

1977 Senate Bill 15

Date published: November 30, 1977

**CHAPTER 178, Laws of 1977**  
(Vetoed in Part)

AN ACT to renumber 111.70 (7); to amend 111.70 (4) (L), 111.77 (9), 121.006 (2) (a) and (3), 121.02 (1) (h) and 121.07 (6) (b); to create 111.70 (1) (nm), (3) (a) 7 and (b) 6, (4) (c) 4 and (cm), (7) (b) and (7m), 121.23 and 121.91 (3) (a) 4 of the statutes; and to repeal chapter 29, laws of 1977, section 1617y, relating to revision of municipal employment collective bargaining impasse resolution procedures for employes other than law enforcement and fire fighting personnel, ~~the definition of a school day~~, payment of state school aids and calculation of cost controls, providing for final and binding arbitration, authorizing a limited right to strike, granting rule-making authority, providing penalties and making an appropriation.

Vetoed  
in Part

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

SECTION 1. 111.70 (1) (nm) and (3) (a) 7 and (b) 6 of the statutes are created to read:

111.70 (1) (nm) "Strike" includes any strike or other concerted stoppage of work by municipal employes, and any concerted slowdown or other concerted interruption of operations or services by municipal employes, or any concerted refusal to work or perform their usual duties as municipal employes, ~~which is authorized or condoned by a labor organization~~ for the purpose of enforcing demands upon a municipal employer. Such conduct by municipal employes which is not authorized or condoned by a labor organization ~~also~~ constitutes a "strike", but does not subject such labor organization to the penalties under this subchapter. This paragraph does not apply to collective bargaining units composed of law enforcement or fire fighting personnel.

Vetoed  
in Part

(3) (a) 7. To refuse or otherwise fail to implement an arbitration decision lawfully made under sub. (4) (cm).

(b) 6. To refuse or otherwise fail to implement an arbitration decision lawfully made under sub. (4) (cm).

SECTION 2. 111.70 (4) (c) 4 of the statutes is created to read:

111.70 (4) (c) 4. This paragraph applies only to municipal employes who are engaged in law enforcement or fire fighting service from the effective date of this act (1977) until October 31, 1981; but after October 31, 1981, applies to all municipal employes, except as provided in s. 111.77 (9) or as otherwise expressly provided.

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

111.70 (4) (cm) *Methods for peaceful settlement of disputes.* 1. "Notice of commencement of contract negotiations." For the purpose of advising the commission of the commencement of contract negotiations, whenever either party requests the other to reopen negotiations under a binding collective bargaining agreement, or the parties otherwise commence negotiations if no such agreement exists, the party requesting negotiations shall immediately notify the commission in writing. Upon failure of the requesting party to provide such notice, the other party may so notify the commission. The notice shall specify the expiration date of the existing collective bargaining agreement, if any, and shall set forth any additional information the commission may require on a form provided by the commission.

Vetoed  
in Part

2. "Presentation of initial proposals; open meetings." The meetings between parties to a collective bargaining agreement or proposed collective bargaining agreement under this subchapter which are held for the purpose of presenting initial bargaining proposals, along with supporting rationale, shall be open to the public. Each party shall submit its initial bargaining proposals to the other party in writing. ~~All subsequent negotiating meetings between the parties prior to mediation, by the commission held under this paragraph shall be open to the public unless the parties jointly agree that such meetings shall be closed to the public.~~ Failure to comply with this subdivision is not cause to invalidate a collective bargaining agreement under this subchapter.

3. "Mediation." The commission or its designee shall function as mediator in labor disputes involving municipal employes upon request of one or both of the parties, or upon initiation of the commission. The function of the mediator shall be to encourage voluntary settlement by the parties. No mediator has the power of compulsion.

4. "Grievance arbitration." Parties to a dispute pertaining to the meaning or application of the terms of a written collective bargaining agreement may agree in writing to have the commission or any other appropriate agency serve as arbitrator or may designate any other competent, impartial and disinterested person to so serve.

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

6. "Mediation-Arbitration." If a dispute has not been settled after a reasonable period of negotiation and after mediation by the commission under subd. 3 and other settlement procedures, if any, established by the parties have been exhausted, and the parties are deadlocked with respect to any dispute between them over wages, hours and conditions of employment to be included in a new collective bargaining agreement, either party, or the parties jointly, may petition the commission, in writing, to initiate mediation-arbitration, as provided in this section.

a. Upon receipt of a petition to initiate mediation-arbitration, the commission shall make an investigation, with or without a formal hearing, to determine whether mediation-arbitration should be commenced. If in determining whether an impasse exists the commission finds that the procedures set forth in this paragraph have not been complied with and such compliance would tend to result in a settlement, it may order such compliance before ordering mediation-arbitration. The validity of any

arbitration award or collective bargaining agreement shall not be affected by failure to comply with such procedures. Prior to the close of the investigation each party shall submit in writing its single final offer containing its final proposals on all issues in dispute to the commission. Such final offers may include only mandatory subjects of bargaining. Permissive subjects of bargaining may be included by a party if the other party does not object and shall then be treated as a mandatory subject. No later than such time, the parties shall also submit to the commission a stipulation, in writing, with respect to all matters which are agreed upon for inclusion in the new or amended collective bargaining agreement. The commission, after receiving a report from its investigator and determining that mediation-arbitration should be commenced, shall issue an order requiring mediation-arbitration and immediately submit to the parties a list of 5 mediator-arbitrators. Upon receipt of such list, the parties shall alternately strike names until a single name is left, who shall be appointed as mediator-arbitrator. The petitioning party shall notify the commission in writing of the identity of the mediator-arbitrator selected. Upon receipt of such notice, the commission shall formally appoint the mediator-arbitrator and submit to him or her the final offers of the parties. The final offers shall be considered public documents and shall be available from the commission. In lieu of a single mediator-arbitrator and upon request of both parties, the commission shall appoint a tripartite mediation-arbitration panel consisting of one member selected by each of the parties and a neutral person designated by the commission who shall serve as a chairperson. A mediation-arbitration panel has the same powers and duties as provided in this section for any other appointed mediator-arbitrator, and all arbitration decisions by such panel shall be determined by majority vote.

b. The mediator-arbitrator shall, within 10 days of his or her appointment, establish dates and places for the conduct of mediation-arbitration sessions. Upon petition of at least 5 citizens of the jurisdiction served by the municipal employer, filed within 10 days of the date on which the mediator-arbitrator is appointed, the arbitrator shall hold a public hearing in the jurisdiction for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their positions and to members of the public to offer their comments and suggestions. The final offers of the parties, as transmitted by the commission to the mediator-arbitrator, shall serve as the initial basis for mediation and continued negotiations between the parties with respect to the issues in dispute. During such time, the mediator-arbitrator, and upon his or her request the commission or its designee, shall endeavor to mediate the dispute and encourage a voluntary settlement by the parties. During such period of mediation and continued negotiations, either party, with the consent of the other party, may modify its final offer in writing.

c. If the parties have failed to reach a voluntary settlement after a reasonable period for mediation as determined by the mediator-arbitrator, the mediator-arbitrator shall provide written notification to the parties and the commission of his or her intent to resolve the dispute by final and binding arbitration. Thereafter, either party may, within a time limit established by the mediator-arbitrator, withdraw its final offer and mutually agreed upon modifications thereof, if any, and shall immediately provide written notice of such withdrawal to the other party, the mediator-arbitrator and the commission. If both parties withdraw their final offers and mutually agreed upon modifications, the labor organization, after giving 10 days' written advance notice to the municipal employer and the commission, may strike. Unless both parties withdraw their final offers and mutually agreed upon modifications, the final offer of neither party shall be deemed withdrawn and the mediator-arbitrator shall proceed to resolve the dispute by final and binding arbitration as provided in this paragraph.

d. Before issuing his or her arbitration decision, the mediator-arbitrator acting as arbitrator shall, on his or her own motion or at the request of either party, conduct a meeting open to the public for the purpose of providing the opportunity to both parties to explain or present supporting arguments for their complete offer on all matters to be covered by the proposed agreement. The mediator-arbitrator acting as arbitrator shall adopt without further modification the final offer of one of the parties on all disputed

issues submitted under subd. 6. a, except those items that the commission determines not to be mandatory subjects of bargaining and those items which have not been treated as mandatory subjects by the parties, and including any prior modifications of such offer mutually agreed upon by the parties under subd. 6. b, which decision shall be final and binding on both parties and shall be incorporated into a written collective bargaining agreement. The mediator-arbitrator acting as arbitrator shall serve a copy of his or her decision on both parties and the commission.

e. Mediation-arbitration proceedings shall not be interrupted or terminated by reason of any prohibited practice complaint filed by either party at any time.

f. The costs of mediation-arbitration shall be divided equally between the parties. The mediator-arbitrator shall submit a statement of his or her costs to both parties and to the commission.

g. If a question arises as to whether any proposal made in negotiations by either party is a mandatory, permissive or prohibited subject of bargaining, the commission shall determine the issue pursuant to par. (b). If either party to the dispute petitions the commission for a declaratory ruling under par. (b), the proceedings under subd. 6. c and d shall be delayed until the commission renders a decision in the matter, but not during any appeal of the commission order. The mediator-arbitrator's award shall be made in accordance with the commission's ruling, subject to automatic amendment by any subsequent court reversal thereof.

7. "Factors considered." In making any decision under the arbitration procedures authorized by this subsection, the mediator-arbitrator shall give weight to the following factors:

a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services and with other employes generally in public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.

e. The average consumer prices for goods and services, commonly known as the cost-of-living.

f. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

8. "Rule-making." The commission shall adopt rules for the conduct of all mediation-arbitration proceedings under subd. 6, including rules for the appointment of tripartite mediation-arbitration panels when requested by the parties, the expeditious rendering of arbitration decisions, such as waivers of briefs and transcripts, and proceedings for the enforcement of arbitration decisions of the mediator-arbitrator. Chapter 298 does not apply to such arbitration proceedings.

9. "Application." This paragraph does not apply to labor disputes involving law enforcement and fire fighting personnel.

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

111.70 (4) (L) (title) *Strikes prohibited; exception.* ~~Nothing~~ Except as authorized under par. (cm) 5 and 6. c. nothing contained in this subchapter shall constitute ~~constitutes~~ a grant of the right to strike by any ~~county or~~ municipal employe, and such strikes are hereby expressly prohibited. Par. (cm) does not authorize any strike after an injunction has been issued against such strike under sub. (7m).

SECTION 5. 111.70 (7) of the statutes is renumbered 111.70 (7) (a).

SECTION 6. 111.70 (7) (b) of the statutes is created to read:

111.70 (7) (b) This subsection applies only to municipal employes who are engaged in law enforcement or fire fighting service from the effective date of this act (1977) until October 31, 1981; but after October 31, 1981, applies to all municipal employes, except as otherwise expressly provided.

SECTION 7. 111.70 (7m) of the statutes is created to read:

111.70 (7m) INJUNCTIVE RELIEF; PENALTIES; CIVIL LIABILITY. (a) *Injunction; prohibited strike.* At any time after the commencement of a strike which is prohibited under sub. (4) (L), the municipal employer or any citizen directly affected by such strike may petition the circuit court for an injunction to immediately terminate the strike. If the court determines that the strike is prohibited under sub. (4) (L), it shall issue an order immediately enjoining the strike, and in addition shall impose the penalties provided in par. (c).

(b) *Injunction; threat to public health or safety.* At any time after a labor organization gives advance notice of a strike under sub. (4) (cm) which is expressly authorized under sub. (4) (cm), the municipal employer or any citizen directly affected by such strike may petition the circuit court to enjoin the strike. If the court finds that the strike poses an imminent threat to the public health or safety, the court shall, within 48 hours of the receipt of the petition but after notice to the parties and after holding a hearing, issue an order immediately enjoining the strike, and in addition shall order the parties to submit a new final offer on all disputed issues to the commission for final and binding arbitration as provided in sub. (4) (cm). The commission, upon receipt of the final offers of the parties, shall transmit them to the mediator-arbitrator who is acting as arbitrator or a successor designated by the commission. The mediator-arbitrator acting as arbitrator shall omit preliminary steps and shall commence immediately to arbitrate the dispute.

(c) *Penalties.* 1. "Labor organizations." a. Any labor organization which violates sub. (4) (L) shall be penalized by the suspension of any dues check-off agreement and fair-share agreement between the municipal employer and such labor organization for a period of one year. At the end of the period of suspension, any such agreement shall be reinstated unless the labor organization is no longer authorized to represent the municipal employes covered by such dues check-off or fair-share agreement or the agreement is no longer in effect.

b. Any labor organization which violates sub. (4) (L) after an injunction has been issued shall be required to forfeit \$2 per member per day, but not more than \$10,000 per day. Each day of continued violation constitutes a separate offense.

2. "Individuals." Any individual who violates sub. (4) (L) after an injunction against a strike has been issued shall be fined \$10. Each day of continued violation constitutes a separate offense. After the injunction has been issued, any municipal employe who is absent from work because of purported illness is presumed to be on strike unless the illness is verified by a written report from a physician to the municipal employer. The court shall order that any fine imposed under this subdivision be paid by means of a salary deduction at a rate to be determined by the court.

3. "Strike in violation of award." Any person who authorizes or otherwise participates in a strike after the issuance of any final and binding arbitration award or

decision under sub. (4) (cm) and prior to the end of the term of the agreement which the award or decision amends or creates shall forfeit not less than \$15. Each day of continued violation constitutes a separate offense.

4. "Contempt of court." The penalties provided in this paragraph do not preclude the imposition by the court of any penalty for contempt provided by law.

(d) *Compensation forfeited.* No municipal employe may be paid wages or salaries by the municipal employer for the period during which he or she engages in any strike.

(e) *Civil liability.* Any party refusing to include an arbitration award or decision under sub. (4) (cm) in a written collective bargaining agreement or failing to implement the award or decision, unless good cause is shown, shall be liable for attorney fees, interest on delayed monetary benefits, and other costs incurred in any action by the nonoffending party to enforce the award or decision.

(f) *Application.* This subsection does not apply to strikes involving law enforcement and fire fighting personnel.

SECTION 8. 111.77 (9) of the statutes is amended to read:

111.77 (9) Section 111.70 (4) (c) 3 and (cm) shall not apply to employments covered by this section.

SECTION 9. 121.006 (2) (a) and (3) of the statutes, as affected by chapter 29, laws of 1977, are amended to read:

121.006 (2) (a) Hold school for at least 180 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, the days to be computed in accordance with s. 115.01 (10).

(3) Unless the state superintendent is satisfied that failure to meet the requirements of this subsection was occasioned by some extraordinary cause not arising from intention or neglect on the part of the responsible officers, a school district operating under ch. 119 shall hold school for at least 180 days each year, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, the days to be computed in accordance with s. 115.01 (10); and shall, for the full period during which school is in session during each year as provided by the rules of the board of school directors, employ teachers qualified under s. 118.19 and pay a salary of not less than \$266 a month to each regular teacher and of not less than \$10 a day to each qualified continuous substitute teacher.

SECTION 10. 121.02 (1) (h) of the statutes is amended to read:

121.02 (1) (h) School shall be held and students shall receive actual instruction for at least 180 days, less any days during which the state superintendent determines that school is not held or educational standards are not maintained as the result of a strike by school district employes, with additional days included as provided in s. 115.01 (10).

SECTION 11. 121.07 (6) (b) of the statutes, as affected by chapter 29, laws of 1977, is amended to read:

121.07 (6) (b) The "primary ceiling cost per member" is 110% of the state average shared cost per member for the previous school year, as determined by the state superintendent, except as provided in s. 121.23.

SECTION 12. 121.23 of the statutes is created to read:

**121.23 Payment of aids in school district labor disputes.** (1) In the event that the state superintendent finds that school is not held, or educational standards are not maintained in accordance with s. 121.02 (1) (h) as the result of a strike by school district employes, make-up days are authorized to be scheduled but no make-up days are required.

(2) If a school district holds less than 180 days of school as the result of a strike by school district employes, for the purposes of computing general aid, the state

superintendent shall compute the school district's primary ceiling cost per member in accordance with the procedure specified in pars. (a) to (e). In making the calculation, the state superintendent shall:

(a) Determine the amount of shared cost not incurred by the school district because of the strike.

(b) Determine the amount of shared cost that the school district would have incurred had the strike not occurred.

(c) Divide the amount determined under par. (a) by the amount determined under par. (b).

(d) Multiply the quotient determined under par. (c) by the amount determined under s. 121.07 (6) (b).

(e) Subtract the product determined under par. (d) from the amount determined under s. 121.07 (6) (b).

SECTION 13. 121.91 (3) (a) 4 of the statutes is created to read:

121.91 (3) (a) 4. Salary amounts budgeted but not paid in the prior school year because of a work stoppage by school district employes.

SECTION 14. Chapter 29, laws of 1977, section 1617y is repealed.

SECTION 15. **Legislative council study.** (1) The legislative council is directed to conduct a study of the effect of this act on the collective bargaining process in municipal employment. The study shall evaluate the effect of the act on all aspects of collective bargaining in municipal employment including, but not limited to, the following:

(a) The effect on all formal and informal elements involved in the negotiation process, including the duration of the process and the techniques and tactics used by the parties.

(b) The extent to which collective bargaining agreements are facilitated by the impasse resolution procedures authorized under this act.

(c) The economic impact of the collective bargaining agreements reached under the municipal employment relations act after the effective date of this act, especially with regard to wages, hours and conditions of employment.

(d) The availability of mediator-arbitrators, their cost to the parties and the nature of the arbitration decisions rendered under this act.

(e) The effect of this act on the services rendered by the employment relations commission.

(f) An analysis of court interpretations, if any, construing this act.

(g) The effect of this act on the frequency, intensity and duration of strikes.

(h) The extent to which the parties to a dispute under the municipal employment relations act have utilized mutually agreed upon dispute settlement procedures.

(2) The legislative council may contract for all or part of the study with a private or public institution or agency.

(3) If any part of the study is contracted for, the legislative council shall monitor the study. The council shall make periodic reports to the legislature on the findings of the study, and shall make its final report on the results of the study to the legislature no later than February 1, 1981.

SECTION 16. **Appropriation increase.** The appropriation to the employment relations commission under section 20.425 (1) (a) of the statutes, as affected by the laws of 1977, is increased by \$137,300 for the 1977-78 fiscal year and by \$137,300 for the 1978-79 fiscal year for the purpose of funding 4 additional mediator positions and 2 additional clerical positions, and for court reporting expenses required to implement the provisions of this act.

**SECTION 17. Application.** (1) Section 111.70 (1) (nm), (3) (a) 7 and (b) 6, (4) (cm) and (7m) of the statutes, as created by this act, shall be in effect from the effective date of this act until October 31, 1981, and after that date are void, except that any proceeding under such provisions pending on October 31, 1981, shall continue to be subject to such provisions, until finally settled between the parties or adjudicated by arbitration, the employment relations commission or a court of competent jurisdiction.

(2) Except as provided in subsection (3), this act shall take effect on January 1, 1978, or on the day after publication, whichever is later.

(3) SECTION 16 of this act shall take effect on the day after publication.

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