



## Unions and Labor Relations

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State and federal law recognize a process, referred to as collective bargaining, in which an employer and a representative for its employees may negotiate on certain subjects relating to employment, with the intention of reaching an agreement. When successful, such an agreement is formalized in a written document called a collective bargaining agreement, sometimes referred to as a union contract or labor agreement. This issue brief provides an overview of the laws regarding collective bargaining for public and private sector employers and employees, as well as private sector employment associated with public funding or approval.

### PUBLIC SECTOR EMPLOYERS AND EMPLOYEES

State law governs collective bargaining for public sector employees under the Municipal Employment Relations Act (MERA), for municipal employees, and the State Employment Labor Relations Act (SELRA), for state employees.<sup>1</sup>

MERA distinguishes between three types of municipal employees: (1) general municipal employees; (2) public safety employees; and (3) transit employees. SELRA distinguishes between two types of state employees: (1) general state employees; and (2) public safety employees. A “general municipal employee” is a municipal employee who is not a public safety employee or transit employee. Likewise, a “general state employee” is a state employee who is not a public safety employee. A “public safety employee” is generally a police officer, fire fighter, or emergency medical services provider.

General municipal employees and general state employees may collectively bargain with their employers on base wages, but are prohibited from bargaining collectively on other subjects, including hours, conditions of employment, and “fair-share” agreements that require all employees to pay union dues, including individuals who choose not to be union members. Base wages may be bargained on up to the increase in the Consumer Price Index. A proposal to increase total base wages above that limit must be approved by a statewide or local referendum that covers those employees. Under MERA and SELRA, “base wages” does not include overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, or automatic pay progressions.

Public safety employees and transit employees may collectively bargain with their employers on wages, hours, and conditions of employment, with some exceptions. As written, state law also allows public safety and transit employees to collectively bargain on whether to include a “fair-share” agreement that requires all employees to pay union dues, including individuals who choose not to be union members. However, that statutory provision has been overridden by a U.S. Supreme Court decision, which held that a public employee who is not a member of the union cannot be required to pay union dues for the cost of the union’s representation in the collective bargaining process and contract administration.<sup>2</sup>

The Wisconsin Employment Relations Commission ([WERC](#)), attached to the Department of Workforce Development, has certain duties under both MERA and SELRA. These duties include administering elections for municipal and state employees’ collective bargaining representatives, mediating contract negotiations and grievance disputes, and adjudicating complaints of unlawful practices.<sup>3</sup>

### PRIVATE SECTOR EMPLOYERS AND EMPLOYEES

Collective bargaining for private sector employees is generally governed by federal law, specifically the National Labor Relations Act (NLRA), as amended.<sup>4</sup> The National Labor Relations Board ([NLRB](#)) administers the NLRA. The NLRB has regional offices where employees, employers, and unions may file charges alleging NLRA violations, or file petitions seeking an election regarding union representation.<sup>5</sup>

Under the NLRA, private sector employees may collectively bargain on wages, hours, and other terms and conditions of employment. Both the employer and union are required to meet and confer in good faith, and actively participate in reaching a collective bargaining agreement.

Although largely preempted, state law contains some provisions relating to collective bargaining for private sector employees.<sup>6</sup> For example, Wisconsin statutes include what is commonly referred to as a “right-to-work” law<sup>7</sup> for private sector employers and employees, which is not preempted by the NLRA. The law prohibits an employer and a labor organization from entering into an agreement that requires membership in a labor organization as a condition of employment, and it prohibits a person from requiring an individual to pay dues to a labor organization.

If a union is in place and represents employees in collective bargaining, it is required to represent and defend all employees who have filed grievances or are disputing disciplinary action, including employees who have opted out of the union under the “right-to-work” law. This obligation is sometimes referred to as the union’s duty of fair representation.

Under federal law, withdrawing from a union is an annual option.<sup>8</sup> A union is required to give members annual notice of the option to withdraw, and the particular process and notice requirements will depend on the specific union rules.

## PRIVATE SECTOR EMPLOYMENT ASSOCIATED WITH PUBLIC FUNDING OR APPROVAL

State law prohibits the state and local governmental units from requiring private parties to enter into collective bargaining agreements.

In particular, state law specifies that the state and local governmental units cannot require a person to enter into an agreement with a labor organization on a public works project, and cannot consider, in reviewing bids, whether or not an agreement is in place with a labor organization. This requirement applies to a collective bargaining agreement that may be used between contractors and labor organizations on an identified public works project. This type of agreement is sometimes referred to as a project labor agreement, or, in some cases, as a community workforce agreement.<sup>9</sup>

Additionally, state law specifies that the state and local governmental units cannot require a person to accept provisions of a collective bargaining agreement or to waive rights under state or federal labor relations laws. This type of requirement in an agreement is sometimes referred to as a labor peace agreement. The prohibition applies to any action by ordinance, policy, regulation, contract, zoning, permitting, licensing, or any other condition of the state or a local governmental unit that affects a private employer.<sup>10</sup>

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<sup>1</sup> MERA is set forth in subch. IV of ch. 111, Stats. Under s. 111.70 (1) (j), Stats., a municipal employer includes school districts, cities, counties, towns, villages, library boards, sewerage districts, and other political subdivisions. SELRA is set forth in subch. V of ch. 111, Stats.

<sup>2</sup> *Janus v. American Federation of State, County, and Municipal Employees*, 585 U.S. \_\_\_\_ (2018).

<sup>3</sup> For example, see ss. 111.70 (4) and 111.83 to 111.88, Stats. More information about WERC, as well as information about filing a complaint, may be found at [www.werc.wi.gov](http://www.werc.wi.gov).

<sup>4</sup> 29 U.S.C. ss. 151-169.

<sup>5</sup> Information about the NLRB, including how to file a complaint, is available at <https://www.nlr.gov/about-nlr/what-we-do>.

<sup>6</sup> Subchapter I of ch. 111, Stats.

<sup>7</sup> For more information on the state’s right-to-work law, see *Wisconsin’s “Right-to-Work” Law*, Legislative Council Information Memorandum IM-2015-04.

<sup>8</sup> 29 U.S.C. s. 186 (c) (4). As written, the state right-to-work law allows an employee to give a 30-day notice at any time to terminate dues withholding. [s. 111.06 (1) (i), Stats.] However, a federal court has held that this provision is preempted by the NLRA. [*Int’l Ass’n of Machinists Dist. 10 v. Allen*, Case No. 16-cv-77-wmc, U.S. Dist. Ct. W.D. Wis. (Dec. 28, 2016).]

<sup>9</sup> Section 66.0901, Stats.; see also 2017 Wisconsin Act 3.

<sup>10</sup> Sections 66.0134, 103.007, 103.12, and 103.36, Stats.; see also 2017 Wisconsin Act 327.