

EMPLOYMENT RELATIONS COMMISSION

Provisions Affecting Local Law Enforcement and Firefighting Employers and Employees;
Payment of a Police Officer's Salary After Discharge in a First Class City; Memoranda of
Understanding Relating to Current School District Collective Bargaining Agreements, and
Disciplinary Provisions for Police Fire Personnel in Cities Other than Milwaukee

Motion:

Move to:

1. *Provisions Affecting Local Law Enforcement and Firefighting Employers and Employees.* Provide that an employer of law enforcement and fire personnel under the Municipal Employment Relations Act (MERA) may not pay, on behalf of any law enforcement or fire fighting employee, the employee-required retirement contributions specified in 2011 Wisconsin Act 10, if that employee first becomes a participating employee in a retirement system on or after the bill's effective date.

In arbitration proceedings relating to law enforcement and fire personnel, provide that in making any arbitration decision, the arbitrator or arbitration panel must consider and give the greatest weight to the economic conditions in the jurisdiction of the municipal employer. Require the arbitrator or arbitration panel to give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

Provide that the design and choice of health insurance coverage plans to be offered by employers under MERA to represented law enforcement and fire personnel would be a prohibited subject of bargaining.

Provide that nonrepresented law enforcement and fire fighting personnel that are employed by a municipal employer before the effective date of the bill would be exempt from a provision in 2011 Act 10 that prohibits the employer from paying, on behalf of the employee, any employee-required retirement contributions.

Provide that nonrepresented law enforcement and fire fighting personnel that are employed by a municipal employer before the effective date of the bill that participate in a health insurance plan offered by the Group Insurance Board would be exempt from a provision in Act 10 that specifies that beginning on January 1, 2012, except as otherwise provided in a collective bargaining agreement with local law enforcement or firefighters, an employer may not offer the GIB health care coverage plan to its employees if the employer pays more than 88% of the average premium cost of plans offered in any tier with the lowest employee premium cost (tier-1 plan).

Require that nonrepresented law enforcement and fire fighting personnel that are employed by a municipal employer before the effective date of the bill, be subject to the same employee retirement contribution and health insurance contribution requirements that apply to represented law enforcement and fire fighting personnel that are employed by the municipality before the effective date of the bill.

Provide that the treatment of nonrepresented law enforcement and fire fighting personnel under these provisions would apply to a represented law enforcement and fire fighting employee moving to a nonrepresented position within the same Department.

Provide that the provisions would take effect on the later of: (a) the day after publication of the budget bill; (b) the day after publication of 2011 Wisconsin Act 10; or (c) the effective date of substantially similar provisions enacted under separate legislation in the 2011 legislative session.

2. *Payment of a Police Officer's Salary After Discharge in a First Class City.* Move to provide that a member of the police force in a first class city (Milwaukee) may not be discharged or suspended without pay or benefits until the discharge or suspension is disposed of by the board of fire and police commissioners or the time for appealing the discharge or suspension has passed, unless felony or Class A or B misdemeanor charges are also pending against the officer, and if the charges arose out of the same conduct or incident that serves as the basis for the discharge or suspension.

3. *Memoranda of Understanding Relating to Current School District Collective Bargaining Agreements.* Permit school district employers and the collective bargaining representative of school district employees to enter into a single memorandum of understanding within 90 days of the effective date of the bill to modify compensation and fringe benefit requirements for represented employees under a collective bargaining agreement that is in effect and was initially entered into prior to February 1, 2011. Provide that any memoranda of understanding entered into by a school district and the collective bargaining representative of its employees relating to compensation and fringe benefits requirements under a collective bargaining agreement that is in effect on the effective date of the bill and was initially entered into prior February 1, 2011, shall not be considered a modification of the contract for purposes of 2011 Wisconsin Act 10, sections 9315(1) and (2) and 9332 (1), or substantially similar provisions that may be enacted under separate legislation. Provide that the memorandum of understanding remains in force for the term of the contract and, if any item in the memorandum of understanding is not a prohibited subject of bargaining upon expiration of the contract, the item in the memorandum of understanding remains in force until the parties enter into a new agreement.

4. *Disciplinary Provisions for Police Fire Personnel in Cities Other than Milwaukee.* Repeal the current law provisions that: (a) a collective bargaining agreement may, notwithstanding the disciplinary process specified in s. 62.13 (5) of the statutes, contain dispute resolution procedures, including arbitration, that address the suspension, reduction in rank, suspension and reduction in rank, or removal of such personnel; and (b) if the procedures include arbitration, the arbitration hearing shall be public and the decision of the arbitrator shall be issued within 180 days of the conclusion of the hearing.

Further, repeal current law provisions that a municipal employer is prohibited from

bargaining collectively with respect to: (a) the prohibition of access to arbitration as an alternative to the disciplinary procedures under current law; (b) the reduction of current law standards relating to the determination of just cause to sustain charges against fire fighting or law enforcement personnel; and (c) the payment of compensation in a way that is inconsistent with the current law provision that no person may be deprived of compensation while suspended, pending the disposition of charges.

Note:

Provisions Affecting Local Law Enforcement and Firefighting Employers and Employees. The motion's provisions would have effect only if the employee retirement, health benefits, and collective bargaining provisions of 2011 Act 10, or substantially similar provisions enacted under separate legislation in the 2011 legislative session, become law.

Under the provisions of 2011 Wisconsin Act 10, a WRS general participant, and an executive or elected official participant would be required to make an employee contribution to the WRS in an amount equal to one-half of all actuarially-required contributions, as approved by the Employee Trust Fund (ETF) Board. [Under the current 2011 rates, one-half of the general participant rate would be 5.8% and one-half the executive/elected official rate would be 6.65%.] The Act would also require WRS participants who are protective occupation employees (both those who are and are not covered by social security) to contribute the percentage of earnings that would be paid by general participants (5.8% in 2011). Act 10 also applies these provisions to the retirement system of Milwaukee County and the City of Milwaukee, except that for the City of Milwaukee retirement system the phrase "all employee required" contributions is specified rather than "half of all actuarially required" contributions to utilize terminology more consistent with the provisions of City of Milwaukee retirement system.

However, represented public safety workers, which include local law enforcement and fire personnel, would retain the ability, under Act 10, to collectively bargain for an employer pickup of some or all of the employee-required retirement contributions. The motion retains these provisions, but would require that a MERA employer may not pay, on behalf of any law enforcement or fire fighting employee, the employee-required retirement contributions specified in 2011 Wisconsin Act 10, if that employee first becomes a participating employee in the WRS on or after the bill's effective date. The provisions would apply to newly hired law enforcement and fire personnel who participate in the WRS, the City of Milwaukee retirement system, and the Milwaukee County retirement system.

Under current law, for City of Milwaukee law enforcement arbitrations, in determining proper compensation, an arbitrator must utilize: (a) the most recently published U.S. Bureau of Labor Statistics "Standards of Living Budgets for Urban Families, Moderate and Higher Level", as a guideline to determine the compensation necessary for members to enjoy a standard of living commensurate with their needs, abilities and responsibilities; and (b) increases in the cost of living as measured by the average annual increases in the U.S. Bureau of Labor Statistics "Consumer Price Index" since the last adjustment in compensation for those members. For fire fighters in the City of Milwaukee and for law enforcement and fire personnel in other larger jurisdictions, an arbitrator must give weight to: (a) the interests and welfare of the public and the financial ability of

the unit of government to meet these costs; (b) comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally, in public employment in comparable communities and in private employment in comparable communities; (c) the average consumer prices for goods and services, commonly known as the cost of living; and (d) the overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

The motion would establish that the economic conditions in the jurisdiction of the municipal employer would be the "greatest weight" factor in arbitration decisions relating to law enforcement and fire personnel and would require the arbitrator or arbitration panel to give an accounting of the consideration of this factor in the arbitrator's or panel's decision.

The motion would provide that the design and choice of health insurance coverage plans to be offered by employers under MERA to represented law enforcement and fire personnel would be a prohibited subject of bargaining. The employee contribution requirements for any offered coverage for represented law enforcement and fire personnel would still be collectively bargained.

The motion would include nonrepresented law enforcement (police and sheriff) and fire fighting personnel as exceptions to the retirement contribution and Group Insurance Board local employer health plan contribution requirements of Act 10. Under the motion, a municipality would be required to impose the same retirement and health insurance contribution levels on nonrepresented law enforcement and fire fighting personnel that apply to represented law enforcement and fire fighting personnel employed by the municipality.

The motion also provides that the treatment of nonrepresented law enforcement and fire fighting personnel under these provisions would apply to a represented law enforcement or fire fighting employee moving to a nonrepresented position within the same Department. A represented employee moving to a nonrepresented position in a different Department would not be covered by these provisions.

Payment of a Police Officer's Salary After Discharge in a First Class City. Under current law, the municipality (City of Milwaukee) is permitted to discharge a police officer without pay or benefits during the appeal process, and any officer who is suspended must be provided pay and benefits during an appeal process. The current law provision was enacted in 2009 Wisconsin Act 28. The motion would reinstate the law that existed prior to the Act 28 change.

Memoranda of Understanding Relating to Current School District Collective Bargaining Agreements. Under 2011 Wisconsin Act 10, certain conditions would be established for employee health insurance contributions for local governmental units insured through a program offered by the Group Insurance Board, employee retirement contributions, and municipal collective bargaining. The initial applicability requirements in the Act would specify that the provisions would first apply to employees who are covered by a collective bargaining agreement that contains provisions inconsistent with these provisions on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

The intent of the provision is to permit changes through a single memorandum of understanding to current collective bargaining agreements that were initially entered into prior to February 1, 2011, relating to compensation and fringe benefits without activating the 2011 Wisconsin Act 10 initial applicability provisions.

Disciplinary Provisions for Police Fire Personnel in Cities Other than Milwaukee. The intent to the motion is to repeal changes to the disciplinary process applicable to police and fire fighting personnel made under 2007 Act 20 and reestablish statutory provisions in effect prior to Act 20.

Under current law (as enacted in 2007 Act 20), notwithstanding the current law procedures for disciplinary actions against police and fire fighters, a collective bargaining agreement entered into between law enforcement and fire fighting personnel and a municipal employer may contain dispute resolution procedures, including arbitration, that address the suspension, reduction in rank, suspension and reduction in rank, or removal of such personnel. If the procedures include arbitration, the arbitration hearing would be required to be public and the decision of the arbitrator must be issued within 180 days of the conclusion of the hearing. These provisions do not apply to City of Milwaukee law enforcement or fire fighting personnel.

In a bargaining unit containing fire fighting or law enforcement personnel, the municipal employer is prohibited from bargaining collectively with respect to: (a) the prohibition of access to arbitration as an alternative to the disciplinary procedures under current law; (b) the reduction of current law standards relating to the determination of just cause to sustain charges against fire fighting or law enforcement personnel; and (c) the payment of compensation in a way that is inconsistent with the current law provision that no person may be deprived of compensation while suspended, pending the disposition of charges.

Under pre-Act 20 law, a law enforcement officer or fire fighter employed by a city (other than the City of Milwaukee), village, town or county could not be suspended, reduced in rank, suspended and reduced in rank, or dismissed by a grievance committee, civil service commission, county board, or board of police and fire commissioners (a tribunal) unless the tribunal determined that there is just cause to sustain the charges that have been brought against the officer or fire fighter. If the charges are sustained and the officer or fire fighter is disciplined by the tribunal, he or she was allowed to appeal the order to circuit court, except that a county law enforcement officer, under a decision of the Wisconsin Supreme Court (*Eau Claire County v. General Teamsters Union Local No. 662*, 2000 WI 57), was allowed to proceed either with an appeal to circuit court or with the grievance procedures, including arbitration, in the officer's collective bargaining agreement. The trial based on the appeal is before the court, which must determine whether there is just cause to sustain the charges against the accused officer or fire fighter and the tribunal's order. If the charges and the tribunal's order are sustained, the tribunal's order is final and conclusive, but, if reversed, the officer or fire fighter is reinstated and entitled to pay as though he or she were in continuous service.

The motion would reestablish these pre-Act 20 provisions.

