



Legislative Fiscal Bureau

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April 30, 2003

Joint Committee on Finance

Paper #326

Additional Program Revenue-Supported Agency Staff (Employment Relations Commission)

CURRENT LAW

The Wisconsin Employment Relations Commission (WERC) charges fees for the following functions: (1) mediation, arbitration, and investigation services; (2) consensus bargaining and labor/management cooperation training; and (3) publications. Revenues generated from these Commission activities are credited respectively to three separate program revenue annual accounts: a fee appropriation [s. 20.425(1)(i)], a collective bargaining training appropriation [s. 20.425(1)(h)], and a publications appropriation [s. 20.425(1)(g)]. The Commission's fee appropriation currently supports 3.0 PR positions.

GOVERNOR

No provision.

DISCUSSION POINTS

1. Under Senate Bill 44, the WERC's three program revenue appropriations are funded as follows:

<u>Appropriation</u>	<u>2003-04</u>	<u>2004-05</u>
Fees	\$220,600	\$220,600
Collective Bargaining Training	12,000	12,000
Publications	<u>19,300</u>	<u>19,300</u>
Total	\$251,900	\$251,900

2. The WERC establishes its grievance arbitration, mediation, interest arbitration and fact-finding fees by administrative rule. Currently, these fees are \$250 per filing and are divided equally between the parties (\$125 is charged to each party). Upon payment of the fee, the parties have access to all Commission dispute resolution services. These may include hearings, travel to meet with the parties, mediation, research, writing, and associated administrative and clerical staff support. The fee is the same regardless of the complexity of the matter in dispute or the length of time required by Commission staff to resolve it. A more limited complaint investigation function has a fee of \$40 that is also established by administrative rule.

3. While the Commission does not have explicit authority to establish fees by administrative rule for its consensus bargaining and labor/management cooperation training activities, it does impose a nominal charge (either \$110 per participant for a two-day training or \$70 per participant for a one-day refresher course) to offset basic training course costs. Publication fees are generally set to recover the costs of publication or dissemination of the documents.

4. The fees for grievance arbitration, mediation, interest arbitration, and fact-finding have remained unchanged at \$250 per filing since they were implemented in 1995-96. The complaint investigation fee has been increased once, from \$25 to \$40 per filing (on January 1, 2000). Similarly, the Commission's nominal training fees have also remained unchanged in recent years.

5. Fee revenues for grievance arbitration, mediation, interest arbitration, fact-finding, and complaint investigations appear to be relatively reliable, averaging \$225,400 annually over the last four fiscal years. Currently, the Commission projects that these fees will generate revenues of \$260,000 in 2003-04 and \$211,000 in 2004-05. Revenues from Commission-sponsored training activities have been less predictable and appear to vary based on demand and the Commission's ability to schedule training sessions. The Commission anticipates revenues of \$15,000 annually from this source during the 2003-05 biennium. Publication revenues have been declining in recent years as more Commission documents become available on the Internet and the number of paid subscriptions for agency documents has dropped. The Commission projects publications revenues of \$3,000 annually during the 2003-05 biennium.

6. In separate budget recommendations under Senate Bill 44, the Commission's budget is reduced by \$400,000 GPR and 4.0 GPR positions annually. These modifications represent a 16.1% reduction to the agency's annual adjusted base funding level of \$2,479,100 GPR and a 17.8% reduction to its base authority of 22.5 GPR positions. An additional budget initiative transfers the state employee appeal functions of the Personnel Commission to the WERC without any increase in staff.

7. The WERC estimates that the appeals workload transferred from the Personnel Commission to the WERC would require two additional positions. Further, the WERC indicates that layoffs and displacements throughout state service mandated by the budget bill may further increase caseloads under the jurisdiction being transferred from the Personnel Commission to the WERC. In testimony before the Committee, the Commission stated, "...we believe the new

responsibilities coupled to reductions of authorized positions and tax dollar resources will require a reassessment of the agency's mission priorities and a likely reallocation of the personnel that remain to perform services. We are greatly concerned that traditional services will thus necessarily be diluted, some (including ... training) possibly eliminated, and that the timeliness of all of our services would also be substantially reduced."

8. Currently, the WERC has 16.0 professional staff dedicated to mediation, arbitration and training activities. Of the 16.0 staff, 8.0 are located in Madison, 1.0 in Racine, 1.0 in Milwaukee, 1.0 in Elkhorn, 1.0 in Oshkosh, 1.0 in Fond du Lac, 2.0 in Wausau and 1.0 in Eau Claire. Under the bill, four positions are eliminated. Based on average caseload, the elimination of the four positions would increase the biennial caseload of the remaining staff from an estimated 128 cases to 171 cases. Including the estimated biennial appeals caseload of the Personnel Commission (based on 1999-01 filings) that would transfer to the WERC, the average biennial caseload would be equivalent to 145 cases under current law staffing levels and would increase to 194 cases under the Governor's recommended staffing levels. The highest biennial caseload for Commission staff in recent years occurred during the 1993-95 biennium, when 150 cases per professional employee were handled.

9. The Commission also indicates that a greater utilization of PR funding to offset some of the agency's reductions and to address the additional appeals caseload transferred from the Personnel Commission might be appropriate. Accordingly, the Committee could consider authorizing additional PR-funded positions supported from agency filing fee revenues. Such an approach would require an increase in filing fees in order to ensure a reliable revenue stream to support any such new positions. Further, the Committee would have the option to provide the additional PR-funded staff either to address the workload considerations raised by the Commission or to achieve greater overall GPR savings for the state (or a combination of the two).

10. Currently, there is a projected available July 1, 2003, opening balance in the Commission's fee appropriation account of \$296,000 PR. [This opening balance has been adjusted to reflect an additional expenditure of \$124,000 PR in 2002-03 from this appropriation, as recently approved by this Committee under s. 16.515 procedures.] The appropriation currently supports 3.0 PR positions. Given the expected available account balance and current revenue projections for the next biennium, the appropriation could not support any additional positions on a permanent basis.

11. However, based on current caseload patterns, if fees for grievance arbitration, mediation, interest arbitration and fact finding were increased from \$250 to \$500 per filing, and the complaint investigation fee increased from \$40 to \$80, the increased revenues would be sufficient to support an additional 2.0 PR professional positions on an on-going basis. Any more than 2.0 PR-funded positions would likely require higher fees during the 2005-07 biennium.

12. A question may be raised whether such an increase in WERC filing fees would reduce the number of filings or would cause the parties in a dispute to seek other mediation services. A decrease in filings could adversely affect the Commission's ability to support any additional PR-funded staff.

13. When the Commission initially imposed filing fees in 1995-96, it did experience a reduction in the overall number of annual filings. The Commission believes that the issues and monetary considerations involved in most of the current filings are such that these cases would likely continue to be filed, even with higher fees. To the extent that the Commission's fee structure would serve to eliminate the filing of any cases involving only minor and technical issues, this effect has likely already been realized when fees were initiated in 1995-96, and no additional, significant change would now be anticipated.

14. Currently, the Federal Mediation and Conciliation Service does not mediate public sector disputes where a state public agency for this purpose is in place (the WERC). Mediation, arbitration and similar services could be procured from for-profit and not-for-profit providers; however, these entities typically charge an initial administrative fee in excess of the Commission's current charges and then impose an additional hourly charge. Daily rates of \$800 or more are not uncommon. Consequently, it is unlikely that the type of fee increase mentioned here would result in a loss of WERC-provided services to other providers.

15. If the Committee wishes to address the Commission's increasing workload, it could provide additional expenditure authority of \$237,800 PR and authorize 2.0 PR positions annually, supported from increased fee revenues (first effective for filings on and after October 1, 2003). This alternative would enable the WERC to retain 14.0 of its 16.0 professional staff positions currently dedicated to mediation, arbitration and training. During the 2003-05 biennium, if total professional staffing of 14 positions is provided and recent caseload filing experience is assumed, the average caseload would increase from 128 under current law staffing to approximately 146 under this alternative. (Including the projected impact of transferred Personnel Commission appeals caseload, the average caseload would increase from 145 to approximately 166 under this alternative.)

16. As a further alternative, the Committee could provide the Commission with an additional 1.0 PR position to address workload concerns and then convert a remaining GPR-funded position to PR funding as a cost savings measure. Under this alternative, the Committee could reduce the Commission's budget by \$115,700 GPR and 1.0 GPR position annually and provide additional expenditure authority of \$237,800 PR and authorize 2.0 PR positions annually, supported from increased fee revenues (first effective for filings on and after October 1, 2003). This alternative would enable the WERC to retain 13.0 of its 16.0 professional staff positions currently dedicated to mediation, arbitration and training. During the 2003-05 biennium, if total professional staffing of 13 positions is provided and recent caseload filing experience is assumed, the average caseload would increase from 128 under current law staffing to approximately 158 under this alternative. (Including the projected impact of transferred Personnel Commission appeals caseload, the average caseload would increase from 145 to approximately 179 under this alternative.)

17. As a final alternative, the Committee could convert 2.0 remaining GPR-funded positions to PR funding as a cost savings measure. Under this alternative, the Committee could reduce the Commission's budget by \$237,800 GPR and 2.0 GPR position annually and provide additional expenditure authority of \$237,800 PR and authorize 2.0 PR positions annually, supported from increased fee revenues (first effective for filings on and after October 1, 2003). This

alternative would not provide the WERC with any additional professional staff positions beyond the 12.0 positions remaining under the Governor's recommendations. As noted earlier, the biennial caseload under the Governor's recommendation is estimated to increase from 128 cases to 171 cases (from 145 cases to 194 cases, including Personnel Commission matters).

18. If it is determined that additional PR supported positions are appropriate, existing WERC administrative rules would need to be modified. In order to generate sufficient revenue to support the positions, fee increases would need to become effective by October 1, 2003. The Committee may, therefore, wish to create a nonstatutory provision allowing WERC to adopt emergency rules related to the increased fees. Under an emergency rule, WERC would be allowed to implement the new fees prior to legislative review and approval of the permanent rule.

19. The WERC currently has three separate annual PR appropriations. Separate appropriations allow the Legislature the ability to monitor individual appropriations more easily by specifically identifying these appropriation in the Chapter 20 appropriations schedule. For smaller state agencies, however, separate smaller PR appropriations limit the flexibility an agency has to address fiscal management issues, by restricting the sources of revenue upon which they may draw. If the Commission's three current PR appropriations were combined, the Commission would have a greater ability to support any additional PR positions authorized with a more broadly-based flow of revenues. Such an action would improve the agency's ability to fund up to 5.0 PR positions (3.0 PR base level positions and up to 2.0 PR positions under the above alternatives) on an on-going basis.

ALTERNATIVES

1. Provide \$237,800 PR and 2.0 PR positions annually in the Wisconsin Employment Relations Commission supported from increased fee revenues.

<u>Alternative 1</u>	<u>PR</u>
2003-05 FUNDING (Change to Bill)	\$475,600
2004-05 POSITIONS (Change to Bill)	2.00

2. Provide \$237,800 PR and 2.0 PR positions annually in the Wisconsin Employment Relations Commission supported from increased fee revenues. Delete \$115,700 GPR and 1.0 GPR position annually.

<u>Alternative 2</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
2003-05 FUNDING (Change to Bill)	- \$231,400	\$475,600	\$244,200
2004-05 POSITIONS (Change to Bill)	- 1.00	2.00	1.00

3. Provide \$237,800 PR and 2.0 PR positions annually in the Wisconsin Employment Relations Commission supported from increased fee revenues. Delete \$237,800 GPR and 2.0 GPR

positions annually.

<u>Alternative 3</u>	<u>GPR</u>	<u>PR</u>	<u>TOTAL</u>
2003-05 FUNDING (Change to Bill)	- \$475,600	\$475,600	\$0
2004-05 POSITIONS (Change to Bill)	- 2.00	2.00	0.00

4. Create a nonstatutory provision allowing WERC to adopt emergency rules related to the increased fees.

5. Combine the Wisconsin Employment Relations Commission's fees appropriation (revenues generated from charges for Commission provided mediation, arbitration, and investigation services), collective bargaining training appropriation (revenues generated from WERC training sessions), and publications appropriation (revenue generated from publications sales) into a single annual program revenue appropriation.

6. Take no action.

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