

2001 DRAFTING REQUEST

Bill

Received: 08/22/2001

Received By: champra

Wanted: As time permits

Identical to LRB:

For: Scott Walker (608) 266-9180

By/Representing: Greg Reiman

This file may be shown to any legislator: NO

Drafter: champra

May Contact:

Addl. Drafters:

Subject: Employ Pub - collective bargain

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Arbitration in collective bargaining process for law enforcement officers employed by a county having a population of 500,000 or more

Instructions:

See Attached.

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	champra 09/07/2001	jdyer 09/10/2001	pgreensl 09/10/2001	_____	lrb_docadmin 09/10/2001	lrb_docadminS&L 11/01/2001	

FE Sent For:

<END>

AT Intro.

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1?	champra	11 9/10 jld	9/10 PS	9/10 PS/RS			

FE Sent For: END



**Scott Walker**

Wauwatosa's Representative in the Wisconsin State Assembly

HI PETER:

I THINK THIS FALLS UNDER  
YOUR TEAM.

SCOTT WOULD LIKE A BILL  
DRAFTED TO INCLUDE THE  
MILWAUKEE COUNTY SHERIFFS  
FOR THE BINDING ARBITRATION  
RULES COVERING THE MILWAUKEE  
POLICE DEPT. (SEE ATTACHOO)

THANKS!

GREG REIMAN

P.O. Box 8953, State Capitol, Madison, WI 53708-8953 • (608) 266-9180

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2334 N. 73rd Street, Wauwatosa, WI 53213 • (414) 258-1086

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# Milwaukee Deputy Sheriffs' Association

Safety Building, 821 West State Street, Milwaukee, Wisconsin 53233 • (414) 276-5222 • Fax (414) 276-5295

AUG 16 2001

## Memorandum

To: Representative Scott Walker  
From: Forbes McIntosh  
Date: Thursday, August 16, 2001  
Re: **Binding Arbitration**  
**Milwaukee County**

The Milwaukee Deputy Sheriff's Association represents over 600 Milwaukee County deputies. As you may be aware, the labor contract negotiations between the County and the deputy sheriffs have become more adversarial, leading labor negotiations to be resolved by arbitration.

Unfortunately, the arbitration process currently used by Milwaukee County to resolve disputes only allows for a comparison of the final offer proposed by the deputies and the final offer proposed by the County. The only decision allowed from the arbitrator is accepting one of the two offers in its entirety. Therefore, the arbitrator is unable to look at each issue individually, rather the process becomes a gamble on the entire package offered by each side.

The Milwaukee Deputy Sheriff's Association believes the current method of binding arbitration is flawed, ties the hands of the arbitrator and does not allow the arbitrator the ability to measure each issue on its own merit. Therefore, the Association is requesting that the arbitration process for Milwaukee County law enforcement be modified and include Milwaukee County law enforcement in the current binding arbitration process used by the Milwaukee Police Department, 111.70 (4) (jm) Stats.

The binding arbitration process provided for under 111.70 (4) (jm) would allow Milwaukee County and the Milwaukee Deputy Sheriff's Association to present their case on each unresolved issue, allowing the arbitrator to make a final decision on each issue based on its merit. This system would allow for a more fair and equitable resolution to those issues not agreed upon.

If you have any questions regarding this matter, please feel free to contact either myself at (414) 276-5222 or Forbes McIntosh at (608) 255-0566. Your support in this matter is greatly appreciated.

Thank you.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRB-3650/1

RAC: 1:...

JLD

Gen

2001 BILL

Gen

1 AN ACT ...; relating to: collective bargaining arbitration procedure for law  
2 enforcement officers employed by a county having a population of 500,000 or  
3 more.

*Analysis by the Legislative Reference Bureau*

Under current law affecting county law enforcement agencies, employers and recognized or certified representatives of employees have the duty to bargain collectively in good faith. If a collective bargaining dispute arises and an impasse has been reached, and the parties have no procedures for the settlement of a dispute, either party may petition the employment relations commission (WERC) to initiate compulsory, final, and binding arbitration of the dispute. If WERC determines that an impasse exists, it must issue an order requiring arbitration. Pursuant to this order, the commission is required to submit to the parties a panel of five arbitrators from which the parties alternately strike names until the name of a single arbitrator remains. The commission is required to appoint this person as the arbitrator. The arbitrator must select the final offer of one of the parties and issue an award incorporating that offer without modification, except when the parties agree to allow the arbitrator to determine all issues in a dispute involving wages, hours, and conditions of employment.

WERC

This bill creates a new arbitration procedure for law enforcement officers employed by a county having a population of 500,000 or more, a procedure that is virtually identical to the one used by members of a police department of a 1st class city (currently, only the city of Milwaukee). Under this new procedure, if the

which is

first

**BILL**

representative of law enforcement officers employed by a county having a population of 500,000 or more and representatives of the county reach an impasse on the terms of the collective bargaining agreement, either the representative of the law enforcement officers or the representative of the county may petition WERC for appointment of an arbitrator to determine the terms of the agreement relating to the wages, hours, and working conditions of the law enforcement officers and any other matters that are subject to arbitration. Upon a determination by WERC that the parties have reached an impasse on matters relating to wages, hours, and conditions of employment or any other matters subject to arbitration on which there is no mutual agreement, WERC must appoint an arbitrator to determine those terms of the agreement on which there is no mutual agreement. Within 14 days of the arbitrator's appointment, the arbitrator must conduct a hearing to determine the terms of the agreement relating to wages, hours, and working conditions and any other matters subject to arbitration.

In determining those terms of the agreement on which there is no mutual agreement and on which the parties have negotiated to impasse, the arbitrator has the power to:

\* 1. Set all items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, pension programs, including amount of pension, relative contributions, and all eligibility conditions, the terms and conditions of overtime compensation and compensatory time, vacation pay, and vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance, uniform allowances, and any other similar item of compensation.

\* 2. Determine regular hours of work, what activities shall constitute overtime work, and all standards and criteria for the assignment and scheduling of work.

\* 3. Determine a seniority system, and how seniority shall affect wages, hours, and working conditions. \*

4. Determine a promotional program.

5. Determine criteria for merit increases in compensation and the procedures for applying the criteria.

6. Determine all work rules affecting the law enforcement officers, except those work rules created by law.

7. Establish any educational program for the law enforcement officers that is appropriate, together with a mechanism for financing the program.

third 8. Establish a system for resolving all disputes under the agreement, including final and binding ~~two~~ party arbitration.

9. Determine the duration of the agreement and the law enforcement officers to which it shall apply.

10. Establish a system for administration of the collective bargaining agreement between the parties by a law enforcement officer who is not directly accountable to the sheriff in matters relating to that administration.

Under the bill, in determining the law enforcement officer compensation, the arbitrator must use the most recently published U.S. bureau of labor statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level" as a guideline, as well as increases in the cost of living as measured by the average \*

**BILL**

annual increases in the U.S. bureau of labor statistics "Consumer Price Index" since the last adjustment in compensation for those officers. In addition, in determining all noncompensatory working conditions and relationships, the arbitrator must consider the patterns of employee-employer relationships generally prevailing between technical and professional employees and their employers in both the private and public sectors of the economy where those relationships have been established by a collective bargaining agreement.

Under the bill, within 30 days after the close of the hearing, the arbitrator must issue a written decision determining the terms of the agreement between the parties ~~which~~ <sup>that</sup> were not the subject of mutual agreement and on which the parties negotiated in good faith to impasse. Within 14 days of the arbitrator's decision, the parties must reduce to writing the total agreement composed of those items mutually agreed to between the parties and the determinations of the arbitrator, unless either party seeks judicial review of the determination. Within 60 days of the arbitrator's decision, either party may petition the circuit court for Milwaukee County to set aside or enforce the arbitrator's decision. If the decision was within the subject matter jurisdiction of the arbitrator, the court must enforce the decision, unless the court finds by a clear preponderance of the evidence that the decision was procured <sup>\*</sup> by fraud, bribery, or collusion. The court may not review the sufficiency of the evidence supporting the arbitrator's determination of the terms of the agreement. Within 30 days of a final court judgment, the parties must reduce the agreement to writing and with the arbitrator execute the agreement.

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 (4) (jr) <sup>✓</sup> of the statutes is created to read:
- 2           111.70 (4) (jr) *Binding arbitration*, <sup>✓</sup> *counties having a population of 500,000 or*
- 3 *more.* If the representative of law enforcement officers employed by a county having
- 4 a population of 500,000 <sup>✓</sup> or more, as determined under par. (d), and representatives
- 5 of the county reach an impasse on the terms of the collective bargaining agreement,
- 6 the dispute shall be resolved in the following manner:
- 7           1. Either the representative of the law enforcement officers or the
- 8 representative of the county may petition the <sup>✓</sup> commission for appointment of an
- 9 arbitrator to determine the terms of the agreement relating to the wages, hours, and



## BILL

## SECTION 1

1 working conditions of the law enforcement officers and other matters that are subject  
2 to arbitration under subd. 4. ✓

3 2. The commission shall conduct a hearing on the petition, and upon a  
4 determination that the parties have reached an impasse on matters relating to  
5 wages, hours, and conditions of employment or other matters subject to arbitration  
6 under subd. 4. on which there is no mutual agreement, the commission shall appoint  
7 an arbitrator to determine those terms of the agreement on which there is no mutual  
8 agreement. The commission may appoint any person it considers to be qualified,  
9 except that the arbitrator may not be a resident of the county <sup>that</sup> ~~which~~ is party to the  
10 dispute.

11 3. Within 14 days of the arbitrator's appointment, the arbitrator shall conduct  
12 a hearing to determine the terms of the agreement relating to wages, hours, and  
13 working conditions and other matters subject to arbitration under subd. 4. The  
14 arbitrator may subpoena witnesses at the request of either party or on the  
15 arbitrator's own motion. All testimony shall be given under oath. The arbitrator  
16 shall take judicial notice of all economic and social data presented by the parties that  
17 is relevant to the wages, hours, and working conditions of the law enforcement  
18 personnel or other matters subject to arbitration under subd. 4. ✓ The other party shall  
19 have an opportunity to examine and respond to such data. The rules of evidence  
20 applicable to a contested case, as defined in s. 227.01 (3), ✓ shall apply to the hearing  
21 before the arbitrator.

22 4. In determining those terms of the agreement on which there is no mutual  
23 agreement and on which the parties have negotiated to impasse, as determined by  
24 the commission, the arbitrator, without restriction because of enumeration, shall  
25 have the power to:

**BILL**

- 1 a. Set all items of compensation, including base wages, longevity pay, health,  
2 accident, and disability insurance programs, pension programs, including amount of  
3 pension, relative contributions, and all eligibility conditions, the terms and  
4 conditions of overtime compensation and compensatory time, vacation pay, and  
5 vacation eligibility, sickness pay amounts, and sickness pay eligibility, life insurance,  
6 uniform allowances, and any other similar item of compensation.
- 7 b. Determine regular hours of work, what activities shall constitute overtime  
8 work, and all standards and criteria for the assignment and scheduling of work.
- 9 c. Determine a seniority system, and how seniority shall affect wages, hours,  
10 and working conditions.
- 11 d. Determine a promotional program.
- 12 e. Determine criteria for merit increases in compensation and the procedures  
13 for applying the criteria.
- 14 f. Determine all work rules affecting the law enforcement officers, except those  
15 work rules created by law.
- 16 g. Establish any educational program for the law enforcement officers that is  
17 appropriate, together with a mechanism for financing the program.
- 18 h. Establish a system for resolving all disputes under the agreement, including  
19 final and binding 3rd party arbitration.
- 20 i. Determine the duration of the agreement and the law enforcement officers  
21 to which it shall apply.
- 22 j. Establish a system for administration of the collective bargaining agreement  
23 between the parties by a law enforcement officer who is not directly accountable to  
24 the sheriff in matters relating to that administration.

**BILL**

**SECTION 1**

1           5. In determining the proper compensation to be received by law enforcement  
2 officers under subd. 4., the arbitrator shall use: *all of the following*

3           a. The most recently published U.S. bureau of labor statistics "Standards of  
4 Living Budgets for Urban Families, Moderate and Higher Level" as a guideline to  
5 determine the compensation necessary for law enforcement officers to enjoy a  
6 standard of living commensurate with their needs, abilities, and responsibilities and

7           b. Increases in the cost of living as measured by the average annual increases  
8 in the U.S. bureau of labor statistics "Consumer Price Index" since the last  
9 adjustment in compensation for those officers.

10           6. In determining all noncompensatory working conditions and relationships  
11 under subd. 4., including methods for resolving disputes under the labor agreement,  
12 the arbitrator shall consider the patterns of employee-employer relationships  
13 generally prevailing between technical and professional employees and their  
14 employers in both the private and public sectors of the economy where those  
15 relationships have been established by a collective bargaining agreement between  
16 the representative of those employees and their employer.

17           7. All subjects described in subd. 4. shall be negotiable between the  
18 representative of the law enforcement officers and the county.

19           8. Within 30 days after the close of the hearing, the arbitrator shall issue a  
20 written decision determining the terms of the agreement between the parties *that*  
21 were not the subject of mutual agreement and on which the parties negotiated in  
22 good faith to impasse, as determined by the commission, and *that* were the subject  
23 of the hearing under this paragraph. The arbitrator shall state the reasons for each  
24 determination. Each proposition or fact accepted by the arbitrator must be  
25 established by a preponderance of the evidence.

**BILL**

1           9. Subject to subds. 11. and 12.,<sup>✓</sup> within 14 days of the arbitrator's decision, the  
2 parties shall reduce to writing the total agreement composed of those items mutually  
3 agreed to between the parties and the determinations of the arbitrator. The  
4 document shall be signed by the arbitrator and the parties, unless either party seeks  
5 judicial review of the determination pursuant to subd. 11.<sup>✓</sup>

6           10. All costs of the arbitration hearing, including the arbitrator's fee, shall be  
7 borne equally by the parties.

8           11. Within 60 days of the arbitrator's decision, either party may petition the  
9 circuit court for Milwaukee County<sup>✓</sup> to set aside or enforce the arbitrator's decision.  
10 If the decision was within the subject matter jurisdiction of the arbitrator as set forth  
11 in subd. 4.,<sup>✓</sup> the court must enforce the decision, unless the court finds by a clear  
12 preponderance of the evidence that the decision was procured by fraud, bribery,<sup>o</sup> or  
13 collusion. The court may not review the sufficiency of the evidence supporting the  
14 arbitrator's determination of the terms of the agreement.

15           12. Within 30 days of a final court judgment, the parties shall reduce the  
16 agreement to writing and with the arbitrator execute the agreement pursuant to  
17 subd. 9.<sup>✓</sup>

18           13. After the filing of a petition before the commission pursuant to<sup>✓</sup> subd. 1. and  
19 before the execution of an agreement pursuant to subd. 9.,<sup>✓</sup> neither party may  
20 unilaterally alter any term of the wages, hours,<sup>o</sup> and working conditions of the law  
21 enforcement officers or any other matter subject to arbitration under subd. 4.<sup>✓</sup>

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1977 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672.

22           **SECTION 2. 111.70 (8) (a) of the statutes is amended to read:**

23           111.70 (8) (a) This section, except subs. (1) (nm), (4) (cm) and (7m), applies to  
24 law enforcement supervisors employed by a 1st class city. This section, except subs.

**BILL**

**SECTION 2**

1 (1) (nm), (4) (cm) ~~and~~, (jm), <sup>MOVE</sup> and (jr) and (7m), applies to law enforcement supervisors  
 2 employed by a county having a population of 500,000 or more. For purposes of such  
 3 application, the term "municipal employee" includes such a supervisor.

History: 1971 c. 124, 246, 247, 307, 336; 1973 c. 64, 65; 1974 c. 178, 186, 272, 442, 449; 1979 c. 32 s. 92 (15); 1981 c. 20, 112, 187; 1983 a. 189, 192; 1985 a. 29; 1985 a. 182 s. 57; 1985 a. 318; 1987 a. 153, 399; 1991 a. 136; 1993 a. 16, 429, 492; 1995 a. 27, 225, 289; 1997 a. 27, 237; 1999 a. 9, 65; 1999 a. 150 s. 672.

**SECTION 3. 111.71 (2) of the statutes is amended to read:**

5 111.71 (2) The commission shall assess and collect a filing fee for filing a  
 6 complaint alleging that a prohibited practice has been committed under s. 111.70 (3).  
 7 The commission shall assess and collect a filing fee for filing a request that the  
 8 commission act as an arbitrator to resolve a dispute involving the interpretation or  
 9 application of a collective bargaining agreement under s. 111.70 (4) (c) 2. or (cm) 4.  
 10 The commission shall assess and collect a filing fee for filing a request that the  
 11 commission initiate fact-finding under s. 111.70 (4) (c) 3. The commission shall  
 12 assess and collect a filing fee for filing a request that the commission act as a  
 13 mediator under s. 111.70 (4) (c) 1. or (cm) 3. The commission shall assess and collect  
 14 a filing fee for filing a request that the commission initiate compulsory, final and  
 15 binding arbitration under s. 111.70 (4) (cm) 6. ~~or~~, (jm), ~~or~~ (jr) <sup>or</sup> 111.77 (3). For the  
 16 performance of commission actions under ss. 111.70 (4) (c) 1., 2. and 3., (cm) 3., 4. and  
 17 6. ~~and~~, (jm) <sup>2</sup> and (jr) <sup>or</sup> and 111.77 (3), the commission shall require that the parties to  
 18 the dispute equally share in the payment of the fee and, for the performance of  
 19 commission actions involving a complaint alleging that a prohibited practice has  
 20 been committed under s. 111.70 (3), the commission shall require that the party filing  
 21 the complaint pay the entire fee. If any party has paid a filing fee requesting the  
 22 commission to act as a mediator for a labor dispute and the parties do not enter into  
 23 a voluntary settlement of the dispute, the commission may not subsequently assess  
 24 or collect a filing fee to initiate fact-finding or arbitration to resolve the same labor

**BILL**

1 dispute. If any request for the performance of commission actions concerns issues  
 2 arising as a result of more than one unrelated event or occurrence, each such  
 3 separate event or occurrence shall be treated as a separate request. The commission  
 4 shall promulgate rules establishing a schedule of filing fees to be paid under this  
 5 subsection. Fees required to be paid under this subsection shall be paid at the time  
 6 of filing the complaint or the request for fact-finding, mediation or arbitration. A  
 7 complaint or request for fact-finding, mediation or arbitration is not filed until the  
 8 date such fee or fees are paid, except that the failure of the respondent party to pay  
 9 the filing fee for having the commission initiate compulsory, final and binding  
 10 arbitration under s. 111.70 (4) (cm) 6. or, (jm), or (jr) or 111.77 (3) shall not prohibit  
 11 the commission from initiating such arbitration. The commission may initiate  
 12 collection proceedings against the respondent party for the payment of the filing fee.  
 13 Fees collected under this subsection shall be credited to the appropriation account  
 14 under s. 20.425 (1) (i).

15 History: 1971 c. 124; 1973 c. 90; 1981 c. 20; 1983 a. 27; 1985 a. 24; 1991 a. 39; 1993 a. 16; 1995 a. 27, 216.

**SECTION 4.** 111.77 (8) (b) of the statutes is amended to read:

16 111.77 (8) (b) This section shall not apply to members of a police department  
 17 employed by a 1st class city <sup>10</sup> and law enforcement officers employed by a county  
 18 having a population of 500,000 or more, nor to any city, village, or town having a  
 19 population of less than 2,500.

20 History: 1971 c. 247, 307; 1973 c. 64; 1975 c. 259; 1977 c. 178; 1979 c. 32 s. 92 (15); 1989 a. 258; 1991 a. 136; 1993 a. 16; 1995 a. 27.

**SECTION 5. Initial applicability.**

21 (1) This act first applies to petitions for arbitration that are submitted to the  
 22 employment relations commission under subchapter IV of chapter 111 of the statutes

**BILL**

1 on the effective date of this subsection<sup>✓</sup> to resolve disputes affecting law enforcement  
2 officers employed by a county having a population of 500,000<sup>✓</sup> or more.

3 (END)



# State of Wisconsin

## LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET  
5TH FLOOR  
MADISON, WI 53701-2037

STEPHEN D. MILLER  
CHIEF

LEGAL SECTION: (608) 266-3561  
LEGAL FAX: (608) 264-6948

September 10, 2001

### MEMORANDUM

To: Representative Walker 

From: Rick A. Champagne, Senior Attorney

Re: LRB-3650/1 Arbitration in collective bargaining process for law enforcement officers employed by a county having a population of 500,000 or more

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY  JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9930 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.