

2003 SENATE BILL 286

October 15, 2003 – Introduced by Senators BROWN, LAZICH, DARLING, REYNOLDS, LEIBHAM and A. LASEE, cosponsored by Representatives GOTTLIEB, LEMAHIEU, GIELOW, LOTHIAN, STONE, OWENS, MCCORMICK, AINSWORTH, NISCHKE, GROTHMAN, HAHN, VUKMIR, HONADEL, KERKMAN and J. WOOD. Referred to Committee on Labor, Small Business Development and Consumer Affairs.

1 **AN ACT** *to repeal* 111.70 (4) (cm) 7r. e. and 111.70 (4) (cm) 7r. f.; *to amend* 111.70
 2 (1) (a), 111.70 (1) (dm), 111.70 (4) (cm) 5s., 111.70 (4) (cm) 6. am., 111.70 (4) (cm)
 3 6. d., 111.70 (4) (cm) 7., 111.70 (4) (cm) 7g., 111.70 (4) (cm) 7r. c., 111.70 (4) (cm)
 4 7r. d., 111.70 (4) (m) (title), 111.77 (4) (a) and 111.77 (4) (b); *to repeal and*
 5 *recreate* 111.77 (6); and *to create* 111.70 (4) (cm) 7t., 111.70 (4) (nm) and 111.77
 6 (4m) of the statutes; **relating to:** employment relations under the Municipal
 7 Employment Relations Act.

Analysis by the Legislative Reference Bureau

The bill does all of the following:

1. Currently, under the Municipal Employment Relations Act (MERA), with respect to local government employment other than law enforcement and fire fighting employment, the arbitrator in reaching a decision 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, 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 employees in the same and comparable communities, the cost of living, the overall compensation and benefits that the employees currently receive, and other similar factors. But, under current law, the arbitrator is required to give greater weight to

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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.

The bill changes the greater weight factor to require that the arbitrator consider the financial ability of the municipal employer to meet the costs required under the proposed settlement. In addition, the bill eliminates those factors requiring comparison of wages, hours, and conditions of employment of public and private sector employment in the same community or comparable communities. Finally, the bill provides that no arbitrator's decision may take effect unless the arbitrator gives an accounting in writing of the consideration of each of the factors in reaching his or her decision.

2. Current law under MERA, in local government law enforcement and fire fighting employment (other than law enforcement employment in the City of Milwaukee) requires that the arbitrator, in reaching a decision, must consider a number of factors, the majority of which are identical to those that the arbitrator must consider in other disputes involving local government employment. This bill makes the facts that the arbitrator must consider in local government law enforcement and fire fighting employment (other than law enforcement employment in the City of Milwaukee) identical to those the arbitrator must consider in disputes involving other local government employment. As a result, the arbitrator will have the same greatest weight, greater weight, and other factors to consider. The bill also requires that no arbitrator's decision may take effect unless the arbitrator gives an accounting in writing of the consideration of each of the factors in reaching his or her decision.

3. The bill provides that in all local government employment (other than law enforcement employment in the City of Milwaukee) neither the municipal employer nor the labor organization may include in its final offer any item that would require the retroactive application of a salary adjustment for any period occurring before the date that the arbitrator issues the arbitration decision. However, the bill also provides that the arbitrator, if he or she adopts the labor organization's final offer, must require the retroactive application of a salary adjustment for the period under the agreement that occurs before the date that the arbitrator issues the arbitration decision.

4. Under MERA, municipal employers and employees must bargain all issues related to wages, hours, and conditions of employment. The bill prohibits bargaining on any municipal employer's decision to enter into contracts with persons who are not municipal employees for the performance of services for the municipality, or the impact of any such decision on the wages, hours, and conditions of employment of the municipal employees who would otherwise perform those services.

For further information see the *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:

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

2 111.70 (1) (a) “Collective bargaining” means the performance of the mutual
3 obligation of a municipal employer, through its officers and agents, and the
4 representative of its municipal employees in a collective bargaining unit, to meet and
5 confer at reasonable times, in good faith, with the intention of reaching an
6 agreement, or to resolve questions arising under such an agreement, with respect to
7 wages, hours and conditions of employment, and with respect to a requirement of the
8 municipal employer for a municipal employee to perform law enforcement and fire
9 fighting services under s. 61.66, except as provided in sub. (4) (m) and (nm) and s.
10 40.81 (3) and except that a municipal employer shall not meet and confer with respect
11 to any proposal to diminish or abridge the rights guaranteed to municipal employees
12 under ch. 164. The duty to bargain, however, does not compel either party to agree
13 to a proposal or require the making of a concession. Collective bargaining includes
14 the reduction of any agreement reached to a written and signed document. The
15 municipal employer shall not be required to bargain on subjects reserved to
16 management and direction of the governmental unit except insofar as the manner
17 of exercise of such functions affects the wages, hours and conditions of employment
18 of the municipal employees in a collective bargaining unit. In creating this
19 subchapter the legislature recognizes that the municipal employer must exercise its
20 powers and responsibilities to act for the government and good order of the
21 jurisdiction which it serves, its commercial benefit and the health, safety and welfare
22 of the public to assure orderly operations and functions within its jurisdiction,
23 subject to those rights secured to municipal employees by the constitutions of this
24 state and of the United States and by this subchapter.

25 **SECTION 2.** 111.70 (1) (dm) of the statutes is amended to read:

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1 111.70 (1) (dm) “Economic issue” means salaries, overtime pay, sick leave,
2 payments in lieu of sick leave usage, vacations, clothing allowances in excess of the
3 actual cost of clothing, length-of-service credit, continuing education credit, shift
4 premium pay, longevity pay, extra duty pay, performance bonuses, health insurance,
5 life insurance, dental insurance, disability insurance, vision insurance, long-term
6 care insurance, worker’s compensation and unemployment insurance, social
7 security benefits, vacation pay, holiday pay, lead worker pay, temporary assignment
8 pay, retirement contributions, supplemental retirement benefits, severance or other
9 separation pay, hazardous duty pay, certification or license payment, and limitations
10 on layoffs that create a new or increased financial liability on the employer and
11 ~~contracting or subcontracting of work that would otherwise be performed by~~
12 ~~municipal employees in the collective bargaining unit with which there is a labor~~
13 ~~dispute.~~

14 **SECTION 3.** 111.70 (4) (cm) 5s. of the statutes is amended to read:

15 111.70 (4) (cm) 5s. ‘Issues subject to arbitration.’ In a collective bargaining unit
16 consisting of school district professional employees, the municipal employer or the
17 labor organization may petition the commission to determine whether the municipal
18 employer has submitted a qualified economic offer. The commission shall appoint an
19 investigator for that purpose. If the investigator finds that the municipal employer
20 has submitted a qualified economic offer, the investigator shall determine whether
21 a deadlock exists between the parties with respect to all economic issues. If the
22 municipal employer submits a qualified economic offer applicable to any period
23 beginning on or after July 1, 1993, no economic issues are subject to interest
24 arbitration under subd. 6. for that period, ~~except that only the impact of contracting~~
25 ~~out or subcontracting work that would otherwise be performed by municipal~~

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1 ~~employees in the collective bargaining unit is subject to interest arbitration under~~
2 ~~subd. 6.~~ In such a collective bargaining unit, economic issues concerning the wages,
3 hours or conditions of employment of the school district professional employees in the
4 unit for any period prior to July 1, 1993, are subject to interest arbitration under
5 subd. 6. for that period. In such a collective bargaining unit, noneconomic issues
6 applicable to any period on or after July 1, 1993, are subject to interest arbitration
7 after the parties have reached agreement and stipulate to agreement on all economic
8 issues concerning the wages, hours or conditions of employment of the school district
9 professional employees in the unit for that period. In such a collective bargaining
10 unit, if the commission's investigator finds that the municipal employer has
11 submitted a qualified economic offer and that a deadlock exists between the parties
12 with respect to all economic issues, the municipal employer may implement the
13 qualified economic offer. On the 90th day prior to expiration of the period included
14 within the qualified economic offer, if no agreement exists on that day, the parties are
15 deemed to have stipulated to the inclusion in a new or revised collective bargaining
16 agreement of all provisions of any predecessor collective bargaining agreement
17 concerning economic issues, or of all provisions of any existing collective bargaining
18 agreement concerning economic issues if the parties have reopened negotiations
19 under an existing agreement, as modified by the terms of the qualified economic offer
20 and as otherwise modified by the parties. In such a collective bargaining unit, on and
21 after that 90th day, a municipal employer that refuses to bargain collectively with
22 respect to the terms of that stipulation, applicable to the 90-day period prior to
23 expiration of the period included within the qualified economic offer, does not violate
24 sub. (3) (a) 4. Any such unilateral implementation after August 11, 1993, during the
25 90-day period prior to expiration of the period included within a qualified economic

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1 offer, operates as a full, final and complete settlement of all economic issues between
2 the parties for the period included within the qualified economic offer. The failure
3 of a labor organization to recognize the validity of such a lawful qualified economic
4 offer does not affect the obligation of the municipal employer to submit economic
5 issues to arbitration under subd. 6.

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

7 111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the
8 commission shall make an investigation, with or without a formal hearing, to
9 determine whether arbitration should be commenced. If in determining whether an
10 impasse exists the commission finds that the procedures set forth in this paragraph
11 have not been complied with and such compliance would tend to result in a
12 settlement, it may order such compliance before ordering arbitration. The validity
13 of any arbitration award or collective bargaining agreement shall not be affected by
14 failure to comply with such procedures. Prior to the close of the investigation each
15 party shall submit in writing to the commission its single final offer containing its
16 final proposals on all issues in dispute that are subject to interest arbitration under
17 this subdivision or under subd. 5s. in collective bargaining units to which subd. 5s.
18 applies, except that no party may include in its final offer any item that would require
19 the retroactive application of a salary adjustment for any period occurring before the
20 date that the arbitrator issues the arbitration decision. If a party fails to submit a
21 single, ultimate final offer, the commission shall close the investigation based on the
22 last written position of the party and shall strike from that position any item that
23 would require the retroactive application of a salary adjustment for any period
24 occurring before the date that the arbitrator issues the arbitration decision. The
25 municipal employer may not submit a qualified economic offer under subd. 5s. after

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1 the close of the investigation. Such final offers may include only mandatory subjects
2 of bargaining, except that a permissive subject of bargaining may be included by a
3 party if the other party does not object and shall then be treated as a mandatory
4 subject. No later than such time, the parties shall also submit to the commission a
5 stipulation, in writing, with respect to all matters which are agreed upon for
6 inclusion in the new or amended collective bargaining agreement. The commission,
7 after receiving a report from its investigator and determining that arbitration should
8 be commenced, shall issue an order requiring arbitration and immediately submit
9 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall
10 alternately strike names until a single name is left, who shall be appointed as
11 arbitrator. The petitioning party shall notify the commission in writing of the
12 identity of the arbitrator selected. Upon receipt of such notice, the commission shall
13 formally appoint the arbitrator and submit to him or her the final offers of the
14 parties. The final offers shall be considered public documents and shall be available
15 from the commission. In lieu of a single arbitrator and upon request of both parties,
16 the commission shall appoint a tripartite arbitration panel consisting of one member
17 selected by each of the parties and a neutral person designated by the commission
18 who shall serve as a chairperson. An arbitration panel has the same powers and
19 duties as provided in this section for any other appointed arbitrator, and all
20 arbitration decisions by such panel shall be determined by majority vote. In lieu of
21 selection of the arbitrator by the parties and upon request of both parties, the
22 commission shall establish a procedure for randomly selecting names of arbitrators.
23 Under the procedure, the commission shall submit a list of 7 arbitrators to the
24 parties. Each party shall strike one name from the list. From the remaining 5
25 names, the commission shall randomly appoint an arbitrator. Unless both parties

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1 to an arbitration proceeding otherwise agree in writing, every individual whose
2 name is submitted by the commission for appointment as an arbitrator shall be a
3 resident of this state at the time of submission and every individual who is
4 designated as an arbitration panel chairperson shall be a resident of this state at the
5 time of designation.

6 **SECTION 5.** 111.70 (4) (cm) 6. d. of the statutes is amended to read:

7 111.70 (4) (cm) 6. d. Before issuing his or her arbitration decision, the arbitrator
8 shall, on his or her own motion or at the request of either party, conduct a meeting
9 open to the public for the purpose of providing the opportunity to both parties to
10 explain or present supporting arguments for their complete offer on all matters to
11 be covered by the proposed agreement. The arbitrator shall adopt without further
12 modification the final offer of one of the parties on all disputed issues submitted
13 under subd. 6. am., except those items that the commission determines not to be
14 mandatory subjects of bargaining and those items which have not been treated as
15 mandatory subjects by the parties, and including any prior modifications of such
16 offer mutually agreed upon by the parties under subd. 6. b., ~~which~~ If the arbitrator
17 adopts the final offer of the labor organization, the arbitrator shall also require the
18 retroactive application of any salary adjustment for the period covered under the
19 collective bargaining agreement that occurs before the date that the arbitrator issues
20 the decision. The arbitrator's decision shall be final and binding on both parties and
21 shall be incorporated into a written collective bargaining agreement. The arbitrator
22 shall serve a copy of his or her decision on both parties and the commission.

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

24 111.70 (4) (cm) 7. 'Factor given greatest weight.' In making any decision under
25 the arbitration procedures authorized by this paragraph, the arbitrator or

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1 arbitration panel shall consider and shall give the greatest weight to any state law
2 or directive lawfully issued by a state legislative or administrative officer, body or
3 agency which places limitations on expenditures that may be made or revenues that
4 may be collected by a municipal employer. ~~The arbitrator or arbitration panel shall~~
5 ~~give an accounting of the consideration of this factor in the arbitrator's or panel's~~
6 ~~decision.~~

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

8 111.70 (4) (cm) 7g. 'Factor given greater weight.' In making any decision under
9 the arbitration procedures authorized by this paragraph, the arbitrator or
10 arbitration panel shall consider and shall give greater weight to economic conditions
11 in the jurisdiction of the municipal employer and its financial ability to meet the costs
12 of any proposed settlement than to any of the factors specified in subd. 7r. In
13 considering the factor specified in this subdivision, the arbitrator or arbitration
14 panel shall specifically consider the revenues available to the municipal employer
15 without the municipal employer having to increase its property tax rate to maintain
16 essential services.

17 **SECTION 8.** 111.70 (4) (cm) 7r. c. of the statutes is amended to read:

18 111.70 (4) (cm) 7r. c. The interests and welfare of the public ~~and the financial~~
19 ~~ability of the unit of government to meet the costs of any proposed settlement.~~

20 **SECTION 9.** 111.70 (4) (cm) 7r. d. of the statutes is amended to read:

21 111.70 (4) (cm) 7r. d. Comparison of wages, hours, and conditions of
22 employment of the municipal employees involved in the arbitration proceedings with
23 the wages, hours, and conditions of employment of other employees performing
24 similar services in the same community.

25 **SECTION 10.** 111.70 (4) (cm) 7r. e. of the statutes is repealed:

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1 **SECTION 11.** 111.70 (4) (cm) 7r. f. of the statutes is repealed:

2 **SECTION 12.** 111.70 (4) (cm) 7t. of the statutes is created to read:

3 111.70 (4) (cm) 7t. 'Consideration of factors in arbitration decision.' No decision
4 made by an arbitrator under the arbitration procedures authorized by this
5 paragraph may take effect unless the arbitrator gives an accounting in writing of the
6 consideration of the factors specified in subds. 7. to 7r. in the decision.

7 **SECTION 13.** 111.70 (4) (m) (title) of the statutes is amended to read:

8 111.70 (4) (m) (title) *Prohibited subjects of bargaining; school districts.*

9 **SECTION 14.** 111.70 (4) (nm) of the statutes is created to read:

10 111.70 (4) (nm) *Prohibited subjects of bargaining; all municipal employers.* A
11 municipal employer is prohibited from bargaining collectively with respect to the
12 employer's decision to enter into contracts with persons who are not municipal
13 employees for the performance of services for the municipality, or the impact of any
14 such decision on the wages, hours, and conditions of employment of the municipal
15 employees who would otherwise perform those services.

16 **SECTION 15.** 111.77 (4) (a) of the statutes is amended to read:

17 111.77 (4) (a) *Form 1.* ~~The~~ Except as provided in sub. (4m), the arbitrator shall
18 have the power to determine all issues in dispute involving wages, hours and
19 conditions of employment.

20 **SECTION 16.** 111.77 (4) (b) of the statutes is amended to read:

21 111.77 (4) (b) *Form 2.* The commission shall appoint an investigator to
22 determine the nature of the impasse. The commission's investigator shall advise the
23 commission in writing, transmitting copies of such advice to the parties of each issue
24 which is known to be in dispute. Such advice shall also set forth the final offer of each
25 party as it is known to the investigator at the time that the investigation is closed.

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1 No party may include in its final offer any item that would require the retroactive
2 application of a salary adjustment for any period occurring before the date that the
3 arbitrator issues the arbitration decision. Neither party may amend its final offer
4 thereafter, except with the written agreement of the other party. The Except as
5 provided in sub. (4m), the arbitrator shall select the final offer of one of the parties
6 and shall issue an award incorporating that offer without modification.

7 **SECTION 17.** 111.77 (4m) of the statutes is created to read:

8 111.77 **(4m)** 1. No arbitration decision under sub. (4) (a) may include any item
9 requiring the retroactive application of a pay adjustment for any period occurring
10 before the date that the arbitrator issues the arbitration decision, except that if the
11 arbitrator awards a pay adjustment that is substantially similar to that included in
12 the final offer of the labor organization the arbitrator shall require the retroactive
13 application of the pay adjustment.

14 2. If the arbitrator adopts the final offer of the labor organization under sub.
15 (4) (b), the arbitrator shall also require the retroactive application of any salary
16 adjustment for the period covered under the collective bargaining agreement that
17 occurs before the date that the arbitrator issues the decision.

18 **SECTION 18.** 111.77 (6) of the statutes is repealed and recreated to read:

19 111.77 **(6)** (a) In making any decision under the arbitration procedures
20 authorized by this section, the arbitrator shall consider and shall give the greatest
21 weight to any state law or directive lawfully issued by a state legislative or
22 administrative officer, body or agency which places limitations on expenditures that
23 may be made or revenues that may be collected by a municipal employer.

24 (b) In making any decision under the arbitration procedures authorized by this
25 section, the arbitrator shall consider and shall give greater weight to economic

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1 conditions in the jurisdiction of the municipal employer and its financial ability to
2 meet the costs of any proposed settlement than to any of the factors specified in par.
3 (c). In considering the factor specified in this paragraph, the arbitrator shall
4 specifically consider the revenues available to the municipal employer without the
5 municipal employer having to increase its property tax rate to maintain essential
6 services.

7 (c) In making any decision under the arbitration procedures authorized by this
8 section, the arbitrator shall also give weight to the following factors:

9 1. The lawful authority of the municipal employer.

10 2. Stipulations of the parties.

11 3. The interests and welfare of the public.

12 4. Comparison of wages, hours, and conditions of employment of the municipal
13 employees involved in the arbitration proceedings with the wages, hours, and
14 conditions of employment of other employees performing similar services in the same
15 community.

16 5. The average consumer prices for goods and services, commonly known as the
17 cost of living.

18 6. The overall compensation presently received by the municipal employees,
19 including direct wage compensation, vacation, holidays and excused time, insurance
20 and pensions, medical and hospitalization benefits, the continuity and stability of
21 employment, and all other benefits received.

22 7. Changes in any of the foregoing circumstances during the pendency of the
23 arbitration proceedings.

24 8. Such other factors, not confined to the foregoing, which are normally or
25 traditionally taken into consideration in the determination of wages, hours, and

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1 conditions of employment through voluntary collective bargaining, mediation,
2 fact-finding, arbitration, or otherwise between the parties, in the public service or
3 in private employment.

4 (d) No decision made by an arbitrator under the arbitration procedures
5 authorized by this section may take effect unless the arbitrator gives an accounting
6 in writing of the consideration of the factors specified in pars. (a) to (c) in the decision.

7 **SECTION 19. Initial applicability.**

8 (1) This act first applies to collective bargaining agreements under subchapter
9 IV of chapter 111 for which a notice of commencement of contract negotiations has
10 been filed by either party under section 111.70 (4) (cm) 1. or 111.77 (1) of the statutes
11 on the effective date of this subsection.

12

(END)