



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1102/3 4  
RAC:kjf&kmg:pg  
Keep  
RMR

SOON

DOA:.....Ziegler - Elimination of qualified economic offer provisions in  
Municipal Employment Relations Act

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Do Not Gen

1 AN ACT ...; relating to: the budget.

*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

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

0000professional employees 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 employees' existing fringe benefit costs and the employees' 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 employees 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 employees 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 employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This bill eliminates the QEO 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 employees, 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 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 and, instead, requires that the arbitrator or arbitration panel simply considers these as factors.

~~3. Under current law, every collective bargaining agreement covering school district professional employees must expire on June 30 of the odd-numbered years. For all other local government employees, 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 employees the same as those of other local government employees.~~

3  
4. Finally, under current law, school district professional employees are required to be placed in a collective bargaining unit that is separate from the units of other school district employees. 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:*

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

2           111.70 (1) (b) “Collective bargaining unit” means a unit ~~consisting of municipal~~  
3 ~~employees who are school district professional employees or of municipal employees~~  
4 ~~who are not school district professional employees~~ that is determined by the  
5 commission to be appropriate for the purpose of collective bargaining.

6           **SECTION 2.** 111.70 (1) (dm) of the statutes is repealed.

7           **SECTION 3.** 111.70 (1) (fm) of the statutes is repealed.

8           **SECTION 4.** 111.70 (1) (nc) of the statutes is repealed.

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

10          111.70 (4) (cm) 5. ‘Voluntary impasse resolution procedures.’ In addition to the  
11 other impasse resolution procedures provided in this paragraph, a municipal  
12 employer and labor organization may at any time, as a permissive subject of  
13 bargaining, agree in writing to a dispute settlement procedure, including  
14 authorization for a strike by municipal employees or binding interest arbitration,  
15 which is acceptable to the parties for resolving an impasse over terms of any  
16 collective bargaining agreement under this subchapter. A copy of such agreement  
17 shall be filed by the parties with the commission. If the parties agree to any form of  
18 binding interest arbitration, the arbitrator shall give weight to the factors  
19 enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

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

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

1           111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute ~~relating to one~~  
2 ~~or more issues, qualifying for interest arbitration under subd. 5s. in a collective~~  
3 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable  
4 period of negotiation and after mediation by the commission under subd. 3. and other  
5 settlement procedures, if any, established by the parties have been exhausted, and  
6 the parties are deadlocked with respect to any dispute between them over wages,  
7 hours, and conditions of employment to be included in a new collective bargaining  
8 agreement, either party, or the parties jointly, may petition the commission, in  
9 writing, to initiate compulsory, final, and binding arbitration, as provided in this  
10 paragraph. At the time the petition is filed, the petitioning party shall submit in  
11 writing to the other party and the commission its preliminary final offer containing  
12 its latest proposals on all issues in dispute. Within 14 calendar days after the date  
13 of that submission, the other party shall submit in writing its preliminary final offer  
14 on all disputed issues to the petitioning party and the commission. If a petition is  
15 filed jointly, both parties shall exchange their preliminary final offers in writing and  
16 submit copies to the commission at the time the petition is filed.

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

18           111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the  
19 commission shall make an investigation, with or without a formal hearing, to  
20 determine whether arbitration should be commenced. If in determining whether an  
21 impasse exists the commission finds that the procedures set forth in this paragraph  
22 have not been complied with and such compliance would tend to result in a  
23 settlement, it may order such compliance before ordering arbitration. The validity  
24 of any arbitration award or collective bargaining agreement shall not be affected by  
25 failure to comply with such procedures. Prior to the close of the investigation each

1 party shall submit in writing to the commission its single final offer containing its  
2 final proposals on all issues in dispute that are subject to interest arbitration under  
3 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~  
4 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall  
5 close the investigation based on the last written position of the party. ~~The municipal~~  
6 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~  
7 ~~of the investigation.~~ Such final offers may include only mandatory subjects of  
8 bargaining, except that a permissive subject of bargaining may be included by a  
9 party if the other party does not object and shall then be treated as a mandatory  
10 subject. No later than such time, the parties shall also submit to the commission a  
11 stipulation, in writing, with respect to all matters which are agreed upon for  
12 inclusion in the new or amended collective bargaining agreement. The commission,  
13 after receiving a report from its investigator and determining that arbitration should  
14 be commenced, shall issue an order requiring arbitration and immediately submit  
15 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall  
16 alternately strike names until a single name is left, who shall be appointed as  
17 arbitrator. The petitioning party shall notify the commission in writing of the  
18 identity of the arbitrator selected. Upon receipt of such notice, the commission shall  
19 formally appoint the arbitrator and submit to him or her the final offers of the  
20 parties. The final offers shall be considered public documents and shall be available  
21 from the commission. In lieu of a single arbitrator and upon request of both parties,  
22 the commission shall appoint a tripartite arbitration panel consisting of one member  
23 selected by each of the parties and a neutral person designated by the commission  
24 who shall serve as a chairperson. An arbitration panel has the same powers and  
25 duties as provided in this section for any other appointed arbitrator, and all

1 arbitration decisions by such panel shall be determined by majority vote. In lieu of  
2 selection of the arbitrator by the parties and upon request of both parties, the  
3 commission shall establish a procedure for randomly selecting names of arbitrators.  
4 Under the procedure, the commission shall submit a list of 7 arbitrators to the  
5 parties. Each party shall strike one name from the list. From the remaining 5  
6 names, the commission shall randomly appoint an arbitrator. Unless both parties  
7 to an arbitration proceeding otherwise agree in writing, every individual whose  
8 name is submitted by the commission for appointment as an arbitrator shall be a  
9 resident of this state at the time of submission and every individual who is  
10 designated as an arbitration panel chairperson shall be a resident of this state at the  
11 time of designation.

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

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

14 **SECTION 11.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

15 111.70 (4) (cm) 7r. ~~‘Other factors~~ Factors considered.’ (intro.) In making any  
16 decision under the arbitration procedures authorized by this paragraph, the  
17 arbitrator or arbitration panel shall also give weight to the following factors:

18 **SECTION 12.** 111.70 (4) (cm) 7r. ie. of the statutes is created to read:

19 111.70 (4) (cm) 7r. ie. Any state law or directive lawfully issued by a state  
20 legislative or administrative officer, body, or agency which places limitations on  
21 expenditures that may be made or revenues that may be collected by a municipal  
22 employer.

23 **SECTION 13.** 111.70 (4) (cm) 7r. ir. of the statutes is created to read:

24 111.70 (4) (cm) 7r. ir. Economic conditions in the jurisdiction of the municipal  
25 employer.

1           **SECTION 14.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,  
2           renumbered 111.70 (4) (cm) 8m. and amended to read:

3           111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for  
4           the initial collective bargaining agreement between the parties and except as the  
5           parties otherwise agree, every collective bargaining agreement covering municipal  
6           employees subject to this paragraph ~~other than school district professional~~  
7           ~~employees~~ shall be for a term of 2 years. No, but in no case may a collective  
8           bargaining agreement for any collective bargaining unit consisting of municipal  
9           ~~employees subject to this paragraph other than school district professional~~  
10          ~~employees~~ shall be for a term exceeding 3 years. e. No arbitration award may  
11          contain a provision for reopening of negotiations during the term of a collective  
12          bargaining agreement, unless both parties agree to such a provision. The  
13          requirement for agreement by both parties does not apply to a provision for  
14          reopening of negotiations with respect to any portion of an agreement that is  
15          declared invalid by a court or administrative agency or rendered invalid by the  
16          enactment of a law or promulgation of a federal regulation.

17          **SECTION 15.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

18          **SECTION 16.** 111.70 (4) (cm) 8p. of the statutes is repealed.

19          **SECTION 17.** 111.70 (4) (cm) 8s. of the statutes is amended to read:

20          111.70 (4) (cm) 8s. 'Forms for determining costs.' The commission shall  
21          prescribe forms for calculating the total increased cost to the municipal employer of  
22          compensation and fringe benefits provided to school district professional employees.  
23          The cost shall be determined based upon the total cost of compensation and fringe  
24          benefits provided to school district professional employees who are represented by  
25          a labor organization on the 90th day before expiration of any previous collective

1 bargaining agreement between the parties, or who were so represented if the  
2 effective date is retroactive, or the 90th day prior to commencement of negotiations  
3 if there is no previous collective bargaining agreement between the parties, without  
4 regard to any change in the number, rank, or qualifications of the school district  
5 professional employees. For purposes of such determinations, any cost increase that  
6 is incurred on any day other than the beginning of the 12-month period commencing  
7 with the effective date of the agreement or any succeeding 12-month period  
8 commencing on the anniversary of that effective date shall be calculated as if the cost  
9 increase were incurred as of the beginning of the 12-month period beginning on the  
10 effective date or anniversary of the effective date in which the cost increase is  
11 incurred. ~~In each collective bargaining unit to which subd. 5s. applies, the municipal  
12 employer shall transmit to the commission and the labor organization a completed  
13 form for calculating the total increased cost to the municipal employer of  
14 compensation and fringe benefits provided to the school district professional  
15 employees covered by the agreement as soon as possible after the effective date of the  
16 agreement.~~

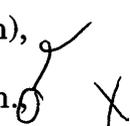
17 ~~SECTION 18. 111.70 (4) (cn) of the statutes is repealed.~~

18 **SECTION 19.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

19 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective  
20 bargaining unit for the purpose of collective bargaining and shall whenever possible,  
21 unless otherwise required under this subchapter, avoid fragmentation by  
22 maintaining as few collective bargaining units as practicable in keeping with the size  
23 of the total municipal work force. In making such a determination, the commission  
24 may decide whether, in a particular case, the municipal employees in the same or  
25 several departments, divisions, institutions, crafts, professions, or other

1 occupational groupings constitute a collective bargaining unit. Before making its  
2 determination, the commission may provide an opportunity for the municipal  
3 employees concerned to determine, by secret ballot, whether or not they desire to be  
4 established as a separate collective bargaining unit. ~~The commission shall not~~  
5 ~~decide, however, that any group of municipal employees constitutes an appropriate~~  
6 ~~collective bargaining unit if the group includes both municipal employees who are~~  
7 ~~school district professional employees and municipal employees who are not school~~  
8 ~~district professional employees.~~ The commission shall not decide, however, that any  
9 ~~other~~ group of municipal employees constitutes an appropriate collective bargaining  
10 unit if the group includes both professional employees and nonprofessional  
11 employees, unless a majority of the professional employees vote for inclusion in the  
12 unit. The commission shall not decide that any group of municipal employees  
13 constitutes an appropriate collective bargaining unit if the group includes both craft  
14 employees and noncraft employees unless a majority of the craft employees vote for  
15 inclusion in the unit. The commission shall place the professional employees who are  
16 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in  
17 a separate collective bargaining unit from a unit that includes any other professional  
18 employees whenever at least 30% of those professional employees request an election  
19 to be held to determine that issue and a majority of the professional employees at the  
20 charter school who cast votes in the election decide to be represented in a separate  
21 collective bargaining unit. Any vote taken under this subsection shall be by secret  
22 ballot.

23 **SECTION 9317. Initial applicability; employment relations commission.**

24 (1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (b), (dm),  
25 (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), ie., and ir., 8m. 

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2  
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4  
5

a., b., and c., 8p., and 8s. ~~and~~ and (d) 2. a. of the statutes first applies to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2005, and that are filed under section 111.70 (4) (cm) 6. of the statutes, as affected by this act, on the effective date of this subsection.

(END)

2003

## Champagne, Rick

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**From:** Ziegler, Paul  
**Sent:** Wednesday, February 05, 2003 12:04 PM  
**To:** Champagne, Rick  
**Cc:** Hanle, Bob  
**Subject:** changes to draft 1102/4

Rick -- Please make the following modifications to LRB draft 1102/4 regarding the repeal of the QEO:

1. Amend the definition of "collective bargaining" in (1)(a) so that school district employers will be required to bargain subjects related to education policy but to exclude those subjects from interest arbitration unless the parties agree to submit such items to interest arbitration.
2. Notwithstanding the provisions of #1, the following would apply; If an employer makes a proposal that relates employee compensation or performance expectations to student performance, then the employees' collective bargaining representative shall have the right to bargain to impasse and to include in its final offer any proposal to meet those performance requirements or expectations, even if such proposals concern education policy.
3. Add a new factor for arbitrators to consider when making determinations. Specifically, whether the proposal promotes an equal opportunity for a sound basic education as guaranteed by Article X, § 3 of the State Constitution.

On a side issue, lets leave section 17 in the draft as it is. The intent here is to keep the draft limited to the represented employees of school districts.

Thank you.

Paul



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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

0000professional employees 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 employees' existing fringe benefit costs and the employees' 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 employees 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 employees 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 employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

3 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 employees, 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 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 and, instead, requires that the arbitrator or arbitration panel simply considers these as factors.

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

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3 employees who are school district professional employees or of municipal employees

Insert 2-1

Insert Analysis 1

Insert Analysis 2

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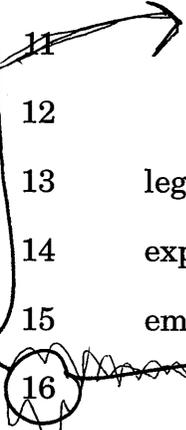
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22 the initial collective bargaining agreement between the parties and except as the  
23 parties otherwise agree, every collective bargaining agreement covering municipal  
24 employees subject to this paragraph ~~other than school district professional~~  
25 employees shall be for a term of 2 years. No, but in no case may a collective

Insert 6-16



1 bargaining agreement for any collective bargaining unit consisting of municipal  
2 employees ~~subject to this paragraph other than school district professional~~  
3 ~~employees~~ shall be for a term exceeding 3 years. e. No arbitration award may  
4 contain a provision for reopening of negotiations during the term of a collective  
5 bargaining agreement, unless both parties agree to such a provision. The  
6 requirement for agreement by both parties does not apply to a provision for  
7 reopening of negotiations with respect to any portion of an agreement that is  
8 declared invalid by a court or administrative agency or rendered invalid by the  
9 enactment of a law or promulgation of a federal regulation.

10 ~~SECTION 15.~~ 111.70 (4) (cm) 8m. b. of the statutes is repealed.

11 ~~SECTION 16.~~ 111.70 (4) (cm) 8p. of the statutes is repealed.

12 ~~SECTION 17.~~ 111.70 (4) (cm) 8s. of the statutes is amended to read:

13 111.70 (4) (cm) 8s. 'Forms for determining costs.' The commission shall  
14 prescribe forms for calculating the total increased cost to the municipal employer of  
15 compensation and fringe benefits provided to school district professional employees.  
16 The cost shall be determined based upon the total cost of compensation and fringe  
17 benefits provided to school district professional employees who are represented by  
18 a labor organization on the 90th day before expiration of any previous collective  
19 bargaining agreement between the parties, or who were so represented if the  
20 effective date is retroactive, or the 90th day prior to commencement of negotiations  
21 if there is no previous collective bargaining agreement between the parties, without  
22 regard to any change in the number, rank, or qualifications of the school district  
23 professional employees. For purposes of such determinations, any cost increase that  
24 is incurred on any day other than the beginning of the 12-month period commencing  
25 with the effective date of the agreement or any succeeding 12-month period

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

10 SECTION ~~18.~~ 111.70 (4) (d) 2. a. of the statutes is amended to read:

11 111.70 (4) (d) 2. a. The commission shall determine the appropriate collective  
12 bargaining unit for the purpose of collective bargaining and shall whenever possible,  
13 unless otherwise required under this subchapter, avoid fragmentation by  
14 maintaining as few collective bargaining units as practicable in keeping with the size  
15 of the total municipal work force. In making such a determination, the commission  
16 may decide whether, in a particular case, the municipal employees in the same or  
17 several departments, divisions, institutions, crafts, professions, or other  
18 occupational groupings constitute a collective bargaining unit. Before making its  
19 determination, the commission may provide an opportunity for the municipal  
20 employees concerned to determine, by secret ballot, whether or not they desire to be  
21 established as a separate collective bargaining unit. ~~The commission shall not~~  
22 ~~decide, however, that any group of municipal employees constitutes an appropriate~~  
23 ~~collective bargaining unit if the group includes both municipal employees who are~~  
24 ~~school district professional employees and municipal employees who are not school~~  
25 ~~district professional employees.~~ The commission shall not decide, however, that any

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

Insert 9-15

15 **SECTION 9317. Initial applicability; employment relations commission.**

16 (1) **QUALIFIED ECONOMIC OFFERS.** The treatment of section 111.70 (1) (b), (dm),  
 17 (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), ie., and ir., 8m. a.,  
 18 b., and c., 8p., and 8s. and (d) 2. a. of the statutes first applies to petitions for  
 19 arbitration that relate to collective bargaining agreements that cover periods  
 20 beginning on or after July 1, 2003, and that are filed under section 111.70 (4) (cm)  
 21 6. of the statutes, as affected by this act, on the effective date of this subsection.

22 (END)

Insert 9-22

**Insert Analysis 1:**

2. Currently, in school districts, collective bargaining law requires that the parties engage in good faith bargaining on all matters related to wages, hours, and conditions of employment. This bill requires the employer to bargain collectively with respect to education policy, but also provides that no dispute relating to an education policy issue is subject to interest arbitration unless all parties to the dispute agree, in writing, to make such an issue subject to interest arbitration. Under the bill, however, if the employer makes a proposal that provides that employee compensation or performance expectations are linked with student academic performance, the labor organization may include in its single final offer for purposes of interest arbitration any proposal to meet the performance expectations, including a proposal affecting education policy.

**Insert Analysis 2:**

~~No PP~~ In addition, with respect to <sup>a</sup> school district~~s~~, the bill provides that the arbitrator or arbitration panel must use as a factor a determination as to which party's proposal best provides for a fundamental right to an equal opportunity for a sound basic education under article X, section 3, of the Wisconsin constitution.

**Insert 2-1:**

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

111.70 (1) (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a

proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit and except as provided in sub. (4)(p). In creating this subchapter the legislature recognizes that the municipal employer must exercise its powers and responsibilities to act for the government and good order of the jurisdiction which it serves, its commercial benefit and the health, safety and welfare of the public to assure orderly operations and functions within its jurisdiction, subject to those rights secured to municipal employees by the constitutions of this state and of the United States and by this subchapter.

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; 2001 a. 16.

**Insert 6-16:**

~~SECTION 2.~~ 111.70 (4) (cm) 7r. hm. of the statutes is created to read:

111.70 (4) (cm) 7r. hm. In a school district, a determination as to which party's proposal best provides for a fundamental right to an equal opportunity for a sound basic education under article X, section 3, of the constitution.

**Insert 9-15:**

~~SECTION 3.~~ 111.70 (4) (p) of the statutes is created to read:

111.70 (4) (p) *Additional mandatory subjects of bargaining in school districts.*

1. In a school district, the municipal employer is required to bargain collectively with respect to education policy, except that no dispute relating to an education policy issue is subject to interest arbitration under <sup>par.</sup> ~~sub.~~ (cm) 6. unless all parties to the

dispute agree, in writing, to make such an issue subject to interest arbitration under par. (cm) 6.

2. Notwithstanding subd. 1., in a school district, if the municipal employer makes a proposal that provides that employee compensation or performance expectations are linked with student academic performance, the labor organization may include in its single final offer under par. (cm) 6. am. any proposal to meet the performance expectations, including a proposal affecting education policy.

**Insert 9-22:**

~~(c)~~ SCHOOL DISTRICT COLLECTIVE BARGAINING SUBJECTS AND FACTORS. The treatment of sections 111.70 (1) (a) and (4) (cm) 7r. hm. and (p) of the statutes first applies to collective bargaining agreements tht cover periods beginning on or after July 1, 2003. <sup>(a)</sup>



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1102/5/6  
RAC:kjf&kmg:pg

RMR

DOA:.....Ziegler - BB0372, Elimination of qualified economic offer provisions in Municipal Employment Relations Act

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

Don + Gen

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

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

→ 0000 professional employees 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 employees' existing fringe benefit costs and the employees' 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 employees 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 employees 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 employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

2. Currently, in school districts, collective bargaining law requires that the parties engage in good faith bargaining on all matters related to wages, hours, and conditions of employment. This bill requires the employer to bargain collectively with respect to education policy, but also provides that no dispute relating to an education policy issue is subject to interest arbitration unless all parties to the dispute agree, in writing, to make such an issue subject to interest arbitration. Under the bill, however, if the employer makes a proposal that provides that employee compensation or performance expectations are linked with student academic performance, the labor organization may include in its single final offer for purposes of interest arbitration any proposal to meet the performance expectations, including a proposal affecting education policy.

3. 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 employees, 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 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 and, instead, requires that the arbitrator or arbitration panel simply considers these as factors. In addition, with respect to a school district, the bill provides that the arbitrator or arbitration panel must use as a factor a determination as to which party's proposal best provides for a fundamental right to an equal opportunity for a sound basic education under article X, section 3, of the Wisconsin Constitution.

4 S. Finally, the bill eliminates a 3.8% cap ~~imposed on salary~~ and ~~prevents annual~~ <sup>and</sup> ~~increase~~ for ~~nonrepresented~~ <sup>professional</sup> school district employees.

4. ~~Under~~<sup>y</sup> under current law, school district professional employees are required to be placed in a collective bargaining unit that is separate from the units of other school district employees. 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) (a) of the statutes is amended to read:

111.70 (1) (a) "Collective bargaining" means the performance of the mutual obligation of a municipal employer, through its officers and agents, and the representative of its municipal employees in a collective bargaining unit, to meet and confer at reasonable times, in good faith, with the intention of reaching an agreement, or to resolve questions arising under such an agreement, with respect to wages, hours and conditions of employment, and with respect to a requirement of the municipal employer for a municipal employee to perform law enforcement and fire fighting services under s. 61.66, except as provided in sub. (4) (m) and s. 40.81 (3) and except that a municipal employer shall not meet and confer with respect to any proposal to diminish or abridge the rights guaranteed to municipal employees under ch. 164. The duty to bargain, however, does not compel either party to agree to a proposal or require the making of a concession. Collective bargaining includes the reduction of any agreement reached to a written and signed document. The municipal employer shall not be required to bargain on subjects reserved to management and direction of the governmental unit except insofar as the manner of exercise of such functions affects the wages, hours and conditions of employment of the municipal employees in a collective bargaining unit and except as provided in sub. (4) (p). In creating this subchapter the legislature recognizes that the municipal

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1 employer must exercise its powers and responsibilities to act for the government and  
2 good order of the jurisdiction which it serves, its commercial benefit and the health,  
3 safety and welfare of the public to assure orderly operations and functions within its  
4 jurisdiction, subject to those rights secured to municipal employees by the  
5 constitutions of this state and of the United States and by this subchapter.

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

7 111.70 (1) (b) “Collective bargaining unit” means a unit ~~consisting of municipal~~  
8 ~~employees who are school district professional employees or of municipal employees~~  
9 ~~who are not school district professional employees~~ that is determined by the  
10 commission to be appropriate for the purpose of collective bargaining.

11 **SECTION 3.** 111.70 (1) (dm) of the statutes is repealed.

12 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

13 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

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

15 111.70 (4) (cm) 5. ‘Voluntary impasse resolution procedures.’ In addition to the  
16 other impasse resolution procedures provided in this paragraph, a municipal  
17 employer and labor organization may at any time, as a permissive subject of  
18 bargaining, agree in writing to a dispute settlement procedure, including  
19 authorization for a strike by municipal employees or binding interest arbitration,  
20 which is acceptable to the parties for resolving an impasse over terms of any  
21 collective bargaining agreement under this subchapter. A copy of such agreement  
22 shall be filed by the parties with the commission. If the parties agree to any form of  
23 binding interest arbitration, the arbitrator shall give weight to the factors  
24 enumerated under ~~subds. 7., 7g. and~~ subd. 7r.

25 **SECTION 7.** 111.70 (4) (cm) 5s. of the statutes is repealed.

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

2           111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute ~~relating to one~~  
3 ~~or more issues, qualifying for interest arbitration under subd. 5s. in a collective~~  
4 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable  
5 period of negotiation and after mediation by the commission under subd. 3. and other  
6 settlement procedures, if any, established by the parties have been exhausted, and  
7 the parties are deadlocked with respect to any dispute between them over wages,  
8 hours, and conditions of employment to be included in a new collective bargaining  
9 agreement, either party, or the parties jointly, may petition the commission, in  
10 writing, to initiate compulsory, final, and binding arbitration, as provided in this  
11 paragraph. At the time the petition is filed, the petitioning party shall submit in  
12 writing to the other party and the commission its preliminary final offer containing  
13 its latest proposals on all issues in dispute. Within 14 calendar days after the date  
14 of that submission, the other party shall submit in writing its preliminary final offer  
15 on all disputed issues to the petitioning party and the commission. If a petition is  
16 filed jointly, both parties shall exchange their preliminary final offers in writing and  
17 submit copies to the commission at the time the petition is filed.

18           **SECTION 9.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

19           111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the  
20 commission shall make an investigation, with or without a formal hearing, to  
21 determine whether arbitration should be commenced. If in determining whether an  
22 impasse exists the commission finds that the procedures set forth in this paragraph  
23 have not been complied with and such compliance would tend to result in a  
24 settlement, it may order such compliance before ordering arbitration. The validity  
25 of any arbitration award or collective bargaining agreement shall not be affected by

1 failure to comply with such procedures. Prior to the close of the investigation each  
2 party shall submit in writing to the commission its single final offer containing its  
3 final proposals on all issues in dispute that are subject to interest arbitration under  
4 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~  
5 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall  
6 close the investigation based on the last written position of the party. ~~The municipal~~  
7 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~  
8 ~~of the investigation.~~ Such final offers may include only mandatory subjects of  
9 bargaining, except that a permissive subject of bargaining may be included by a  
10 party if the other party does not object and shall then be treated as a mandatory  
11 subject. No later than such time, the parties shall also submit to the commission a  
12 stipulation, in writing, with respect to all matters which are agreed upon for  
13 inclusion in the new or amended collective bargaining agreement. The commission,  
14 after receiving a report from its investigator and determining that arbitration should  
15 be commenced, shall issue an order requiring arbitration and immediately submit  
16 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall  
17 alternately strike names until a single name is left, who shall be appointed as  
18 arbitrator. The petitioning party shall notify the commission in writing of the  
19 identity of the arbitrator selected. Upon receipt of such notice, the commission shall  
20 formally appoint the arbitrator and submit to him or her the final offers of the  
21 parties. The final offers shall be considered public documents and shall be available  
22 from the commission. In lieu of a single arbitrator and upon request of both parties,  
23 the commission shall appoint a tripartite arbitration panel consisting of one member  
24 selected by each of the parties and a neutral person designated by the commission  
25 who shall serve as a chairperson. An arbitration panel has the same powers and

1 duties as provided in this section for any other appointed arbitrator, and all  
2 arbitration decisions by such panel shall be determined by majority vote. In lieu of  
3 selection of the arbitrator by the parties and upon request of both parties, the  
4 commission shall establish a procedure for randomly selecting names of arbitrators.  
5 Under the procedure, the commission shall submit a list of 7 arbitrators to the  
6 parties. Each party shall strike one name from the list. From the remaining 5  
7 names, the commission shall randomly appoint an arbitrator. Unless both parties  
8 to an arbitration proceeding otherwise agree in writing, every individual whose  
9 name is submitted by the commission for appointment as an arbitrator shall be a  
10 resident of this state at the time of submission and every individual who is  
11 designated as an arbitration panel chairperson shall be a resident of this state at the  
12 time of designation.

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

14 **SECTION 11.** 111.70 (4) (cm) 7g. of the statutes is repealed.

15 **SECTION 12.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

16 111.70 (4) (cm) 7r. ~~‘Other factors~~ Factors considered.’ (intro.) In making any  
17 decision under the arbitration procedures authorized by this paragraph, the  
18 arbitrator or arbitration panel shall ~~also~~ give weight to the following factors:

19 **SECTION 13.** 111.70 (4) (cm) 7r. hm. of the statutes is created to read:

20 111.70 (4) (cm) 7r. hm. In a school district, a determination as to which party’s  
21 proposal best provides for a fundamental right to an equal opportunity for a sound  
22 basic education under article X, section 3, of the constitution.

23 **SECTION 14.** 111.70 (4) (cm) 7r. ie. of the statutes is created to read:

24 111.70 (4) (cm) 7r. ie. Any state law or directive lawfully issued by a state  
25 legislative or administrative officer, body, or agency which places limitations on

1 expenditures that may be made or revenues that may be collected by a municipal  
2 employer.

3 **SECTION 15.** 111.70 (4) (cm) 7r. ir. of the statutes is created to read:

4 111.70 (4) (cm) 7r. ir. Economic conditions in the jurisdiction of the municipal  
5 employer.

6 **SECTION 16.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,  
7 renumbered 111.70 (4) (cm) 8m. and amended to read:

8 111.70 (4) (cm) 8m. 'Term of agreement; reopening of negotiations.' Except for  
9 the initial collective bargaining agreement between the parties and except as the  
10 parties otherwise agree, every collective bargaining agreement covering municipal  
11 employees subject to this paragraph ~~other than school district professional~~  
12 ~~employees~~ shall be for a term of 2 years. No, but in no case may a collective  
13 bargaining agreement for any collective bargaining unit consisting of municipal  
14 employees ~~subject to this paragraph other than school district professional~~  
15 ~~employees~~ shall be for a term exceeding 3 years. e. No arbitration award may  
16 contain a provision for reopening of negotiations during the term of a collective  
17 bargaining agreement, unless both parties agree to such a provision. The  
18 requirement for agreement by both parties does not apply to a provision for  
19 reopening of negotiations with respect to any portion of an agreement that is  
20 declared invalid by a court or administrative agency or rendered invalid by the  
21 enactment of a law or promulgation of a federal regulation.

22 **SECTION 17.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

23 **SECTION 18.** 111.70 (4) (cm) 8p. of the statutes is repealed.

24 **SECTION 19.** 111.70 (4) (cm) 8s. of the statutes is ~~amended to read.~~ <sup>+</sup> *repealed.*

1           111.70 (4) (cm) 8s. 'Forms for determining costs.' The commission shall  
2       prescribe forms for calculating the total increased cost to the municipal employer of  
3       compensation and fringe benefits provided to school district professional employees.  
4       The cost shall be determined based upon the total cost of compensation and fringe  
5       benefits provided to school district professional employees who are represented by  
6       a labor organization on the 90th day before expiration of any previous collective  
7       bargaining agreement between the parties, or who were so represented if the  
8       effective date is retroactive, or the 90th day prior to commencement of negotiations  
9       if there is no previous collective bargaining agreement between the parties, without  
10      regard to any change in the number, rank, or qualifications of the school district  
11      professional employees. For purposes of such determinations, any cost increase that  
12      is incurred on any day other than the beginning of the 12-month period commencing  
13      with the effective date of the agreement or any succeeding 12-month period  
14      commencing on the anniversary of that effective date shall be calculated as if the cost  
15      increase were incurred as of the beginning of the 12-month period beginning on the  
16      effective date or anniversary of the effective date in which the cost increase is  
17      incurred. ~~In each collective bargaining unit to which subd. 5s. applies, the municipal~~  
18      ~~employer shall transmit to the commission and the labor organization a completed~~  
19      ~~form for calculating the total increased cost to the municipal employer of~~  
20      ~~compensation and fringe benefits provided to the school district professional~~  
21      ~~employees covered by the agreement as soon as possible after the effective date of the~~  
22      ~~agreement.~~

23           **SECTION 20.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

24           111.70 (4) (d) 2. a. The commission shall determine the appropriate collective  
25      bargaining unit for the purpose of collective bargaining and shall whenever possible,

1 unless otherwise required under this subchapter, avoid fragmentation by  
2 maintaining as few collective bargaining units as practicable in keeping with the size  
3 of the total municipal work force. In making such a determination, the commission  
4 may decide whether, in a particular case, the municipal employees in the same or  
5 several departments, divisions, institutions, crafts, professions, or other  
6 occupational groupings constitute a collective bargaining unit. Before making its  
7 determination, the commission may provide an opportunity for the municipal  
8 employees concerned to determine, by secret ballot, whether or not they desire to be  
9 established as a separate collective bargaining unit. ~~The commission shall not~~  
10 ~~decide, however, that any group of municipal employees constitutes an appropriate~~  
11 ~~collective bargaining unit if the group includes both municipal employees who are~~  
12 ~~school district professional employees and municipal employees who are not school~~  
13 ~~district professional employees.~~ The commission shall not decide, however, that any  
14 other group of municipal employees constitutes an appropriate collective bargaining  
15 unit if the group includes both professional employees and nonprofessional  
16 employees, unless a majority of the professional employees vote for inclusion in the  
17 unit. The commission shall not decide that any group of municipal employees  
18 constitutes an appropriate collective bargaining unit if the group includes both craft  
19 employees and noncraft employees unless a majority of the craft employees vote for  
20 inclusion in the unit. The commission shall place the professional employees who are  
21 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in  
22 a separate collective bargaining unit from a unit that includes any other professional  
23 employees whenever at least 30% of those professional employees request an election  
24 to be held to determine that issue and a majority of the professional employees at the  
25 charter school who cast votes in the election decide to be represented in a separate

11-16

Section #. 119.04<sup>(1)</sup> of the statutes is amended to read:

no (B)

**119.04 Public instruction laws applicable.** (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c), 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18, 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), ~~118.245~~<sup>✓ strike</sup>, 118.255, 118.258, 118.291, 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) and (37), 120.14 and 120.25 are applicable to a 1st class city school district and board.

(2) ~~The board shall exercise the powers, perform the functions and be entitled to all school aid under sub. (1) insofar as the same are relevant to cities of the 1st class. The board and the schools in cities of the 1st class shall be governed in all matters by the general laws of the state, except as altered or modified by express amendments.~~

History: 1971 c. 152 s. 38; 1971 c. 154 s. 80; 1973 c. 89 s. 20 (1); 1973 c. 90; 1973 c. 188 s. 6; 1973 c. 243, 254, 290, 307, 333; 1975 c. 39, 41, 95, 220, 379, 395, 422; 1977 c. 29; 1977 c. 203 s. 106; 1977 c. 206, 284, 447; 1979 c. 20; 1979 c. 34 s. 2102 (43) (a); 1979 c. 221, 298, 331; 1979 c. 346 s. 15; 1979 c. 355; 1981 c. 59; 1981 c. 241 s. 4; 1983 a. 193; 1983 a. 339 s. 10; 1983 a. 374 s. 12; 1983 a. 412, 489, 538; 1985 a. 29 s. 3202 (43); 1985 a. 56 s. 43; 1985 a. 214 s. 4; 1985 a. 225, 332; 1987 a. 27, 187, 285, 386, 403; 1989 a. 31, 120, 121, 122, 201, 209, 359; 1991 a. 39, 42, 189, 269; 1993 a. 16, 334, 377, 491; 1995 a. 27, 225; 1997 a. 27, 77, 113, 240, 252, 335; 1999 a. 9, 32, 73; 1999 a. 150 ss. 631, 672; 1999 a. 186.

1 collective bargaining unit. Any vote taken under this subsection shall be by secret  
2 ballot.

3 SECTION 21. 111.70 (4) (p) of the statutes is created to read:

4 111.70 (4) (p) *Additional mandatory subjects of bargaining in school districts.*

5 1. In a school district, the municipal employer is required to bargain collectively with  
6 respect to education policy, except that no dispute relating to an education policy  
7 issue is subject to interest arbitration under par. (cm) 6. unless all parties to the  
8 dispute agree, in writing, to make such an issue subject to interest arbitration under  
9 par. (cm) 6.

10 2. Notwithstanding subd. 1., in a school district, if the municipal employer  
11 makes a proposal that provides that employee compensation or performance  
12 expectations are linked with student academic performance, the labor organization  
13 may include in its single final offer under par. (cm) 6. am. any proposal to meet the  
14 performance expectations, including a proposal affecting education policy.

Insert  
11-16

15 SECTION 9317. **Initial applicability; employment relations commission.**

16 (1) QUALIFIED ECONOMIC OFFERS. The treatment of section 111.70 (1) (b), (dm),  
17 (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), ie., and ir., 8m. a.,  
18 b., and c., 8p., and 8s. and (d) 2. a. of the statutes first applies to petitions for  
19 arbitration that relate to collective bargaining agreements that cover periods  
20 beginning on or after July 1, 2003, and that are filed under section 111.70 (4) (cm)  
21 6. of the statutes, as affected by this act, on the effective date of this subsection.

22 (2) SCHOOL DISTRICT COLLECTIVE BARGAINING SUBJECTS AND FACTORS. The  
23 treatment of sections 111.70 (1) (a) and (4) (cm) 7r. hm. and (p) of the statutes first

SEC #. 118.245 of the statutes is repealed.

insert at line 15

1 applies to collective bargaining agreements that cover periods beginning on or after  
2 July 1, 2003.

3 (END)



State of Wisconsin  
2003 - 2004 LEGISLATURE

LRB-1102/6  
RAC:kjf&kmg:rs

DOA:.....Ziegler - BB0372, Elimination of qualified economic offer provisions in Municipal Employment Relations Act

FOR 2003-05 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: the budget.

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*Analysis by the Legislative Reference Bureau*

**EMPLOYMENT**

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 employees 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 employees' existing fringe benefit costs and the employees' 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 employees 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 employees 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 employees' existing fringe benefit costs and to maintain all fringe benefits provided to the municipal employees.

This bill eliminates the QEO exception from the compulsory, final, and binding arbitration process.

2. Currently, in school districts, collective bargaining law requires that the parties engage in good faith bargaining on all matters related to wages, hours, and conditions of employment. This bill requires the employer to bargain collectively with respect to education policy, but also provides that no dispute relating to an education policy issue is subject to interest arbitration unless all parties to the dispute agree, in writing, to make such an issue subject to interest arbitration. Under the bill, however, if the employer makes a proposal that provides that employee compensation or performance expectations are linked with student academic performance, the labor organization may include in its single final offer for purposes of interest arbitration any proposal to meet the performance expectations, including a proposal affecting education policy.

3. 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 employees, 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 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 and, instead, requires that the arbitrator or arbitration panel simply considers these as factors. In addition, with respect to a school district, the bill provides that the arbitrator or arbitration panel must use as a factor a determination as to which party's proposal best provides for a fundamental right to an equal opportunity for a sound basic education under article X, section 3, of the Wisconsin Constitution.

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

5. Finally, the bill eliminates a 3.8% cap imposed on salary fringe benefit annual increases for all nonrepresented professional school district employees.

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

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

1           **SECTION 1.** 111.70 (1) (a) of the statutes 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 s. 40.81 (3) and  
10 except that a municipal employer shall not meet and confer with respect to any  
11 proposal to diminish or abridge the rights guaranteed to municipal employees under  
12 ch. 164. The duty to bargain, however, does not compel either party to agree to a  
13 proposal or require the making of a concession. Collective bargaining includes the  
14 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 and except as provided in

1 sub. (4)(p). In creating this subchapter the legislature recognizes that the municipal  
2 employer must exercise its powers and responsibilities to act for the government and  
3 good order of the jurisdiction which it serves, its commercial benefit and the health,  
4 safety and welfare of the public to assure orderly operations and functions within its  
5 jurisdiction, subject to those rights secured to municipal employees by the  
6 constitutions of this state and of the United States and by this subchapter.

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

8 111.70 (1) (b) “Collective bargaining unit” means a unit ~~consisting of municipal~~  
9 ~~employees who are school district professional employees or of municipal employees~~  
10 ~~who are not school district professional employees~~ that is determined by the  
11 commission to be appropriate for the purpose of collective bargaining.

12 **SECTION 3.** 111.70 (1) (dm) of the statutes is repealed.

13 **SECTION 4.** 111.70 (1) (fm) of the statutes is repealed.

14 **SECTION 5.** 111.70 (1) (nc) of the statutes is repealed.

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

16 111.70 (4) (cm) 5. ‘Voluntary impasse resolution procedures.’ In addition to the  
17 other impasse resolution procedures provided in this paragraph, a municipal  
18 employer and labor organization may at any time, as a permissive subject of  
19 bargaining, agree in writing to a dispute settlement procedure, including  
20 authorization for a strike by municipal employees or binding interest arbitration,  
21 which is acceptable to the parties for resolving an impasse over terms of any  
22 collective bargaining agreement under this subchapter. A copy of such agreement  
23 shall be filed by the parties with the commission. If the parties agree to any form of  
24 binding interest arbitration, the arbitrator shall give weight to the factors  
25 enumerated under ~~subds. 7., 7g.~~ and subd. 7r.

1           **SECTION 7.** 111.70 (4) (cm) 5s. of the statutes is repealed.

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

3           111.70 (4) (cm) 6. a. If in any collective bargaining unit a dispute ~~relating to one~~  
4 ~~or more issues, qualifying for interest arbitration under subd. 5s. in a collective~~  
5 ~~bargaining unit to which subd. 5s. applies,~~ has not been settled after a reasonable  
6 period of negotiation and after mediation by the commission under subd. 3. and other  
7 settlement procedures, if any, established by the parties have been exhausted, and  
8 the parties are deadlocked with respect to any dispute between them over wages,  
9 hours, and conditions of employment to be included in a new collective bargaining  
10 agreement, either party, or the parties jointly, may petition the commission, in  
11 writing, to initiate compulsory, final, and binding arbitration, as provided in this  
12 paragraph. At the time the petition is filed, the petitioning party shall submit in  
13 writing to the other party and the commission its preliminary final offer containing  
14 its latest proposals on all issues in dispute. Within 14 calendar days after the date  
15 of that submission, the other party shall submit in writing its preliminary final offer  
16 on all disputed issues to the petitioning party and the commission. If a petition is  
17 filed jointly, both parties shall exchange their preliminary final offers in writing and  
18 submit copies to the commission at the time the petition is filed.

19           **SECTION 9.** 111.70 (4) (cm) 6. am. of the statutes is amended to read:

20           111.70 (4) (cm) 6. am. Upon receipt of a petition to initiate arbitration, the  
21 commission shall make an investigation, with or without a formal hearing, to  
22 determine whether arbitration should be commenced. If in determining whether an  
23 impasse exists the commission finds that the procedures set forth in this paragraph  
24 have not been complied with and such compliance would tend to result in a  
25 settlement, it may order such compliance before ordering arbitration. The validity

1 of any arbitration award or collective bargaining agreement shall not be affected by  
2 failure to comply with such procedures. Prior to the close of the investigation each  
3 party shall submit in writing to the commission its single final offer containing its  
4 final proposals on all issues in dispute that are subject to interest arbitration under  
5 this subdivision ~~or under subd. 5s. in collective bargaining units to which subd. 5s.~~  
6 ~~applies.~~ If a party fails to submit a single, ultimate final offer, the commission shall  
7 close the investigation based on the last written position of the party. ~~The municipal~~  
8 ~~employer may not submit a qualified economic offer under subd. 5s. after the close~~  
9 ~~of the investigation.~~ Such final offers may include only mandatory subjects of  
10 bargaining, except that a permissive subject of bargaining may be included by a  
11 party if the other party does not object and shall then be treated as a mandatory  
12 subject. No later than such time, the parties shall also submit to the commission a  
13 stipulation, in writing, with respect to all matters which are agreed upon for  
14 inclusion in the new or amended collective bargaining agreement. The commission,  
15 after receiving a report from its investigator and determining that arbitration should  
16 be commenced, shall issue an order requiring arbitration and immediately submit  
17 to the parties a list of 7 arbitrators. Upon receipt of such list, the parties shall  
18 alternately strike names until a single name is left, who shall be appointed as  
19 arbitrator. The petitioning party shall notify the commission in writing of the  
20 identity of the arbitrator selected. Upon receipt of such notice, the commission shall  
21 formally appoint the arbitrator and submit to him or her the final offers of the  
22 parties. The final offers shall be considered public documents and shall be available  
23 from the commission. In lieu of a single arbitrator and upon request of both parties,  
24 the commission shall appoint a tripartite arbitration panel consisting of one member  
25 selected by each of the parties and a neutral person designated by the commission

1 who shall serve as a chairperson. An arbitration panel has the same powers and  
2 duties as provided in this section for any other appointed arbitrator, and all  
3 arbitration decisions by such panel shall be determined by majority vote. In lieu of  
4 selection of the arbitrator by the parties and upon request of both parties, the  
5 commission shall establish a procedure for randomly selecting names of arbitrators.  
6 Under the procedure, the commission shall submit a list of 7 arbitrators to the  
7 parties. Each party shall strike one name from the list. From the remaining 5  
8 names, the commission shall randomly appoint an arbitrator. Unless both parties  
9 to an arbitration proceeding otherwise agree in writing, every individual whose  
10 name is submitted by the commission for appointment as an arbitrator shall be a  
11 resident of this state at the time of submission and every individual who is  
12 designated as an arbitration panel chairperson shall be a resident of this state at the  
13 time of designation.

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

15 **SECTION 11.** 111.70 (4) (cm) 7g. of the statutes is repealed.

16 **SECTION 12.** 111.70 (4) (cm) 7r. (intro.) of the statutes is amended to read:

17 111.70 (4) (cm) 7r. ~~‘Other factors~~ Factors considered.’ (intro.) In making any  
18 decision under the arbitration procedures authorized by this paragraph, the  
19 arbitrator or arbitration panel shall also give weight to the following factors:

20 **SECTION 13.** 111.70 (4) (cm) 7r. hm. of the statutes is created to read:

21 111.70 (4) (cm) 7r. hm. In a school district, a determination as to which party’s  
22 proposal best provides for a fundamental right to an equal opportunity for a sound  
23 basic education under article X, section 3, of the constitution.

24 **SECTION 14.** 111.70 (4) (cm) 7r. ie. of the statutes is created to read:

1           111.70 (4) (cm) 7r. ie. Any state law or directive lawfully issued by a state  
2 legislative or administrative officer, body, or agency which places limitations on  
3 expenditures that may be made or revenues that may be collected by a municipal  
4 employer.

5           **SECTION 15.** 111.70 (4) (cm) 7r. ir. of the statutes is created to read:

6           111.70 (4) (cm) 7r. ir. Economic conditions in the jurisdiction of the municipal  
7 employer.

8           **SECTION 16.** 111.70 (4) (cm) 8m. a. and c. of the statutes are consolidated,  
9 renumbered 111.70 (4) (cm) 8m. and amended to read:

10           111.70 (4) (cm) 8m. ‘Term of agreement; reopening of negotiations.’ Except for  
11 the initial collective bargaining agreement between the parties and except as the  
12 parties otherwise agree, every collective bargaining agreement covering municipal  
13 employees subject to this paragraph ~~other than school district professional~~  
14 ~~employees~~ shall be for a term of 2 years. No, but in no case may a collective  
15 bargaining agreement for any collective bargaining unit consisting of municipal  
16 employees ~~subject to this paragraph other than school district professional~~  
17 ~~employees~~ shall be for a term exceeding 3 years. e. No arbitration award may  
18 contain a provision for reopening of negotiations during the term of a collective  
19 bargaining agreement, unless both parties agree to such a provision. The  
20 requirement for agreement by both parties does not apply to a provision for  
21 reopening of negotiations with respect to any portion of an agreement that is  
22 declared invalid by a court or administrative agency or rendered invalid by the  
23 enactment of a law or promulgation of a federal regulation.

24           **SECTION 17.** 111.70 (4) (cm) 8m. b. of the statutes is repealed.

25           **SECTION 18.** 111.70 (4) (cm) 8p. of the statutes is repealed.

1           **SECTION 19.** 111.70 (4) (cm) 8s. of the statutes is repealed.

2           **SECTION 20.** 111.70 (4) (d) 2. a. of the statutes is amended to read:

3           111.70 (4) (d) 2. a. The commission shall determine the appropriate collective  
4 bargaining unit for the purpose of collective bargaining and shall whenever possible,  
5 unless otherwise required under this subchapter, avoid fragmentation by  
6 maintaining as few collective bargaining units as practicable in keeping with the size  
7 of the total municipal work force. In making such a determination, the commission  
8 may decide whether, in a particular case, the municipal employees in the same or  
9 several departments, divisions, institutions, crafts, professions, or other  
10 occupational groupings constitute a collective bargaining unit. Before making its  
11 determination, the commission may provide an opportunity for the municipal  
12 employees concerned to determine, by secret ballot, whether or not they desire to be  
13 established as a separate collective bargaining unit. ~~The commission shall not~~  
14 ~~decide, however, that any group of municipal employees constitutes an appropriate~~  
15 ~~collective bargaining unit if the group includes both municipal employees who are~~  
16 ~~school district professional employees and municipal employees who are not school~~  
17 ~~district professional employees.~~ The commission shall not decide, however, that any  
18 ~~other~~ group of municipal employees constitutes an appropriate collective bargaining  
19 unit if the group includes both professional employees and nonprofessional  
20 employees, unless a majority of the professional employees vote for inclusion in the  
21 unit. The commission shall not decide that any group of municipal employees  
22 constitutes an appropriate collective bargaining unit if the group includes both craft  
23 employees and noncraft employees unless a majority of the craft employees vote for  
24 inclusion in the unit. The commission shall place the professional employees who are  
25 assigned to perform any services at a charter school, as defined in s. 115.001 (1), in

1 a separate collective bargaining unit from a unit that includes any other professional  
2 employees whenever at least 30% of those professional employees request an election  
3 to be held to determine that issue and a majority of the professional employees at the  
4 charter school who cast votes in the election decide to be represented in a separate  
5 collective bargaining unit. Any vote taken under this subsection shall be by secret  
6 ballot.

7 **SECTION 21.** 111.70 (4) (p) of the statutes is created to read:

8 111.70 (4) (p) *Additional mandatory subjects of bargaining in school districts.*

9 1. In a school district, the municipal employer is required to bargain collectively with  
10 respect to education policy, except that no dispute relating to an education policy  
11 issue is subject to interest arbitration under par. (cm) 6. unless all parties to the  
12 dispute agree, in writing, to make such an issue subject to interest arbitration under  
13 par. (cm) 6.

14 2. Notwithstanding subd. 1., in a school district, if the municipal employer  
15 makes a proposal that provides that employee compensation or performance  
16 expectations are linked with student academic performance, the labor organization  
17 may include in its single final offer under par. (cm) 6. am. any proposal to meet the  
18 performance expectations, including a proposal affecting education policy.

19 **SECTION 22.** 119.04 (1) of the statutes is amended to read:

20 119.04 (1) Subchapters IV, V and VII of ch. 115, ch. 121 and ss. 66.0235 (3) (c),  
21 115.01 (1) and (2), 115.28, 115.31, 115.33, 115.34, 115.343, 115.345, 115.361, 115.38  
22 (2), 115.45, 118.001 to 118.04, 118.045, 118.06, 118.07, 118.10, 118.12, 118.125 to  
23 118.14, 118.145 (4), 118.15, 118.153, 118.16, 118.162, 118.163, 118.164, 118.18,  
24 118.19, 118.20, 118.24 (1), (2) (c) to (f), (6) and (8), ~~118.245~~, 118.255, 118.258, 118.291,  
25 118.30 to 118.43, 118.51, 118.52, 118.55, 120.12 (5) and (15) to (26), 120.125, 120.13

1 (1), (2) (b) to (g), (3), (14), (17) to (19), (26), (34), (35) and (37), 120.14 and 120.25 are  
2 applicable to a 1st class city school district and board.

3 **SECTION 23.** 118.245 of the statutes is repealed.

4 **SECTION 9317. Initial applicability; employment relations commission.**

5 (1) **QUALIFIED ECONOMIC OFFERS.** The treatment of section 111.70 (1) (b), (dm),  
6 (fm), and (nc) and (4) (cm) 5., 5s., 6. a. and am., 7., 7g., 7r. (intro.), ie., and ir., 8m. a.,  
7 b., and c., 8p., and 8s. and (d) 2. a. of the statutes first applies to petitions for  
8 arbitration that relate to collective bargaining agreements that cover periods  
9 beginning on or after July 1, 2003, and that are filed under section 111.70 (4) (cm)  
10 6. of the statutes, as affected by this act, on the effective date of this subsection.

11 (2) **SCHOOL DISTRICT COLLECTIVE BARGAINING SUBJECTS AND FACTORS.** The  
12 treatment of sections 111.70 (1) (a) and (4) (cm) 7r. hm. and (p) of the statutes first  
13 applies to collective bargaining agreements that cover periods beginning on or after  
14 July 1, 2003.

15 (END)