



1995 ASSEMBLY BILL 361

May 10, 1995 - Introduced by Representatives BLACK, BALDUS, BOYLE, BOCK, BALDWIN and PLOMBON. Referred to Committee on Labor and Employment.

1 **AN ACT to repeal** 20.917 (3) (b), 40.80 (3), 111.86, 111.87, 111.88 and 111.91 (1)
2 (b) to (e), (2) and (4); **to renumber** 20.917 (3) (a); **to renumber and amend**
3 40.05 (4) (ar) and 111.91 (1) (a); **to amend** 20.865 (1) (c), 20.865 (1) (i), 20.865
4 (1) (s), 20.917 (6), 40.02 (22) (e) and (25) (b) 8., 40.05 (1) (b), 40.05 (4) (ag) (intro.),
5 40.05 (4) (b), 40.05 (5) (intro.) and (b) 4. and (6) (a), 40.23 (1) (f) 4., 40.62 (2),
6 111.71 (4), 111.71 (5), 111.81 (1), 111.825 (5), 111.84 (1) (b), 111.84 (1) (d), 111.84
7 (2) (c), 111.84 (2) (e), 111.89 (1) and (2) (intro.), 111.92 (1) and (4), 111.93 (3),
8 111.94 (2), 230.88 (2) (b) and 904.085 (2) (a); **to repeal and recreate** 111.71 (5);
9 and **to create** 20.512 (1) (c), 20.921 (1) (g), 40.05 (4) (ar) 1., 111.71 (4), 111.84
10 (1) (g), 111.84 (2) (g), 111.885 and 111.89 (3) and (4) of the statutes; **relating to:**
11 subjects of collective bargaining and authorization of arbitration and a limited
12 right to strike under the state employment labor relations act, granting
13 rule-making authority, making appropriations and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes changes in the subjects of collective bargaining and creates a dispute settlement procedure for classified state employees, program, project and teaching assistants of the University of Wisconsin System and assistant district attorneys.

Subjects of collective bargaining

Under the state employment labor relations act, the state and recognized or certified employe organizations are required to bargain collectively in good faith with respect to certain subjects. Currently, the subjects are wage rates, assignment and reassignment of classifications to pay ranges, determination of an incumbent's pay status resulting from position reallocation or reclassification, pay adjustments upon temporary assignment of a classified employe to duties of a higher classification or downward reallocations of a classified employe's position, fringe benefits, hours and terms and conditions of employment, except that employe occupancy of lodging provided by the state is not a mandatory subject of bargaining and demands relating to retirement and group insurance must be submitted to the employer at least one year prior to the beginning of negotiations (the consequences of failure to comply with this requirement are not set forth). The employer is prohibited from bargaining with respect to the mission and goals of state agencies; policies, practices and procedures of the civil service merit system relating to original appointments and promotions or the job evaluation system; the standard for discharge or discipline; job abandonments; grants made by the department of transportation for repayment of educational loans to minority civil engineers; family and medical leave rights that are less generous than those accorded to nonstate employes under state law; certain employe retirement contributions; interstate retirement credit reciprocity; a prohibition on the purchase of creditable service for retirement benefit purposes in order to establish entitlement to, or to affect the amount of, certain other governmental benefits; and requirements to take lie detector tests that provide fewer rights and remedies to employes than would be available in the absence of a collective bargaining agreement. The employer is directed to endeavor to obtain agreements that do not include provision for payments based upon the period of time an employe has been employed by the state ("length-of-service payments"). In addition, the amount of employe retirement and health insurance contributions (unless otherwise provided in a collective bargaining agreement), the terms of deferred compensation plans, temporary lodging allowances and provisions granting protections to certain employes who make disclosures of improper activity ("whistleblowers") are governed by statute rather than by collective bargaining agreement.

This bill provides, instead, that the state and recognized or certified employe organizations are required to bargain collectively in good faith with respect to wages, hours and conditions of employment. The bill deletes the direction to the employer concerning longevity payments. The bill also deletes the prohibited subjects and the exceptions covering retirement and health insurance contributions, deferred compensation, temporary lodging allowances and employe disclosures. Under the bill, bargaining is not required with respect to the prohibited subjects unless they are construed to fall within the purview of "wages, hours and conditions of employment".

Current law provides that a statutory provision governing retirement for state employes applies to state employes who are covered by a collective bargaining agreement unless otherwise specifically provided in the applicable collective bargaining agreement. The bill provides that provisions governing retirement for state employes that are contained in a collective bargaining agreement between the

state and a labor organization representing those state employees supersede any statutory provisions that pertain to retirement, regardless of whether the matters set forth in the statutes are contained in the agreement.

Current law provides that the state may make a change in any law governing retirement for state employees and may take any action that the law permits the state to take under such a law without committing an unfair labor practice, unless an applicable collective bargaining agreement specifically prohibits the change or action. Any change in the law or any action by the state does not relieve the state of its current duty to bargain collectively with the representatives of represented employees concerning changes in provisions governing their retirement. The bill provides that it is an unfair labor practice for the state to make any change in provisions governing retirement for state employees who are represented by a recognized or certified representative unless the state first bargains collectively in good faith with the representative concerning the proposed change.

Dispute settlement procedure

The bill also creates a dispute settlement procedure for labor disputes involving employees covered by the bill. Under the procedure, the employer and any labor union representing the employees are permitted to agree upon their own dispute settlement procedures, including binding interest arbitration or authorization for a strike. If mediation fails and the parties do not agree on their own settlement procedure, the employer or the union, or the parties jointly, may request the employment relations commission to commence a process of arbitration of those issues in dispute that are mandatory subjects of bargaining (or that have been treated as such by the parties). Arbitration is required unless both parties agree to a strike. If arbitration is used, the arbitrator or panel must select the complete final offer of one of the parties without change. If arbitration is not used, each tentative agreement between the parties is submitted to the joint committee on employment relations (JCOER) and the legislature for approval in a procedure similar to that used under existing law. Currently, mediation and fact-finding (nonbinding arbitration) are the only means of dispute settlement provided in state employee labor disputes. No compulsory means of dispute settlement is currently authorized.

Under the procedure created by the bill, unless otherwise agreed by the parties, strikes are prohibited. If a strike affects the public health or safety, a court may enjoin the strike and require instead that the dispute that is the subject of the strike be submitted to arbitration. All prohibited strikes constitute an unfair labor practice and may be enjoined by a court. Any labor union engaging in a prohibited strike is to be penalized by a one-year suspension of any dues checkoff and maintenance of membership or fair-share agreement between the union and the employer. In addition, the union and its members are subject to monetary penalties for striking after an injunction is issued and special penalties for striking in violation of an arbitration award. Any party refusing to implement an award is civilly liable to the other party for costs incurred to enforce the award. Under the bill, the failure of either party to implement an award is an unfair labor practice. Although strikes by state employees are not authorized currently, the special penalties for strikes do not currently apply to state employees.

For further information see the *state* 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.** 20.512 (1) (c) of the statutes is created to read:

2 20.512 (1) (c) *Arbitration expenses.* A sum sufficient to pay the employer's
3 share of expenses of arbitration in labor disputes involving state classified employes
4 under s. 111.885 (6) (g).

5 **SECTION 2.** 20.865 (1) (c) of the statutes is amended to read:

6 20.865 (1) (c) *Compensation and related adjustments.* A sum sufficient to
7 supplement the appropriations to state agencies for the cost of compensation and
8 related adjustments approved by the legislature or awarded under s. ss. 111.885 and
9 111.92 for represented employes and, approved by the joint committee on
10 employment relations under s. 230.12 and approved by the legislature, when
11 required, for nonrepresented employes in the classified service and comparable
12 adjustments for nonrepresented employes in the unclassified service, except those
13 nonrepresented employes specified in ss. 20.923 (5) and (6) (c) and (m) and 230.08 (2)
14 (d) and (f), as determined under s. 20.928, other than adjustments funded under par.
15 (cj). Unclassified employes included under s. 20.923 (2) need not be paid comparable
16 adjustments.

17 **SECTION 3.** 20.865 (1) (i) of the statutes is amended to read:

18 20.865 (1) (i) *Compensation and related adjustments; program revenues.* From
19 the appropriate program revenue and program revenue-service accounts, a sum
20 sufficient to supplement the appropriations to state agencies for the cost of
21 compensation and related adjustments approved by the legislature or awarded

1 under ~~s. ss. 111.885 and 111.92~~ for represented employes and, approved by the joint
2 committee on employment relations under s. 230.12 and approved by the legislature,
3 when required for nonrepresented employes in the classified service and comparable
4 adjustments for nonrepresented employes in the unclassified service, except those
5 nonrepresented employes specified in ss. 20.923 (5) and (6) (c) and (m) and 230.08 (2)
6 (d) and (f), as determined under s. 20.928, other than adjustments funded under par.
7 (cj). Unclassified employes included under s. 20.923 (2) need not be paid comparable
8 adjustments.

9 **SECTION 4.** 20.865 (1) (s) of the statutes is amended to read:

10 20.865 (1) (s) *Compensation and related adjustments; segregated revenues.*

11 From the appropriate segregated funds, a sum sufficient to supplement the
12 appropriations to state agencies for the cost of compensation and related
13 adjustments ~~approved by the legislature~~ or awarded under ~~s. ss. 111.885 and 111.92~~
14 for represented employes and, approved by the joint committee on employment
15 relations under s. 230.12 and approved by the legislature, when required for
16 nonrepresented employes in the classified service and comparable adjustments for
17 nonrepresented employes in the unclassified service, except those nonrepresented
18 employes specified in ss. 20.923 (5) and (6) (c) and (m) and 230.08 (2) (d) and (f), as
19 determined under s. 20.928. Unclassified employes under s. 20.923 (2) need not be
20 paid comparable adjustments.

21 **SECTION 5.** 20.917 (3) (a) of the statutes is renumbered 20.917 (3).

22 **SECTION 6.** 20.917 (3) (b) of the statutes is repealed.

23 **SECTION 7.** 20.917 (6) of the statutes is amended to read:

24 20.917 (6) The secretary of employment relations may, in writing, delegate to
25 an appointing authority the authority to approve reimbursement for moving

1 expenses under sub. (1) (c), a temporary lodging allowance under sub. (3) ~~(a)~~ (b)
2 or expenses under sub. (5) (b).

3 **SECTION 8.** 20.921 (1) (g) of the statutes is created to read:

4 20.921 (1) (g) This subsection does not apply to deductions payable to a labor
5 organization during suspension of a dues checkoff agreement under s. 111.89 (4) (a)
6 1.

7 **SECTION 9.** 40.02 (22) (e) and (25) (b) 8. of the statutes are amended to read:

8 40.02 (22) (e) Except for OASDHI purposes, at the employer's discretion,
9 means compensation deemed to have been paid for services deemed to have been
10 rendered during periods of leaves of absence without pay, at the employe's rate of pay
11 prior to the leave, provided contributions and premiums on the deemed earnings are
12 paid as required under s. 40.05. Any action taken under this paragraph that applies
13 to state employes whose compensation is determined under s. 230.12 shall be taken
14 pursuant to a ~~collective bargaining agreement under subch. V of ch. 111 or s. 230.12.~~

15 (25) (b) 8. Any other employe of the state for whom coverage is authorized
16 under a ~~collective bargaining agreement under subch. V of ch. 111 or under s. 230.12;~~

17 **SECTION 10.** 40.05 (1) (b) of the statutes is amended to read:

18 40.05 (1) (b) In lieu of employe payment, the employer may pay all or part of
19 the contributions required by par. (a), but all the payments shall be available for
20 benefit purposes to the same extent as required contributions deducted from
21 earnings of the participating employes. Action to assume employe contributions as
22 provided under this paragraph shall be taken at the time and in the form determined
23 by the governing body of the participating employer. The state shall pay under this
24 paragraph for employes covered by a ~~collective bargaining agreement under subch.~~
25 ~~V of ch. 111 and for employes whose fringe benefits are~~ compensation is determined

1 under s. 230.12 an amount equal to 4% of the earnings paid by the state unless
2 otherwise provided in a collective bargaining agreement under subch. V of ch. 111 or
3 unless otherwise determined under s. 230.12. The state shall pay under this
4 paragraph for employees who are not covered by a collective bargaining agreement
5 under subch. V of ch. 111 and for employees whose fringe benefits are compensation
6 is not determined under s. 230.12 an amount equal to 4% of the earnings paid by the
7 state unless a different amount is recommended by the secretary of employment
8 relations and approved by the joint committee on employment relations in the
9 manner provided for approval of changes in the compensation plan under s. 230.12
10 (3).

11 **SECTION 11.** 40.05 (4) (ag) (intro.) of the statutes is amended to read:

12 40.05 (4) (ag) (intro.) Except as otherwise provided in accordance with a
13 collective bargaining agreement under subch. V of ch. 111 or s. 230.12, the employer
14 shall pay for its currently employed insured employees covered by a collective
15 bargaining agreement under subch. V of ch. 111 or of the state whose health
16 insurance premium contribution rates are compensation is determined under s.
17 230.12:

18 **SECTION 12.** 40.05 (4) (ar) of the statutes is renumbered 40.05 (4) (ar) (intro.)
19 and amended to read:

20 40.05 (4) (ar) (intro.) The employer shall pay under par. (a) for employees who
21 are not covered by a collective bargaining agreement under subch. V of ch. 111 and
22 for Notwithstanding par. (ag):

23 2. For employees whose health insurance premium contribution rates are
24 compensation is not determined under s. 230.12 an, the employer shall pay the
25 amount equal to the amount specified in par. (ag) unless a different amount is

1 recommended by the secretary of employment relations and approved by the joint
2 committee on employment relations in the manner provided for approval of changes
3 in the compensation plan under s. 230.12 (3).

4 **SECTION 13.** 40.05 (4) (ar) 1. of the statutes is created to read:

5 40.05 (4) (ar) 1. For employes whose compensation is determined under s.
6 230.12, the compensation plan may provide for a different amount to be paid by the
7 employer than the amount specified in par. (ag).

8 **SECTION 14.** 40.05 (4) (b) of the statutes is amended to read:

9 40.05 (4) (b) Except as provided under pars. (bc) and (bp), accumulated unused
10 sick leave under ss. 13.121 (4), 36.30, 230.35 (2) and 757.02 (5) ~~and subch. V of ch.~~
11 ~~111~~ of any eligible employe shall, at the time of death, upon qualifying for an
12 immediate annuity or for a lump sum payment under s. 40.25 (1) or upon termination
13 of creditable service and qualifying as an eligible employe under s. 40.02 (25) (b) 6.
14 or 10., be converted, at the employe's current basic pay rate, to credits for payment
15 of health insurance premiums on behalf of the employe or the employe's surviving
16 insured dependents. The full premium for any eligible employe who is insured at the
17 time of retirement, or for the surviving insured dependents of an eligible employe
18 who is deceased, shall be deducted from the credits until the credits are exhausted
19 and paid from the account under s. 40.04 (10), and then deducted from annuity
20 payments, if the annuity is sufficient. The department shall provide for the direct
21 payment of premiums by the insured to the insurer if the premium to be withheld
22 exceeds the annuity payment. Except as provided in par. (bd), upon conversion of an
23 employe's unused sick leave to credits under this paragraph, the employe or, if the
24 employe is deceased, the employe's surviving insured dependents may elect to delay
25 initiation of deductions from those credits for up to 10 years after the date of the

1 conversion if the employe or surviving insured dependents are covered by a
2 comparable health insurance plan or policy during the period beginning on the date
3 of the conversion and ending on the last day of the 2nd month after the date on which
4 the employe or surviving insured dependents later elect to initiate deductions from
5 those credits. A health insurance plan or policy is considered comparable if it
6 provides hospital and medical benefits that are substantially equivalent to the
7 standard health insurance plan established under s. 40.52 (1).

8 **SECTION 15.** 40.05 (5) (intro.) and (b) 4. and (6) (a) of the statutes are amended
9 to read:

10 40.05 (5) INCOME CONTINUATION INSURANCE PREMIUMS. (intro.) For the income
11 continuation insurance provided under subch. V the employe shall pay the amount
12 remaining after the employer has contributed the following or, if different, the
13 amount determined under ~~a collective bargaining agreement under subch. V of ch.~~
14 ~~111 or s. 230.12:~~

15 (b) 4. The accrual and crediting of sick leave shall be determined in accordance
16 with ss. 13.121 (4), 36.30, 230.35 (2) and 757.02 (5) ~~and subch. V of ch. 111.~~

17 (6) (a) Except as otherwise provided in accordance with ~~a collective bargaining~~
18 ~~agreement under subch. V of ch. 111 or s. 230.12,~~ each insured employe under the age
19 of 70 and annuitant under the age of 65 shall pay for group life insurance coverage
20 a sum, approved by the group insurance board, which shall not exceed 60 cents
21 monthly for each \$1,000 of group life insurance, based upon the last amount of
22 insurance in force during the month for which earnings are paid. The equivalent
23 premium may be fixed by the group insurance board if the annual compensation is
24 paid in other than 12 monthly instalments.

25 **SECTION 16.** 40.23 (1) (f) 4. of the statutes is amended to read:

1 40.23 (1) (f) 4. Any employer may, in a collective bargaining agreement under
2 subch. IV of ch. 111, limit its right to require retirement.

3 **SECTION 17.** 40.62 (2) of the statutes is amended to read:

4 40.62 (2) Sick leave accumulation shall be determined in accordance with ss.
5 13.121 (4), 36.30, 230.35 (2), 757.02 (5) and 978.12 (3), ~~subch. V of ch. 111~~ and the
6 rules of the department.

7 **SECTION 18.** 40.80 (3) of the statutes is repealed.

8 **SECTION 19.** 111.71 (4) of the statutes is created to read:

9 111.71 (4) The commission shall collect on a systematic basis information on
10 the operation of the arbitration law under s. 111.885. The commission shall report
11 on the operation of the law to the legislature on an annual basis. The report shall
12 be submitted to the chief clerk of each house of the legislature for distribution to the
13 legislature under s. 13.172 (2).

14 **SECTION 20.** 111.71 (4) of the statutes is amended to read:

15 111.71 (4) The commission shall collect on a systematic basis information on
16 the operation of the arbitration law laws under ~~s. ss.~~ 111.70 (4) (cm) and 111.885. The
17 commission shall report on the operation of the law to the legislature on an annual
18 basis. The report shall be submitted to the chief clerk of each house of the legislature
19 for distribution to the legislature under s. 13.172 (2).

20 **SECTION 21.** 111.71 (5) of the statutes is amended to read:

21 111.71 (5) The commission shall, on a regular basis, provide training programs
22 to prepare individuals for service as arbitrators or arbitration panel members under
23 ~~s. ss.~~ 111.70 (4) (cm) and 111.885. The commission shall engage in appropriate
24 promotional and recruitment efforts to encourage participation in the training
25 programs by individuals throughout the state, including at least 10 residents of each

1 congressional district. The commission may also provide training programs to
2 individuals and organizations on other aspects of collective bargaining, including on
3 areas of management and labor cooperation directly or indirectly affecting collective
4 bargaining. The commission may charge a reasonable fee for participation in the
5 programs.

6 **SECTION 22.** 111.71 (5) of the statutes, as affected by 1993 Wisconsin Acts 16
7 and ... (this act), is repealed and recreated to read:

8 111.71 (5) The commission may provide training programs to individuals and
9 organizations on various aspects of collective bargaining and areas of management
10 and labor cooperation directly or indirectly affecting collective bargaining. The
11 commission may charge a reasonable fee for participation in the programs.

12 **SECTION 23.** 111.81 (1) of the statutes is amended to read:

13 111.81 (1) "Collective bargaining" means the performance of the mutual
14 obligation of the state as an employer, by its officers and agents, and the
15 representatives of its employes, to meet and confer at reasonable times, in good faith,
16 with respect to the subjects of bargaining provided in s. 111.91 (1) with the intention
17 of reaching an agreement, or to resolve questions arising under such an agreement.
18 The duty to bargain, however, does not compel either party to agree to a proposal or
19 require the making of a concession. "Collective bargaining" includes the reduction
20 of any agreement reached to a written and signed document.

21 **SECTION 24.** 111.825 (5) of the statutes is amended to read:

22 111.825 (5) Although supervisors are not considered employes for purposes of
23 this subchapter, the commission may consider a petition for a statewide collective
24 bargaining unit of professional supervisors or a statewide unit of nonprofessional
25 supervisors in the classified service, but the representative of supervisors may not

1 be affiliated with any labor organization representing employees. For purposes of this
2 subsection, affiliation does not include membership in a national, state, county or
3 municipal federation of national or international labor organizations. The certified
4 representative of supervisors may not bargain collectively with respect to any matter
5 other than wages and fringe benefits as provided in s. 111.91 (1).

6 **SECTION 25.** 111.84 (1) (b) of the statutes is amended to read:

7 111.84 (1) (b) ~~Except as otherwise provided in this paragraph, to~~ To initiate,
8 create, dominate or interfere with the formation or administration of any labor or
9 employe organization or contribute financial support to it. ~~Except as provided in ss.~~
10 ~~40.02 (22) (e) and 40.23 (1) (f) 4, no change in any law affecting the Wisconsin~~
11 ~~retirement system under ch. 40 and no action by the employer that is authorized by~~
12 ~~such a law constitutes a violation of this paragraph unless an applicable collective~~
13 ~~bargaining agreement specifically prohibits the change or action. No such change~~
14 ~~or action affects the continuing duty to bargain collectively regarding the Wisconsin~~
15 ~~retirement system under ch. 40 to the extent required by s. 111.91. It is not an unfair~~
16 ~~labor practice for the employer to reimburse state employes at their prevailing wage~~
17 ~~rate for the time spent during the employe's regularly scheduled hours conferring~~
18 ~~with the employer's officers or agents and for attendance at commission or court~~
19 ~~hearings necessary for the administration of this subchapter. Professional~~
20 ~~supervisory or craft personnel may maintain membership in professional or craft~~
21 ~~organizations; however, as members of such organizations they shall be prohibited~~
22 ~~from those activities related to collective bargaining in which the organizations may~~
23 ~~engage.~~

24 **SECTION 26.** 111.84 (1) (d) of the statutes is amended to read:

1 111.84 (1) (d) To refuse to bargain collectively on matters set forth in s. 111.91
2 (~~1~~) with a representative of a majority of its employes in an appropriate collective
3 bargaining unit. Where the employer has a good faith doubt as to whether a labor
4 organization claiming the support of a majority of its employes in appropriate
5 collective bargaining unit does in fact have that support, it may file with the
6 commission a petition requesting an election as to that claim. It is not deemed to
7 have refused to bargain until an election has been held and the results thereof
8 certified to it by the commission. A violation of this paragraph includes, but is not
9 limited to, the refusal to execute a collective bargaining agreement previously orally
10 agreed upon.

11 **SECTION 27.** 111.84 (1) (g) of the statutes is created to read:

12 111.84 (1) (g) To fail to implement an arbitration award lawfully made under
13 s. 111.885.

14 **SECTION 28.** 111.84 (2) (c) of the statutes is amended to read:

15 111.84 (2) (c) To refuse to bargain collectively on matters set forth in s. 111.91
16 (~~1~~) with the duly authorized officer or agent of the employer which is the recognized
17 or certified exclusive collective bargaining representative of employes specified in s.
18 111.81 (7) (a) in an appropriate collective bargaining unit or with the certified
19 exclusive collective bargaining representative of employes specified in s. 111.81 (7)
20 (b) or (c) in an appropriate collective bargaining unit. Such refusal to bargain shall
21 include, but not be limited to, the refusal to execute a collective bargaining
22 agreement previously orally agreed upon.

23 **SECTION 29.** 111.84 (2) (e) of the statutes is amended to read:

1 111.84 (2) (e) ~~To~~ Except as authorized in s. 111.885, to engage in, induce or
2 encourage any employes to engage in a strike, or a concerted refusal to work or
3 perform their usual duties as employes.

4 **SECTION 30.** 111.84 (2) (g) of the statutes is created to read:

5 111.84 (2) (g) To fail to implement an arbitration award lawfully made under
6 s. 111.885.

7 **SECTION 31.** 111.86 of the statutes is repealed.

8 **SECTION 32.** 111.87 of the statutes is repealed.

9 **SECTION 33.** 111.88 of the statutes is repealed.

10 **SECTION 34.** 111.885 of the statutes is created to read:

11 **111.885 Methods for peaceful settlement of disputes. (1) NOTICE OF**
12 **COMMENCEMENT OF CONTRACT NEGOTIATIONS.** For the purpose of advising the
13 commission of the commencement of contract negotiations, whenever the employer
14 or a labor organization certified or recognized to represent employes under this
15 subchapter requests the other party to reopen negotiations under a binding collective
16 bargaining agreement, or the parties otherwise commence negotiations if no such
17 agreement exists, the party requesting negotiations shall immediately notify the
18 commission in writing. Upon failure of the requesting party to provide such notice,
19 the other party may so notify the commission. The notice shall specify the expiration
20 date of the existing collective bargaining agreement, if any, and shall set forth any
21 additional information that the commission may require on a form provided by the
22 commission.

23 **(2) PRESENTATION OF INITIAL PROPOSALS; OPEN MEETINGS.** The meetings between
24 parties to a collective bargaining agreement or proposed collective bargaining
25 agreement under this subchapter that are held for the purpose of presenting initial

1 bargaining proposals, along with supporting rationale, shall be open to the public.
2 Each party shall submit its initial bargaining proposals to the other party in writing.
3 Failure to comply with this subsection is not cause to invalidate a collective
4 bargaining agreement under this subchapter.

5 **(3) MEDIATION.** The commission or its designee shall function as mediator in
6 labor disputes involving employes, upon request of one or both of the parties or upon
7 initiation of the commission. The function of the mediator is to encourage voluntary
8 settlement by the parties. No mediator has the power of compulsion.

9 **(4) GRIEVANCE ARBITRATION.** Parties to a dispute pertaining to the meaning or
10 application of the terms of a written collective bargaining agreement under this
11 subchapter may agree in writing to have the commission or any other appropriate
12 agency serve as an arbitrator or may designate any other competent, impartial and
13 disinterested person to so serve. Such proceedings are governed by ch. 788.

14 **(5) VOLUNTARY IMPASSE RESOLUTION PROCEDURES.** In addition to the other
15 impasse resolution procedures provided in this section, the employer and labor
16 organization may at any time, as a permissive subject of bargaining, agree in writing
17 to a dispute settlement procedure which is acceptable to the parties for resolving an
18 impasse over terms of any collective bargaining agreement under this subchapter,
19 including authorization for a strike by employes or binding interest arbitration. A
20 copy of the agreement shall be filed by the parties with the commission. If the parties
21 agree to any form of binding interest arbitration, the arbitrator shall give weight to
22 the factors enumerated in sub. (7).

23 **(6) ARBITRATION.** (a) If a dispute has not been settled after a reasonable period
24 of negotiation and after mediation by the commission under sub. (3) and other
25 settlement procedures, if any, established by the parties have been exhausted, and

1 the parties are deadlocked with respect to any dispute between them over mandatory
2 subjects of bargaining enumerated in s. 111.91 to be included in a new collective
3 bargaining agreement, either party, or the parties jointly, may petition the
4 commission in writing to initiate compulsory, final and binding arbitration as
5 provided in this section. At the time the petition is filed, the petitioning party shall
6 submit in writing to the other party and the commission its preliminary final offer
7 containing its latest proposals on all issues in dispute. Within 14 days after the date
8 of that submission, the other party shall submit in writing its preliminary final offer
9 on all disputed issues to the petitioning party and the commission. If a petition is
10 filed jointly, both parties shall exchange their preliminary final offers in writing and
11 submit copies to the commission at the time the petition is filed.

12 (b) Upon receipt of a petition to initiate arbitration, the commission shall make
13 an investigation, with or without a formal hearing, to determine whether arbitration
14 should be commenced. If in determining whether an impasse exists the commission
15 finds that the procedures set forth in this subsection have not been complied with and
16 such compliance would tend to result in a settlement, it may order such compliance
17 before ordering arbitration. The validity of any arbitration award or collective
18 bargaining agreement is not affected by failure to comply with such procedures.
19 Prior to the close of the investigation, each party shall submit in writing to the
20 commission the party's single final offer containing its final proposals on all issues
21 in dispute. Such final offers may include only mandatory subjects of bargaining,
22 except that a permissive subject of bargaining may be included by a party if the other
23 party does not object and that subject shall then be treated as a mandatory subject.
24 No later than that time, the parties shall also submit to the commission a stipulation,
25 in writing, with respect to all matters that are agreed upon for inclusion in the new

1 or amended collective bargaining agreement. The commission, after receiving a
2 report from its investigator and determining that arbitration should be commenced,
3 shall issue an order requiring arbitration and immediately submit to the parties a
4 list of 7 arbitrators. Upon receipt of that list, the parties shall alternately strike
5 names until a single name is left. The commission shall then appoint as arbitrator
6 the individual whose name is left. The petitioning party shall notify the commission
7 in writing of the identity of the arbitrator selected. Upon receipt of the notice, the
8 commission shall formally appoint the arbitrator and submit to him or her the final
9 offers of the parties. The final offers shall be considered public documents and shall
10 be available from the commission. In lieu of a single arbitrator and upon request of
11 both parties, the commission shall appoint a tripartite arbitration panel consisting
12 of one member selected by each of the parties and a neutral person designated by the
13 commission who shall serve as a chairperson. An arbitration panel has the same
14 powers and duties as provided in this section for any other appointed arbitrator. All
15 arbitration decisions by an arbitration panel shall be determined by majority vote.
16 In lieu of selection of the arbitrator by the parties and upon request of both parties,
17 the commission shall establish a procedure for randomly selecting names of
18 arbitrators. Under the procedure, the commission shall submit a list of 7 arbitrators
19 to the parties. Each party shall strike one name from the list. From the remaining
20 5 names, the commission shall randomly appoint an arbitrator. Unless both parties
21 to an arbitration proceeding otherwise agree in writing, every individual whose
22 name is submitted by the commission for appointment as an arbitrator shall be a
23 resident of this state at the time of submission and every individual who is
24 designated as an arbitration panel chairperson shall be a resident of this state at the
25 time of designation.

1 (c) The arbitrator shall, within 10 days after his or her appointment, establish
2 a date and place for the conduct of the arbitration hearing. The final offers of the
3 parties, as transmitted by the commission to the arbitrator, shall serve as the basis
4 for continued negotiations, if any, between the parties with respect to the issues in
5 dispute. At any time prior to the arbitration hearing, either party, with the consent
6 of the other party, may modify its final offer in writing.

7 (d) Prior to the arbitration hearing, either party may, within a time limit
8 established by the arbitrator, withdraw its final offer and mutually agreed upon
9 modifications thereof, if any, and shall immediately provide written notice of the
10 withdrawal to the other party, the arbitrator and the commission. If both parties
11 withdraw their final offers and mutually agreed upon modifications, the labor
12 organization, after giving 10 days' advance written notice to the employer and the
13 commission, may strike. Unless both parties withdraw their final offers and
14 mutually agreed upon modifications, the final offer of neither party is considered
15 withdrawn and the arbitrator shall proceed to resolve the dispute by final and
16 binding arbitration as provided in this section.

17 (e) The arbitrator shall adopt without further modification the final offer of one
18 of the parties on all disputed issues submitted under par. (b), including any prior
19 modifications of the offer mutually agreed upon by the parties under par. (c), except
20 those items that the commission determines not to be mandatory subjects of
21 bargaining and those items that have not been treated as mandatory subjects by the
22 parties. The arbitrator's decision shall be final and binding on both parties and shall
23 be incorporated into a written collective bargaining agreement. The arbitrator shall
24 serve a copy of his or her decision on both parties and the commission.

1 (f) Arbitration proceedings may not be interrupted or terminated by reason of
2 any unfair labor practice complaint filed by either party at any time.

3 (g) The costs of arbitration shall be divided equally between the parties. The
4 arbitrator shall submit a statement of his or her costs to both parties and to the
5 commission.

6 (h) Either party may petition the commission for a declaratory ruling as to
7 whether any proposal made in negotiations is a mandatory, permissive or prohibited
8 subject of bargaining. The commission shall issue a decision on such a petition within
9 15 days, which shall have the effect of an order issued under s. 111.07. The filing of
10 a petition under this paragraph does not prevent the filing of an unfair labor practice
11 complaint concerning the same activity. If a petition is filed under this paragraph,
12 the proceedings under pars. (d) and (e) shall be delayed until the commission renders
13 a decision in the matter, but not during any appeal of the commission order. The
14 arbitrator's award shall be made in accordance with the commission's ruling, subject
15 to automatic amendment by any subsequent court reversal thereof.

16 **(7) FACTORS CONSIDERED.** In making any decision under the arbitration
17 procedures authorized by this section, the arbitrator shall give weight to the
18 following factors:

19 (a) The lawful authority of the employer.

20 (b) Stipulations of the parties.

21 (c) The interests and welfare of the public.

22 (d) The financial ability of the employer to meet the costs of any proposed
23 settlement.

1 (e) Comparison of wages, hours and conditions of employment of the employes
2 involved in the arbitration proceedings with the wages, hours and conditions of
3 employment of other employes performing similar services.

4 (f) Comparison of wages, hours and conditions of employment of the employes
5 involved in the arbitration proceedings with the wages, hours and conditions of
6 employment of other employes generally in public employment.

7 (g) The average consumer prices for goods and services, commonly known as
8 the cost of living.

9 (h) The overall compensation presently received by the employes, including
10 direct wage compensation, vacation, holidays and excused time, insurance and
11 pensions, medical and hospitalization benefits, the continuity and stability of
12 employment, and all other benefits received by the employes.

13 (i) Changes in any of the circumstances specified in pars. (a) to (h) during the
14 pendency of the arbitration proceedings.

15 (j) Such other factors as are normally or traditionally taken into consideration
16 in the determination of wages, fringe benefits, hours and conditions of employment
17 through voluntary collective bargaining, mediation, fact-finding, arbitration or
18 otherwise between the parties, in the public service or in private employment.

19 **(8) RULE MAKING.** The commission shall promulgate rules for the conduct of all
20 arbitration proceedings under sub. (6), including rules for all of the following:

21 (a) The appointment of tripartite arbitration panels when requested by the
22 parties.

23 (b) The expeditious rendering of arbitration decisions, such as waivers of briefs
24 and transcripts.

1 (c) The removal of individuals who have repeatedly failed to issue timely
2 decisions from the commission's list of qualified arbitrators.

3 (d) Proceedings for the enforcement of arbitration decisions.

4 **(9) APPLICATION.** Chapter 788 does not apply to arbitration proceedings under
5 sub. (6).

6 **SECTION 35.** 111.89 (1) and (2) (intro.) of the statutes are amended to read:

7 111.89 (1) Upon establishing that a strike not authorized under s. 111.885 is
8 in progress, the employer may either seek an injunction or file an unfair labor
9 practice charge with the commission under s. 111.84 (2) (e) or both. It is the
10 responsibility of the department to decide whether to seek an injunction or to file an
11 unfair labor practice charge or to impose or seek imposition of penalties under sub.
12 (2) or (4). The existence of an administrative remedy does not constitute grounds
13 for denial of injunctive relief.

14 **(2)** (intro.) The occurrence of a prohibited strike and the participation therein
15 by a state an employe do not affect the rights of the employer, in law or in equity, to
16 deal with the strike, including:

17 **SECTION 36.** 111.89 (3) and (4) of the statutes are created to read:

18 111.89 (3) At any time after a labor organization gives advance notice of a strike
19 under s. 111.885 (6) that is expressly authorized under s. 111.885 (6), any citizen
20 directly affected by the strike may petition the circuit court to enjoin the strike. If
21 the court finds that the strike poses an imminent threat to the public health or safety,
22 the court shall, within 48 hours after the receipt of the petition but after notice to the
23 parties and after holding a hearing, issue an order immediately enjoining the strike,
24 and in addition shall order the parties to submit a new final offer on all disputed
25 issues to the commission for final and binding arbitration as provided in s. 111.885.

1 The commission, upon receipt of the final offers of the parties, shall transmit them
2 to the arbitrator or a successor designated by the commission. The arbitrator shall
3 omit preliminary steps and shall commence immediately to arbitrate the dispute.

4 (4) (a) 1. Notwithstanding s. 111.85, any labor organization that engages in a
5 prohibited strike shall be penalized by the suspension of any dues checkoff
6 agreement and maintenance of membership or fair-share agreement between the
7 employer and that labor organization for a period of one year. At the end of the period
8 of suspension, any such agreement shall be reinstated unless the labor organization
9 is no longer authorized to represent the employees covered by the agreement or the
10 agreement is no longer in effect.

11 2. Any labor organization that engages in a strike after an injunction is issued
12 against the strike shall be required to forfeit \$2 per member per day, but not more
13 than \$10,000 per day. Each day of continued violation constitutes a separate offense.

14 (b) Any individual who engages in a strike after an injunction is issued against
15 the strike shall be fined \$10. Each day of continued violation constitutes a separate
16 offense. After an injunction is issued, any employee who is absent from work because
17 of purported illness is presumed to be on strike unless the illness is verified by a
18 written report from a physician to the employer. The court shall order that any fine
19 imposed under this paragraph be paid by means of a salary deduction at a rate to be
20 determined by the court.

21 (c) Any person who authorizes or otherwise participates in a strike after the
22 issuance of any final and binding arbitration award under s. 111.885 and prior to the
23 end of the term of the agreement that the award amends or creates shall forfeit not
24 less than \$15. Each day of continued violation constitutes a separate offense.

1 (d) The penalties provided in this subsection do not preclude the imposition by
2 the court of any penalty for contempt provided by law.

3 (e) No employe may be paid wages or any salary by the employer for the period
4 during which he or she engages in any strike prohibited by this subchapter.

5 (f) Any party refusing to include an arbitration award under s. 111.885 in a
6 written collective bargaining agreement or failing to implement the award, unless
7 good cause is shown, is liable for attorney fees, interest on delayed monetary benefits,
8 and other costs incurred in any action by the nonoffending party to enforce the
9 award.

10 **SECTION 37.** 111.91 (1) (a) of the statutes is renumbered 111.91 and amended
11 to read:

12 **111.91 Subjects of bargaining.** ~~Except as provided in pars. (b) to (e), matters~~
13 Matters subject to collective bargaining to the point of impasse are ~~wage rates,~~
14 ~~consistent with sub. (2), the assignment and reassignment of classifications to pay~~
15 ~~ranges, determination of an incumbent's pay status resulting from position~~
16 ~~reallocation or reclassification, and pay adjustments upon temporary assignment of~~
17 ~~classified employes to duties of a higher classification or downward reallocations of~~
18 ~~a classified employe's position; fringe benefits consistent with sub. (2); wages,~~ hours
19 and conditions of employment.

20 **SECTION 38.** 111.91 (1) (b) to (e), (2) and (4) of the statutes are repealed.

21 **SECTION 39.** 111.92 (1) and (4) of the statutes are amended to read:

22 111.92 (1) Any Except where a collective bargaining agreement is placed into
23 effect by an arbitrator's decision under s. 111.885, any tentative agreement reached
24 between the department, acting for the executive branch, and any labor organization
25 shall, after official ratification by the labor organization, be submitted by the

1 department to the joint committee on employment relations, which shall hold a
2 public hearing before determining its approval or disapproval. If the committee
3 approves the tentative agreement, it shall introduce in a bill or companion bills, to
4 be put on the calendar or referred to the appropriate scheduling committee of each
5 house, that portion of the tentative agreement which requires legislative action for
6 implementation, such as salary and wage adjustments, changes in fringe benefits,
7 and any proposed amendments, deletions or additions to existing law. Such bill or
8 companion bills are not subject to ss. 13.093 (1), 13.50 (6) (a) and (b) and 16.47 (2).
9 The committee may, however, submit suitable portions of the tentative agreement to
10 appropriate legislative committees for advisory recommendations on the proposed
11 terms. The committee shall accompany the introduction of such proposed legislation
12 with a message that informs the legislature of the committee's concurrence with the
13 matters under consideration and which recommends the passage of such legislation
14 without change. If the joint committee on employment relations does not approve
15 the tentative agreement, it shall be returned to the parties for renegotiation. If the
16 legislature does not adopt without change that portion of the tentative agreement
17 introduced by the joint committee on employment relations, the tentative agreement
18 shall be returned to the parties for renegotiation. The matter may then be submitted
19 to arbitration.

20 (4) It is the declared intention under this subchapter that the negotiation of
21 collective bargaining agreements and their approval by the parties should coincide
22 with the overall fiscal planning and processes of the state.

23 **SECTION 40.** 111.93 (3) of the statutes is amended to read:

24 111.93 (3) ~~Except as provided in ss. 40.05, 40.80 (3), 111.91 (1) (em) and 230.88~~
25 ~~(2) (b), if~~ If a collective bargaining agreement exists between the employer and a labor

1 organization representing employes in a collective bargaining unit, the provisions of
2 that agreement shall supersede the provisions of civil service and other applicable
3 statutes, as well as rules and policies of the board of regents of the university of
4 Wisconsin system, related to wages, fringe benefits, hours and conditions of
5 employment whether or not the matters contained in those statutes, rules and
6 policies are set forth in the collective bargaining agreement.

7 **SECTION 41.** 111.94 (2) of the statutes is amended to read:

8 111.94 (2) The commission shall assess and collect a filing fee of \$25 from the
9 party or parties filing a complaint alleging that an unfair labor practice has been
10 committed under s. 111.84. The commission shall assess and collect a filing fee of \$25
11 from the party or parties filing a request that the commission act as an arbitrator to
12 resolve a dispute involving the interpretation or application of a collective
13 bargaining agreement under s. ~~111.86~~ 111.885 (4). If such a request concerns issues
14 arising as a result of more than one unrelated event or occurrence, each such
15 separate event or occurrence shall be treated as a separate request. Fees required
16 to be paid under this subsection shall be paid at the time of filing the complaint or
17 the request for arbitration. A complaint or request for arbitration is not filed until
18 the date such fee or fees are paid. Fees collected under this subsection shall be
19 deposited as general purpose revenue — earned.

20 **SECTION 42.** 230.88 (2) (b) of the statutes is amended to read:

21 230.88 (2) (b) ~~No collective bargaining agreement supersedes the rights of an~~
22 ~~employe under this subchapter. However, nothing~~ Nothing in this subchapter affects
23 any right of an employe to pursue a grievance in accordance with the procedure
24 under provided in a collective bargaining agreement under subch. V of ch. 111, and
25 if the commission determines that a grievance arising under such a collective

1 bargaining agreement involves the same parties and matters as a complaint under
2 s. 230.85, it shall order the arbitrator's final award on the merits conclusive as to the
3 rights of the parties to the complaint, on those matters determined in the arbitration
4 which were at issue and upon which the determination necessarily depended.

5 **SECTION 43.** 904.085 (2) (a) of the statutes is amended to read:

6 904.085 (2) (a) "Mediation" means mediation under s. 93.50 (3), conciliation
7 under s. 111.54, mediation under s. 111.11, 111.70 (4) (cm) 3, or ~~111.87~~ 111.885 (3),
8 negotiation under s. 144.445 (9), mediation under ch. 655 or s. 767.11, or any similar
9 statutory, contractual or court-referred process facilitating the voluntary resolution
10 of disputes. "Mediation" does not include binding arbitration or appraisal.

11 **SECTION 44. Appropriation changes.**

12 (1) In the schedule under section 20.005 (3) of the statutes for the
13 appropriation to the employment relations commission under section 20.425 (1) (a)
14 of the statutes, as affected by the acts of 1995, the dollar amount is increased by \$-0-
15 for fiscal year 1995-96 and the dollar amount is increased by \$-0- for fiscal year
16 1996-97 to carry out the responsibilities vested in the commission by this act.

17 **SECTION 45. Initial applicability.**

18 (1) This act first applies with respect to negotiations for collective bargaining
19 agreements to be entered into for the biennial fiscal period commencing on June 29,
20 1997.

21 **SECTION 46. Effective dates.** This act takes effect on the day after
22 publication, except as follows:

23 (1) The creation of section 111.71 (4) of the statutes and the repeal and
24 recreation of section 111.71 (5) of the statutes take effect on July 1, 1996.

25 (END)