

*Information Memorandum 96-9**

**MAJOR LABOR ISSUES IN THE
1995 LEGISLATIVE SESSION**

INTRODUCTION

This Information Memorandum reviews several labor issues considered by the 1995 Wisconsin Legislature resulting in the enactment of legislation signed by the Governor. The memorandum does not include issues relating to unemployment compensation (UC) and worker’s compensation (WC), which are routinely dealt with each legislative session by the enactment of bills developed by the UC and WC Advisory Councils.

Copies of all acts referred to in this Information Memorandum may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

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A. PREVAILING WAGE RATES FOR STATE AND LOCAL GOVERNMENT BUILDING PROJECTS AND HIGHWAY PROJECTS

1. Background

Shortly after the enactment of the federal Davis-Bacon Act [40 U.S.C. s. 276a], which requires prevailing wage rates to be paid on federally funded construction projects, the Wisconsin Legislature enacted Chs. 269 and 432, Laws of 1931, and Ch. 95, Laws of 1933. These laws required contractors and subcontractors who perform work on state and local government building projects, local street projects and state highway projects to pay persons working on those projects the prevailing wage rate in the area from which labor for the project would normally be secured for the employe's trade or occupation, and to pay overtime pay at the rate of 1.5 times the usual basic hourly rate of pay for all hours worked in excess of the prevailing hours of labor. Before entering into a contract for a public works project or highway project (excluding certain local street projects), a local unit of government or state agency must request the Department of Industry, Labor and Human Relations (DILHR) to determine the appropriate prevailing wage rates and hours of labor for that project. The Department may exempt a local unit of government from obtaining such determinations if it has adopted standards that are at least as high as those required by state law.

Since they were enacted in the 1930s, Wisconsin's prevailing wage laws had not been substantially reviewed and updated. As a result, many provisions were considered obsolete because they did not reflect modern building and construction trades work site practices and procedures.

Also, because Wisconsin's prevailing wage laws were drafted as three separate statutes [s. 66.293, Stats., municipal construction projects; s. 103.49, Stats., state construction projects; and s. 103.50, Stats., state highway projects], minor piecemeal amendments adopted since the 1930s often affected only one of these statutes, thereby resulting in a lack of uniformity between them.

In 1994, DILHR initiated an exhaustive review of Wisconsin's prevailing wage rate laws, utilizing several "focus groups" to assist the Department in identifying problems under the current law and developing a package of proposed changes in the law. Focus group members included representatives of building trade unions affiliated with the AFL-CIO, the Teamsters Union, the Associated Builders and Contractors of Wisconsin, other contractors associations, state agencies, municipal governments and employes of DILHR's Labor Standards Bureau, which administers the state's prevailing wage laws.

In October 1995, at the request of DILHR, the labor committees in both houses introduced companion bills, 1995 Senate Bill 373 and 1995 Assembly Bill 632, to effectuate the proposed changes in the prevailing wage laws that resulted from the Department's comprehensive review. Following a series of negotiating sessions between labor groups, contractors and other affected parties convened by the Chairpersons of the Labor Committees in the Senate and

Assembly, Senate Bill 373, as amended by Senate Substitute Amendment 1 and Senate Amendment 1 thereto, unanimously passed both houses of the Legislature. On April 16, 1996, the Bill was signed into law by Governor Tommy G. Thompson as 1995 Wisconsin Act 215. The provisions of the Act generally became effective on April 30, 1996.

2. Provisions of 1995 Wisconsin Act 215

a. Prevailing Wage Rate Calculations

(1) ***1993-94 Statutes***. On state and local building projects, the prevailing wage rates were calculated by using the rate, plus fringe benefits, paid to the majority of workers in a specific trade or occupation in a given area. If no majority wage rate exists, the prevailing wage rate was the rate paid to the largest number of workers in that trade or occupation in the area.

For state highway projects, the prevailing wage rate was the wage rate, plus fringe benefits, paid to the largest number of workers in that trade or occupation in the area.

For municipal street projects, there was no statutory prevailing wage rate calculation.

(2) ***Act 215***. For all state and local building projects, a single uniform method for calculating prevailing wage rates is created using the wage rate, plus fringe benefits, paid for the majority of hours worked in a trade or occupation in the area. If no majority rate exists, the prevailing wage rate is based on the average hourly basic wage, plus the average hourly contribution for fringe benefits, weighted by the number of hours worked, paid for all hours worked at the hourly basic rate of pay of the highest-paid 51% of hours worked in the trade or occupation in the area.

For state highway projects, current certified prevailing wage rates may be used in calculations to determine future prevailing wage rates for the area. If the highway project involves the use of heavy equipment, wage rate data from municipal and state building projects may be used.

Data from other projects subject to state and federal prevailing wage laws may not be used to determine prevailing wage rates for any municipal project unless there is insufficient data in the area to determine such rates. Also, data from other projects subject to state and federal prevailing wage laws may not be used for state building projects unless those projects involve the use of heavy equipment.

b. Overtime Pay

(1) ***1993-94 Statutes***. Overtime pay at a rate of 1.5 times the regular rate of pay was required after eight hours of work per day and after 40 hours of work per week.

(2) *Act 215*. Overtime pay at 1.5 times the regular rate of pay is required for all work in excess of 10 hours per day or 40 hours per week, as well as any hours worked on Saturday or Sunday or on six enumerated holidays.

c. Thresholds

(1) *1993-94 Statutes*. The prevailing wage laws did not apply to any project for which the estimated cost of completion is below \$11,000 for a single trade project and \$110,000 for a multiple trade project. These amounts were adjusted every two years by DILHR to reflect changes in construction costs.

(2) *Act 215*. The single trade project threshold is increased to \$30,000 and the multiple trade project threshold is set at \$150,000. The thresholds shall be adjusted annually by DILHR, but no such adjustment shall be made prior to December 1, 1997. A project shall be considered a single trade project if at least 85% of its cost is performed by or attributable to a single trade.

d. Finding of No Violation After Inspection Request

(1) *1993-94 Statutes*. Any person could request a DILHR inspection of payroll records to ensure that a contractor or subcontractor complies with the prevailing wage rate laws. On local building projects, DILHR could collect the costs incurred in conducting an inspection that results in a “no violation” finding.

(2) *Act 215*. The recovery of inspection costs upon a finding of “no violation” is extended to state building projects. If no violation is found, any employe or employes who request an inspection must reimburse for the actual cost of the investigation. Other requesting parties shall pay the actual cost or \$250, whichever is greater.

e. Truck Rental Rates

(1) *1993-94 Statutes*. On state highway projects, DILHR determined the minimum truck rental rates that shall be paid to individuals who own and operate their own vehicles.

(2) *Act 215*. Prior truck rental rate provisions are repealed. However, a truck driver who is an owner-operator must be paid separately for the rental amount of the truck and for driver’s wages at the prevailing wage rate by separate checks.

f. Municipal Wage Determinations

(1) *1993-94 Statutes*. Municipalities were responsible for determining prevailing wage rates for certain local street projects within their boundaries.

(2) *Act 215*. The Department is authorized to determine the prevailing wage rates that must be used on all local street projects. However, municipalities may apply for a general exemption to determine their own rates for these projects.

g. Definition of “Area”

(1) *1993-94 Statutes*. Although prevailing wage rates are calculated based on wages reported throughout a given “area,” the term was not uniformly defined by state law.

(2) *Act 215*. The term “area” is generally defined as the county in which a project is located, but under certain circumstances may also include those counties that are contiguous to that county. Contiguous counties may be included in the “area” when there is insufficient wage data (less than 500 hours of work in a specific trade or occupation) in the county where the project is located.

h. Definition of “Site of Work”

(1) *1993-94 Statutes*. Prevailing wage rates generally applied to employes performing work on the site of the project, but the statutes that applied to state and local projects contained inconsistent and confusing language regarding project site determinations.

(2) *Act 215*. For all state and local projects, prevailing wage rates shall be paid to all persons working at the project site or from facilities that exclusively serve the project site. Such rates also shall apply to employes who transport, deliver and deposit mineral aggregate at the project site from the transporting vehicle or who remove excavated materials or spoil from the project site.

i. Posting Requirements

(1) *1993-94 Statutes*. On state and local building projects, the employer was required to post all applicable prevailing wage rates at the job site. For state highway projects, the Department of Transportation (DOT) was required to post prevailing wage rates.

(2) *Act 215*. For state and local building projects, the unit of government undertaking the project shall post all applicable prevailing wage rates. The DOT will continue to post rates for state highway projects. All posting shall take place at the project site. However, if there is no common site for a municipal building project, the governmental unit shall post the rates at a place it normally uses to post notices.

j. Affidavit of Compliance

(1) *1993-94 Statutes*. For municipal building contracts, prime contractors were required to submit an affidavit stating that they have fully complied with the prevailing wage law and that all subcontractors have also complied with the law.

(2) *Act 215*. The requirement that contractors submit an affidavit of compliance upon completion of a municipal building project is extended to state public work projects. Agents and subcontractors on all public works contracts shall also be required to submit compliance affidavits.

k. Release of Final Payment

(1) *1993-94 Statutes*. A municipality could not release an employer's final payment for completion of a local building project until the employer filed an affidavit attesting to compliance with the prevailing wage law.

(2) *Act 215*. The final payment release restrictions that apply to municipal building projects are extended to state building projects. Also, the final payment may be frozen, in whole or in part, up to the amount of any pending claim if DILHR receives credible evidence that a prevailing wage violation has occurred. A municipality or state agency may be held liable for any premature final payment.

l. Classifications of Occupations and Trades

(1) *1993-94 Statutes*. No state agency was clearly designated as the authority for establishing prevailing wage rate classifications for the various occupations and trades in the construction industry.

(2) *Act 215*. DILHR is designated as the sole agency responsible for determining appropriate employe classifications under all state and municipal prevailing wage laws.

m. Kickbacks Prohibited

(1) *1993-94 Statutes*. Employers who required employes to make "kickbacks," whereby an employe must repay the employer any portion of the prevailing wage rate received for working on a local building project or state highway project, is guilty of a misdemeanor.

(2) *Act 215*. The criminal "kickback" prohibition is expanded to apply to state building projects.

n. Targeting

(1) *1993-94 Statutes*. State law did not regulate a practice known as "targeting," where union members are required to deposit a portion of their wages into a fund used by the union to subsidize bids on other public and private construction projects.

(2) *Act 215*. The remission of wages from public works projects to a union for the purpose of "targeting" is prohibited and persons participating in such activities are subject to criminal penalties in conformity with federal anti-targeting legislation as set forth in the federal Copeland Act [40 U.S.C. s. 276c].

o. Standardized Penalties

(1) *1993-94 Statutes*. Wisconsin's three prevailing wage laws provided a variety of inconsistent penalties for violations of state and municipal prevailing wage requirements.

(2) *Act 215*. Penalties for prohibited activities under the prevailing wage laws are standardized. Violators may be fined up to \$200 and imprisoned up to six months, or both, for each offense.

p. Administrative Review of Wage Rate Determination

(1) *1993-94 Statutes*. For municipal building projects, any person may request DILHR to conduct an administrative review of any prevailing wage rate determination.

(2) *Act 215*. Municipalities and state agencies may also request DILHR to conduct an administrative review in connection with a state building project, based on evidence from at least three similar projects within the past year in the affected municipality or area. Data used as the basis for any administrative review request must come from the Department's most recent annual prevailing wage rate survey.

q. Demolition Work

(1) *1993-94 Statutes*. The prevailing wage laws did not cover demolition work.

(2) *Act 215*. Contracts made by municipalities and state agencies for the demolition of public buildings are covered by the municipal and state prevailing wage laws.

r. Incorporation of Prevailing Wage Rates in Specifications, Contracts and Subcontracts

(1) *1993-94 Statutes*. The statutes were ambiguous regarding the incorporation of prevailing wage rates into specifications, proposals, contracts and subcontracts.

(2) *Act 215*. For all public works projects, applicable prevailing wage rates must be physically incorporated into all project proposals, specifications, contracts and subcontracts. Minor subcontracts are exempted but will be subject to certain notification procedures prescribed by departmental rule.

s. Annual Surveys

(1) *1993-94 Statutes*. For state highway contracts, prior to May 1 each year, DILHR shall annually certify to DOT the prevailing wage rates for all classes of labor in the highway construction industry in each area.

(2) *Act 215*. In addition to state highway construction, by January 1 of each year DILHR shall conduct an annual prevailing wage survey for each trade or occupation in each area in connection with state and local public works projects. The Act clarifies that any person failing to provide survey-related information is not subject to the standardized penalties, discussed above, for prevailing wage violations or the general penalties set forth in ch. 101, Stats.

B. 1995 BUDGET ACT AMENDMENTS RELATING TO BINDING ARBITRATION FOR MUNICIPAL EMPLOYEES

I. Background

On January 1, 1978, Wisconsin's "med-arb" law [s. 111.70 (4) (cm), Stats.] became effective. This legislation authorized the use of compulsory final and binding arbitration to resolve collective bargaining impasses affecting municipal employes, including public school teachers. Different statutory provisions authorized binding arbitration to resolve bargaining disputes affecting the "protective services," e.g., local law enforcement and fire fighting personnel.

1993 Wisconsin Act 16, the 1993-95 Executive Budget Act, repealed the "med-arb" law in its entirety, effective July 1, 1996, thereby making binding arbitration available after that date only to resolve bargaining disputes affecting the protective services. Also, prior to the 1996 "med-arb" sunset date, Act 16 severely curtailed the availability of binding arbitration to resolve bargaining impasses affecting professional school district employes (primarily public school teachers). Specifically, if a school district makes an offer, pursuant to new s. 111.70 (4) (cm) 5s., Stats., on salary and fringe benefits to a union representing professional school district employes that is a "qualified economic offer" (QEO), then no economic issues may be submitted to final and binding arbitration under the "med-arb" law. Noneconomic issues may continue to be resolved by binding arbitration, but only after the parties have reached agreement and stipulated to agreement on all economic issues.

Act 16 defined a QEO as an offer made by a school district to a union representing professional school district employes containing overall salary and fringe benefit increases not exceeding 3.8% and that meets both of the following:

a. A total annual increase in the cost of all salary items (including any step increases, promotional increases and increases due to attaining higher professional qualifications) that equals at least 2.1% of total compensation and fringe benefit costs for all employes covered under the parties' prior collective bargaining agreement.

A one-step increase per year for each eligible employe must be funded within the 2.1% limit. If the provision of step, promotional or professional attainment increases uses up the entire 2.1%, the QEO need not contain any general economic or across-the-board salary adjustment. If the cost of these salary increases exceeds the 2.1% limit, the amounts provided may be reduced proportionately, except that amounts earmarked for promotional and professional attainment increases must be eliminated before the one-step increases for eligible employes may be reduced.

b. A total annual increase in the cost of all fringe benefit items that does not exceed 1.7% of total compensation and fringe benefit costs for all employes covered under the parties' prior collective bargaining agreement.

The employer's offer must include: (1) a continuation of the same percentage contribution by the employer to provide all existing fringe benefits to employees in the bargaining unit; and (2) the maintenance of all existing fringe benefits as they existed on the 90th day prior to the expiration of the previous collective bargaining agreement between the parties or on the 90th day prior to the commencement of negotiations if there was no prior agreement.

If the employer's offer maintains all existing fringe benefits and employer contribution levels but requires increased funding totaling less than 1.7%, the offer is still considered a QEO. However, if the continuation of existing fringe benefits and current employer contribution levels requires an amount that exceeds 1.7%, the employer may make an equivalent reduction in the salary increase component that would otherwise be required in order for the offer to be considered a QEO. Act 16 expressly states that a QEO may even provide for a salary decrease if the increased annual cost of maintaining existing fringe benefits exceeds 3.8% of the total compensation and fringe benefit costs for employees in the bargaining unit.

Act 16 further provided that the 2.1% salary and 1.7% fringe benefit percentages shall be determined based on the total cost of compensation and fringe benefits paid to employees in the bargaining unit on the 90th day before expiration of the parties' previous collective bargaining agreement or the 90th day prior to commencement of the negotiations if there is no previous agreement between the parties, without regard to any subsequent change in the number, rank or qualifications of the school district professional employees.

[For additional changes in s. 111.70, Stats., the Municipal Employment Relations Act (MERA), contained in 1993 Wisconsin Act 16, see Wisconsin Legislative Council Staff Information Memorandum 94-16, *Major Labor Issues in the 1993 Legislative Session*, pp. 4-7, dated May 25, 1994.]

2. Provisions of 1995 Wisconsin Act 27

1995 Wisconsin Act 27, the 1995-97 Executive Budget Act, was signed into law by Governor Thompson on July 26, 1995. Act 27 contained the following provisions affecting dispute resolution procedures for nonprotective municipal employees.

a. ***Repeal of "Med-Arb" Law Sunset Date.*** As noted above, 1993 Wisconsin Act 16 repealed the "med-arb" law, authorizing compulsory binding arbitration for bargaining disputes involving nonprotective municipal employees, effective July 1, 1996.

Act 27 repeals the July 1, 1996 sunset date for the expiration of the binding arbitration law for nonprotective municipal employees, thereby making those arbitration procedures (including the specialized QEO provisions affecting professional school district employees) permanent.

An Assembly provision, which would have removed nonprotective county employees from coverage under the "med-arb" law as of July 1, 1996, was deleted by the Senate. As a result, all nonprotective municipal employees, including county employees, remain subject to the interest arbitration procedures under s. 111.70 (4) (cm), Stats., after that date.

b. ***Factors Used by Arbitrators Revised.*** Prior to the enactment of Act 27, s. 111.70 (4) (cm) 7., Stats., listed nine specific factors that an arbitrator must “give weight to” in making an arbitration award under the “med-arb” law.

Act 27 adds two new statutory factors that the arbitrator must consider in making his or her arbitration decision, and requires that they be given more weight than the other factors previously enumerated by law.

Specifically, Act 27 requires the arbitrator to give the greatest weight to “any state law or directive lawfully issued by a state legislative or administrative officer, body or agency which places limitations on expenditures that may be made or revenues that may be collected by a municipal employer.” As a result, the law now requires the arbitrator to give the greatest weight to such items as local levy limits and cost controls that are, from time to time, imposed at the state level, and further requires the arbitrator to “give an accounting” in his or her written arbitration decision regarding the consideration of this factor.

Act 27 also requires the arbitrator to consider another new factor, local economic conditions, and to give greater weight to this factor than to any of the original statutory factors the arbitrator must consider whenever an arbitration decision is made.

c. ***Negotiations and Disputes Affecting School District Professional Employees.*** Act 27 prohibits the inclusion of school district professional employees in the same collective bargaining unit as other persons who are not school district professional employees, and redefines the term “school district professional employee” to coincide with the existing statutory definition of “professional employe” under the Wisconsin MERA.

Act 27 also authorizes new or modified bargaining agreements between school districts and their professional employes to alter the existing salary range structure, number of steps, requirements for attaining a step, or the assignment of a position to a salary range if such alterations are the result of a voluntary agreement between the parties.

Under Act 27, the solicitation of sealed bids for the provision of group health care benefits for school district professional employes is made a prohibited subject of bargaining. However, the Act further requires school districts, prior to any selection of an insurance provider, to solicit sealed bids to provide health care benefits.

Act 27 authorizes a school district or union representing school district professional employes to petition the Wisconsin Employment Relations Commission (WERC) to determine whether the district has submitted a QEO. If a WERC investigator determines that a QEO has been submitted but that the parties are deadlocked with respect to all economic issues, the school district may implement its QEO. If the parties have not reached an agreement by the 90th day prior to the expiration of the period covered by the QEO, the parties will be deemed to have stipulated to the inclusion in the new collective bargaining agreement of all economic provisions of their predecessor agreement, except as otherwise modified by the QEO or agreed to by the parties. On or after that date, a school district that unilaterally implements its QEO and refuses to bargain further on economic issues will not be deemed to have committed a prohibited

practice. At that time, the districts' implemented QEO will be considered to be a full, final and complete settlement of all economic issues between the parties for the period covered by the QEO.

d. ***Other Provisions.*** By January 1, 1996, Act 27 requires the WERC to establish by rule and implement a schedule of service fees for mediation, interest arbitration and grievance arbitration proceedings, with each party paying one-half of the required fee. A statutory fee cap of \$225 per case was vetoed by Governor Thompson.

Act 27 created new prohibited subjects of bargaining relating to employe reassignments and other impacts affecting employes in conjunction with decisions to operate charter schools in the City of Milwaukee, and other reassignments and employe impacts in Milwaukee due to school closings or contracts with private schools to provide educational programs.

In addition to prohibiting mixed bargaining units consisting of both school district professional employes and other school district employes, Act 27 also prohibits mixed bargaining units consisting of other types of professional and nonprofessional employes, as well as units comprising both craft employes and noncraft employes, unless a majority of the professional employes or a majority of the craft employes vote to approve a mixed bargaining unit.

The Act also authorizes separate bargaining units for charter school professional employes after a 30% showing of interest for a separate unit by affected employes and a subsequent election where a majority of the charter school professional employes vote in favor of a separate bargaining unit.

3. Subsequent Litigation Over “Med-Arb” Law Amendments

As noted above, prior to final passage of 1995 Wisconsin Act 27 by the Legislature, the Senate deleted a provision inserted by the Assembly that would have removed nonprotective county employes from coverage under the binding arbitration provisions of the “med-arb” law, effective July 1, 1996.

Despite this action by the Senate, on October 13, 1996, Juneau County filed a lawsuit [*Juneau County v. Courthouse Employees Local No. 1312, AFSCME, et al.*, Case No. 95CV214] seeking a declaratory judgment that the final and binding arbitration provisions of the “med-arb” law, as affected by Act 27, apply only to bargaining units consisting of school district professional employes (primarily public school teachers) and not to other categories of nonprotective municipal employes.

In addition to the Juneau County lawsuit, in November and December of 1995, the City of New Lisbon and the Village of Necedah filed similar actions in the Circuit Court for Juneau County to have the “med-arb” law declared inapplicable to labor disputes involving nonprotective city and village employes. [*City of New Lisbon v. Wisconsin Council 40, AFSCME*, Case No. 95CV247; and *Village of Necedah v. Wisconsin Council 40, AFSCME*, Case No. 95CV269.]

In these cases, the municipal employers argued that the inclusion of certain language in s. 111.70 (4) (cm) 6. a., Stats., by both 1995 Wisconsin Act 27 and 1993 Wisconsin Act 16 creates “plain language” that clearly removes all nonprotective municipal employes, except public school teachers, from the mandatory binding arbitration requirements of the “med-arb” law. As a result, counties, cities and villages are no longer required to participate in binding interest arbitration with their unionized nonprotective employes.

On March 1, 1996, Juneau County Circuit Judge John W. Brady issued a consolidated decision in the City of New Lisbon and Village of Necedah actions. After declaring the statutory language in question to be ambiguous, Judge Brady concluded that based on the legislative history of Act 27, the Legislature clearly intended that “the plaintiff municipalities remain subject to the binding arbitration provisions” of the “med-arb” law.

On April 12, 1996, the WERC issued two similar decisions involving pending arbitration cases affecting employes of Iowa County and the City of Monona where the municipal employer challenged the continuing application of the “med-arb” law due to the amendments contained in Act 27. [*Iowa County*, Dec. No. 28697 (WERC), April 12, 1996; and *City of Monona*, Dec. No. 28896 (WERC), April 12, 1996.] In its decisions, the Commission, in a reference to the above-mentioned City of New Lisbon/Village of Necedah ruling stated:

Like Judge Brady, we are persuaded that the legislative history clearly establishes that the statutory ambiguity should be resolved in a manner which establishes that interest arbitration under sec. 111.70 (4) (cm) 6., Stats., does apply to municipal employe bargaining units other than school district professional employes. The documentation of the legislative history in the record in this case overwhelmingly establishes this legislative intent.

The initial action filed by Juneau County in October 1995 is still pending in the Circuit Court for Juneau County, and an additional action filed by the North Fond du Lac school district challenging the applicability of the “med-arb” law to disputes involving nonteaching school district employes, remains pending in the circuit court for Fond du Lac County. To date, appeals from the above-discussed circuit court and WERC decisions have not been filed.

C. STATE EMPLOYE COLLECTIVE BARGAINING UNITS REVISED

1. Background

When Wisconsin’s State Employment Labor Relations Act (SELRA), located in subch. V of ch. 111, Stats., was last revised by Ch. 270, Laws of 1971, 14 statutory collective bargaining units were created on a statewide basis for the purpose of collective bargaining between the state and its employes in the classified civil service, covering both professional and nonprofessional occupational groups.

Currently listed in s. 111.825 (1), Stats., these 14 bargaining units include the following five bargaining units for nonprofessional classified state employees:

- a. Clerical and related.
- b. Blue collar and nonbuilding trades.
- c. Building trades crafts.
- d. Security and public safety.
- e. Technical.

The statute also lists the following nine bargaining units for professional classified state employees:

- a. Fiscal and staff services.
- b. Research, statistics and analysis.
- c. Legal.
- d. Patient treatment.
- e. Patient care.
- f. Social services.
- g. Education.
- h. Engineering.
- i. Science.

Since that time, the Legislature has created four additional collective bargaining units, listed in s. 111.825 (2), Stats., for the purpose of collective bargaining between the state and certain groups of unclassified state employees.

In 1985, the Legislature created three separate bargaining units for program, project and teaching assistants employed by the University of Wisconsin (UW) System. One unit represented all such employees at the UW-Madison campus and UW-Extension. The second unit covered similar employees at the UW-Milwaukee; and the third unit was created for employees at all other four-year campuses within the UW System.

The fourth bargaining unit for unclassified state employees was created in 1989. At that time, Wisconsin's assistant district attorneys, who used to be county employees, formally became unclassified state employees with full collective bargaining rights under SELRA.

2. Provisions of 1995 Wisconsin Acts 27, 251 and 324

a. 1995 Wisconsin Act 27

1995 Wisconsin Act 27, the 1995-97 Executive Budget Act, removed the University of Wisconsin Hospitals and Clinics (UWHC) from the UW System and from the authority and control of the UW Board of Regents. In its place, Act 27 created the University of Wisconsin Hospitals and Clinics Authority (hereafter the Authority) to operate and manage the UWHC, beginning July 1, 1996. The Authority would be a state public body, but would not be a state agency.

Pursuant to Act 27, all of the UWHC's nonprofessional represented employees (almost 1,300 state workers) will remain as classified state employees, continue to bargain under SELRA and be represented by the Wisconsin State Employees Union (WSEU) and the Wisconsin Building Trades Negotiating Committee. Another state body, the UWHC Board, containing the same membership as the Authority's 11-member governing board, is created to assume the employer function and negotiate directly with the unions. However, the Joint Committee on Employment Relations (JCOER) and the Legislature are removed from the ratification process for bargaining agreements reached between the UWHC Board and its employees.

Act 27 created new s. 111.825 (1m), Stats., which establishes five new bargaining units for UWHC nonprofessional employees (clerical and related; blue collar and nonbuilding trades; building trades crafts; security and public safety; and technical). However, if a single bargaining representative is certified to represent more than one of these units, that representative and the UWHC Board, pursuant to new s. 111.825 (4m), Stats., "may jointly agree to combine the collective bargaining units."

Under Act 27, approximately 1,800 UWHC professional represented employees (mostly nurses) will no longer be considered state employees and, in the future, will bargain with the Authority under subch. I of ch. 111, Stats., Wisconsin's Employment Peace Act. UWHC nonprofessional supervisory staff, whose wages and benefits were linked to increases obtained by nonprofessional employee bargaining units, will be treated as professional staff for collective bargaining purposes.

Act 27 created new s. 111.05 (5) (a), Stats., which establishes three new bargaining units for UWHC professional employees (patient care; science; and fiscal and staff services). Again, if more than one unit is represented by the same union, the Authority and the union may jointly agree to combine collective bargaining units.

Unions that have been representing UWHC employees will continue to represent the new bargaining units unless petitions for decertification or new elections are filed, and all existing

contracts that the Department of Employment Relations (DER) has negotiated with the unions will remain in effect until June 30, 1997.

b. 1995 Wisconsin Act 251

Prior to the enactment of 1995 Wisconsin Act 251, law enforcement officers who were state employees were assigned under s. 111.825 (1) (d), Stats., to the security and public safety collective bargaining unit, which included approximately 4,400 state workers. Most of the employees in this bargaining unit are correctional officers and other employees of the Department of Corrections (DOC).

Act 251 amends SELRA to establish a new law enforcement collective bargaining unit, that is, a new bargaining unit for certain state classified employees engaged in law enforcement occupations. All of the employees who will be reassigned to the new law enforcement bargaining unit were already included in the existing security and public safety bargaining unit. Act 251 initially applies to collective bargaining agreements negotiated for the 1997-99 biennium.

Act 251 requires the WERC to assign only the following groups of employees to the new law enforcement bargaining unit:

(1) Classified employees of the Department of Administration (DOA) (primarily members of the State Capitol Police), the DOT (primarily members of the State Patrol) and the UW System (primarily UW Campus Police Department members) who engage in the detection and prevention of crime, enforce the laws and are authorized to make arrests for violations of the laws;

(2) Classified employees who provide technical support to the above-mentioned law enforcement officers (primarily dispatchers and communications personnel); and

(3) Classified employees of the DOT who conduct motor vehicle inspections or driver's license examinations (primarily motor vehicle service specialists).

The DER has estimated that the enactment of Act 251 will result in the reassignment of approximately 32 DOA employees, 775 DOT employees, and 180 UW System employees to the new law enforcement bargaining unit. A much smaller number of classified state employees from other state agencies who engage in similar types of law enforcement or support services, such as investigators employed by the Departments of Justice and Revenue and wardens in the Department of Natural Resources, will not be reassigned and will remain in the existing security and public safety collective bargaining unit.

In its fiscal estimate, DER indicates that the Act could require an additional senior labor relations specialist to handle the increased work load at a cost of \$67,300 GPR per year, plus one-time start-up costs of \$5,600 general purpose revenue (GPR) in the first year.

c. 1995 Wisconsin Act 324

As noted previously, under SELRA, approximately 300 attorneys in the state classified service are in a separate bargaining unit for collective bargaining purposes; and, in 1989, another bargaining unit was created for about 270 assistant district attorneys in 71 Wisconsin counties, who are now unclassified state employees.

1995 Wisconsin Act 324, which takes effect on July 1, 1997, amends SELRA to establish a new collective bargaining unit for approximately 260 unclassified staff attorneys in the Office of the State Public Defender (SPD). Expressly excluded from coverage are SPD attorneys who are in supervisory or managerial positions or those who are privy to confidential matters affecting the employer-employee relationship.

Fiscal estimates submitted by the DER indicate that DER would require an additional senior labor relations specialist to handle the increased work load at a cost of \$67,300 GPR annually, in addition to one-time start up costs of \$5,600 GPR. The Office of the SPD indicated that collective bargaining will require an additional half-time personnel assistant at a cost of \$18,500 GPR annually, and one-time start up costs of \$4,300 GPR.

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