargaining agreement between the parties, without regard to any change in the number, rank or qualifications of the school district professional employes. For purposes of such determinations, any cost increase that is incurred on any day other than the beginning of the 12–month period commencing

with the effective date of the agreement or any succeeding 12–month period commencing on the anniversary of that effective date shall be calculated as if the cost increase were incurred as of the beginning of the 12–month period beginning on the effective date or anniversary of the effective date in which the cost increase is incurred. ~~In each collective bargaining unit to which subd. 5s. applies, the municipal employer shall transmit to the commission and the labor organization a completed form for calculating the total increased cost to the municipal employer of compensation and fringe benefits provided to the school district professional employes covered by the agreement as soon as possible after the effective date of the agreement.~~

SECTION 16. 111.70 (4) (cn) of the statutes is repealed.

SECTION 17. 111.70 (4) (d) 2. a. of the statutes is amended to read:

111.70 **(4)** (d) 2. a. The commission shall determine the appropriate collective bargaining unit for the purpose of collective bargaining and shall whenever possible, unless otherwise required under this subchapter, avoid fragmentation by maintaining as few collective bargaining units as practicable in keeping with the size of the total municipal work force. In making such a determination, the commission may decide whether, in a particular case, the municipal employes in the same or several departments, divisions, institutions, crafts, professions or other occupational groupings constitute a collective bargaining unit. Before making its determination, the commission may provide an opportunity for the municipal employes concerned to determine, by secret ballot, whether or not they desire to be established as a separate collective bargaining unit. ~~The commission shall not decide, however, that any group of municipal employes constitutes an appropriate collective bargaining unit if the group includes both municipal employes who are~~

~~school district professional employes and municipal employes who are not school district professional employes.~~ The commission shall not decide, however, that any ~~other~~ group of municipal employes constitutes an appropriate collective bargaining unit if the group includes both professional employes and nonprofessional employes, unless a majority of the professional employes vote for inclusion in the unit. The commission shall not decide that any group of municipal employes constitutes an appropriate collective bargaining unit if the group includes both craft employes and noncraft employes unless a majority of the craft employes vote for inclusion in the unit. The commission shall place the professional employes who are assigned to perform any services at a charter school, as defined in s. 115.001 (1), in a separate collective bargaining unit from a unit that includes any other professional employes whenever at least 30% of those professional employes request an election to be held to determine that issue and a majority of the professional employes at the charter school who cast votes in the election decide to be represented in a separate collective bargaining unit. Any vote taken under this subsection shall be by secret ballot.

SECTION 18. Nonstatutory provisions.

(1) The employment relations commission may not accept any petition for arbitration filed under section 111.70 (4) (cm) 6. of the statutes, in any collective bargaining unit concerning a labor dispute about which the commission has, prior to the effective date of this subsection, already accepted a petition for arbitration filed under section 111.70 (4) (cm) 6. of the statutes.

SECTION 19. Initial applicability.

(1) This act first applies to petitions for arbitration filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

(END)