

2009 DRAFTING REQUEST

Bill

Received: **08/28/2009**

Received By: **phurley**

Wanted: **As time permits**

Identical to LRB:

For: **Frederick Kessler (608) 266-5813**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **phurley**

May Contact:

Addl. Drafters:

Subject: **Courts - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Kessler@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Review of arbitration awards

Instructions:

s. 788.10 Wants to limit the scope of judicial review of arbitration award. Will send materials; wants a preliminary draft for now

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	phurley 09/11/2009	bkraft 09/16/2009	jfrantze 09/16/2009	_____	lparisi 09/16/2009		
/1	phurley 11/03/2009	jdyer 11/04/2009	phenry 11/04/2009	_____	sbasford 11/04/2009	mbarman 11/05/2009	

FE Sent For:

↳ Not Needed

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FE Sent For:			11/4 pk				

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1?	phurley	/P1bjk 9/16	 9/16				

FE Sent For:

<END>

788.10 Vacation of award, rehearing by arbitrators

(1) In any of the following cases the court in and for the county wherein the award was made must make an order vacating the award upon the application of any party to the arbitration:

- (a) Where the award was procured by corruption, fraud or undue means;
- (b) Where there was evident partiality or corruption on the part of the arbitrators; or either of them;
- (c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced;
- (d) Where the arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.
- (e) The following additional rules apply where the arbitration is pursuant to a collective bargaining agreement:

1. Arbitrators exceed their powers where their award requires a party to violate a state statute or constitutional provision.¹

2. Arbitrators exceed their powers where they expressly disregard contractual language governing the dispute.

3. Arbitrators do not exceed their powers where they misinterpret the contractual language or make a mistake of fact or law.²

4. Questions regarding whether a party followed the grievance or arbitration procedure shall not be subject to judicial review.³

5. A court shall not vacate an arbitration award except upon those grounds expressly set forth by this statute.

(2) Where an award is vacated based on a matter not presented to the arbitrators, the court may, in its discretion, direct a rehearing by the arbitrators.

¹ *Clear Channel Outdoor, Inc. v. International Unions of Painters and Allied Trades, Local 770*, 2009 WL 615401 at *7 (7th Cir. 2009); *Eastern Assoc. Coal Corp v. United Mine Workers of America*, 121 S. Ct. 462, 467 (2000).

² *City of Oshkosh v. Oshkosh Public Library Clerical and Maintenance Employees*, 99 Wis. 2d 95, 103-04 (1980); *Joint Sch. Dist. No. 10, City of Jefferson v. Jefferson Educ. Ass'n*, 78 Wis. 2d 94, 117 (1977).

³ *John Wiley & Sons, Inc. v. Livingston*, 376 U.S. 543, 557, 84 S. Ct. 909, 918 (1964); *Milwaukee County v. AFL-CIO*, 191 Wis. 2d 826, 1995 WL 78247 at *2 (Ct. App. 1995) (unpublished).

9-1-09
x/c to Andy:
not additional rules
so play with that language
Also, these clarifications should apply only to collective bargaining agreements
Andy says they don't want to limit it to only coll. bargaining so...

these clarifications should apply only to collective bargaining agreements

how about something like

If collective bargaining, reviewing
judge shall consider:

—
—

Andy will check w/ his boss &
let me know.

9-10: Kessler wants to limit
these considerations to collective
bargaining, BUT try to word it so
that it
doesn't
rule out
considering them
in other
areas

65813

t/c to Andy.
how about w. a new statute that
has 788 10 + these criteria?

Andy says to do that in a prelim
draft.



Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
x-104
Inserts

9-11-09

1 AN ACT ^{gen.} ...; relating to: vacating an award following arbitration pursuant to a
2 collective bargaining agreement.

Analysis by the Legislative Reference Bureau

Under current law, a court may review an award following arbitration and must vacate the award if the court finds that the award was procured by corruption, fraud, or undue means, that there was partiality or corruption on the part of an arbitrator, that the arbitrator was guilty of misconduct in refusing to postpone the hearing or in refusing to hear relevant evidence or of any other misbehavior by which the rights of any party were prejudiced, or where an arbitrator exceeded his or her powers.

This bill imposes the same standards for vacating an award following arbitration that was conducted pursuant to a collective bargaining agreement, but specifies that an arbitrator exceeds his or her authority if the award requires a party to violate a state statute or constitutional provision or if the arbitrator expressly disregards contractual language governing the dispute. Under the bill, an arbitrator does not exceed his or her authority merely by misinterpreting contractual language or making a mistake of law or fact.

Under the bill, a court may not review whether a party to the dispute followed a grievance or arbitration procedure and may not vacate an arbitration award unless it finds one of the grounds listed above for vacation. $\Delta \Delta^e$

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

SECTION 1. 788.105 of the statutes is created to read:

788.105 Vacation of award and rehearing by arbitrators; collective

bargaining agreements. (1) In reviewing an award that was made following arbitration pursuant to a collective bargaining agreement, in any of the following cases the court in and for the county where ^gthe award was made must make an order vacating the award upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption on the part of an arbitrator.

(c) Where an arbitrator was guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where an arbitrator exceeded his or her powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made. In this paragraph:

1. An arbitrator exceeds his or her powers where the award requires a party to violate a ^{state} statute or a constitutional provision or where the ^ethe arbitrator expressly disregards contractual language governing the dispute.

2. An arbitrator does not exceed his or her powers where the award is the result of the arbitrator misinterpreting contractual language or making a mistake of law or fact.

(2) A court may not review whether a party followed a grievance or arbitration procedure.

1 (3) A court may not vacate an arbitration award under this section if it does
2 not find one of the factors under sub. (1).

3 (4) Where an award is vacated and the time within which the agreement
4 required the award to be made has not expired, the court may, in its discretion, direct
5 a rehearing by the arbitrators.

Insert 3.5

(END)
^

**2009–2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB–3332/P1ins
PJH:.....

INSERT 2.1:

SECTION 1. 788.04 (2) (e) of the statutes is amended to read:

788.04 (2) (e) No member of the panel may participate in any subsequent court proceeding on the action arbitrated as either a counsel or a witness unless the court deems the member's testimony necessary for hearings under s. 788.10, 788.105, or 788.11.

History: 1975 c. 43, 199; 1977 c. 26 s. 75; 1977 c. 418 s. 929 (41); 1977 c. 449; 1979 c. 32 ss. 64, 92 (15); Stats. 1979 s. 788.04; 2001 a. 103.

SECTION 2. 788.09 of the statutes is amended to read:

788.09 Court confirmation award, time limit. At any time within one year after the award is made any party to the arbitration may apply to the court in and for the county within which such award was made for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified or corrected under s. 788.10, 788.105, or 788.11. Notice in writing of the application shall be served upon the adverse party or the adverse party's attorney 5 days before the hearing thereof.

History: 1979 c. 32 s. 64; Stats. 1979 s. 788.09; 1981 c. 390; 1993 a. 486.

INSERT 3.5:

SECTION 3. 802.12 (1) (a) 5. of the statutes is amended to read:

802.12 (1) (a) 5. The award is subject to judicial review under ss. 788.10, 788.105, and 788.11.

History: Sup. Ct. Order No. 93–13, 180 Wis. 2d xv; 1995 a. 225; 1997 a. 191; 1999 a. 9; 2005 a. 443, s. 265.

SECTION 4. 802.12 (3) (c) (intro.) of the statutes is amended to read:

802.12 (3) (c) (intro.) If the parties agree to binding arbitration, the court shall, subject to ss. 788.10, 788.105, and 788.11, confirm the arbitrator's award and

incorporate the award into the judgment or postjudgment modification order with respect to all of the following:

History: Sup. Ct. Order No. 93-13, 180 Wis. 2d xv; 1995 a. 225; 1997 a. 191; 1999 a. 9; 2005 a. 443, s. 265.



↑
Keep

SOON

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

11-30

X

Regen

- 1 AN ACT *to amend* 788.04 (2) (e), 788.09, 802.12 (1) (a) 5. and 802.12 (3) (c) (intro.);
- 2 and *to create* 788.105 of the statutes; **relating to:** vacating an award following
- 3 arbitration pursuant to a collective bargaining agreement.

Analysis by the Legislative Reference Bureau

Under current law, a court may review an award following arbitration and must vacate the award if the court finds that the award was procured by corruption, fraud, or undue means; that there was partiality or corruption on the part of an arbitrator; that the arbitrator was guilty of misconduct in refusing to postpone the hearing or in refusing to hear relevant evidence or of any other misbehavior by which the rights of any party were prejudiced; or where an arbitrator exceeded his or her powers.

This bill imposes the same standards for vacating an award following arbitration that was conducted pursuant to a collective bargaining agreement, but specifies that an arbitrator exceeds his or her authority if the award requires a party to violate a state statute or constitutional provision or if the arbitrator expressly disregards contractual language governing the dispute. Under the bill, an arbitrator does not exceed his or her authority merely by misinterpreting contractual language or making a mistake of law or fact.

Under the bill, a court may not review whether a party to the dispute followed a grievance or arbitration procedure and may not vacate an arbitration award unless it finds one of the grounds listed above for vacation.

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

1 **SECTION 1.** 788.04 (2) (e) of the statutes is amended to read:

2 788.04 (2) (e) No member of the panel may participate in any subsequent court
3 proceeding on the action arbitrated as either a counsel or a witness unless the court
4 deems the member's testimony necessary for hearings under s. 788.10, 788.105, or
5 788.11.

6 **SECTION 2.** 788.09 of the statutes is amended to read:

7 **788.09 Court confirmation award, time limit.** At any time within one year
8 after the award is made any party to the arbitration may apply to the court in and
9 for the county within which such award was made for an order confirming the award,
10 and thereupon the court must grant such an order unless the award is vacated,
11 modified or corrected under s. 788.10, 788.105, or 788.11. Notice in writing of the
12 application shall be served upon the adverse party or the adverse party's attorney
13 5 days before the hearing thereof.

14 **SECTION 3.** 788.105 of the statutes is created to read:

15 **788.105 Vacation of award and rehearing by arbitrators; collective**
16 **bargaining agreements.** (1) In reviewing an award that was made following
17 arbitration pursuant to a collective bargaining agreement, in any of the following
18 cases the court in and for the county where the award was made must make an order
19 vacating the award upon the application of any party to the arbitration:

20 (a) Where the award was procured by corruption, fraud, or undue means.

1 (b) Where there was evident partiality or corruption on the part of an
2 arbitrator.

3 (c) Where an arbitrator was guilty of misconduct in refusing to postpone the
4 hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and
5 material to the controversy; or of any other misbehavior by which the rights of any
6 party have been prejudiced.

7 (d) Where an arbitrator exceeded his or her powers, or so imperfectly executed
8 them that a mutual, final, and definite award upon the subject matter submitted was
9 not made. In this paragraph:

10 1. An arbitrator exceeds his or her powers where the award requires a party
11 to violate a state statute or a constitutional provision or where the arbitrator
12 expressly disregards contractual language governing the dispute.

13 2. An arbitrator does not exceed his or her powers where the award is the result
14 of the arbitrator misinterpreting contractual language or making a mistake of law
15 or fact.

16 (2) A court may not review whether a party followed a grievance or arbitration
17 procedure.

18 (3) A court may not vacate an arbitration award under this section if it does
19 not find one of the factors under sub. (1).

20 (4) Where an award is vacated and the time within which the agreement
21 required the award to be made has not expired, the court may, in its discretion, direct
22 a rehearing by the arbitrators.

23 **SECTION 4.** 802.12 (1) (a) 5. of the statutes is amended to read:

24 802.12 (1) (a) 5. The award is subject to judicial review under ss. 788.10,
25 788.105, and 788.11.

Parisi, Lori

From: Hinkel, Andy
Sent: Thursday, November 05, 2009 11:40 AM
To: LRB.Legal
Subject: Draft Review: LRB 09-3332/1 Topic: Review of arbitration awards

Please Jacket LRB 09-3332/1 for the ASSEMBLY.