Legislative Fiscal Bureau
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Labor-Management Cooperation Program (Office of State Employment Relations)

Bill Agency

[LFB 2007-09 Budget Summary: Page 433, #2]

CURRENT LAW

Under current law, the Office of State Employment Relations (OSER) is provided a program revenue appropriation for costs related to collective bargaining grievance arbitrations. Under the appropriation, OSER is authorized to receive from state agencies reimbursement of the state's share of the costs related to grievance arbitrations.

GOVERNOR

Provide $55,400 PR in 2007-08 and $72,600 PR in 2008-09 and 1.0 PR four-year project position annually for a labor-management cooperation program. Authorize OSER to receive revenue to reimburse the state's share of costs for training relating to grievance arbitrations.

DISCUSSION POINTS

1. Most collective bargaining agreements for state employees include provisions that specify procedures for handling employee grievances in a three-step process (although some contracts have a four-step process that includes a pre-filing step). In Step One, the designated representative of the state agency along with the supervisor will schedule and conduct a meeting with the employee and local union representative and respond to the grievance. If the grievance is denied, it may be appealed by the union to Step Two. At Step Two, a grievance meeting is held with the appointing authority of the state agency or his or her designee (that is, the Division Administrator or Bureau Director) and a representative of the agency's personnel office with the

union representatives and the employee. If the grievance is denied at Step Two, the grievance response must include an explanation of the reason for the denial. The costs of Step One and Step Two grievances primarily involve the cost of staff time to prepare for and conduct the grievance meetings, and to prepare a response to the grievance. Each state agency bears these costs for its employees' grievances.

2. Grievances that have not been settled under Step One or Two may be appealed to OSER for arbitration (Step Three). At Step Three, the costs of preparing the case and holding a hearing are incurred by OSER labor-relations staff. In addition, any state costs for an arbitrator, court reporter, agency witnesses and costs such as back-pay are charged to the appropriate state agency. Except for extremely limited bases of appeal, the arbitrator's decision on the grievance is final.

3. The proposed labor-management cooperation (LMC) program is intended to identify and replicate "best practices" in labor-management cooperation at work sites across the state. The position authorized for the program would conduct training of union and management representatives; facilitate workplace interventions; coordinate labor-management cooperation teams and projects; serve as an intra-agency liaison for labor-management activities; and assist OSER and union officials in the development of labor-management goals and strategic plans.

4. The objective of the program is to reduce the overall number of grievance procedures by providing timely on-site training and interventions that address a variety of labor-management disputes. As discussed below, this reduction in grievance procedures has the potential to reduce state costs and to decrease the amount of lost staff time and productivity associated with the processing of employee grievances. These savings, OSER believes, would far exceed the funding amounts provided under the bill.

5. The LMC program was previously operated from 1998-99 to 2002-03. However, due to a lack of resources, these activities ceased. The Governor's provision would reinstitute this initiative and provide program revenue to support 1.0 PR project position. A history of the program's earlier development follows.

6. In mid-1998, the Department of Employment Relations [DER (now OSER)] and the Wisconsin State Employees Union (WSEU) jointly applied for a grant from the Federal Mediation and Conciliation Service to develop a "best practices" program for cooperative problem-solving between labor and management groups under a team approach. Subsequently, a $90,000 grant was awarded and the project was formally commenced in January of 1999 when five regional, two-day forums were held. From interest generated at those forums, a total of 40, two-person volunteer teams from 11 different agencies were formed. These teams then underwent additional training activities designed to allow the teams to address workplace issues at their individual worksites with the goal of improving labor-management relations.

7. DER officials at the time indicated that, subsequent to the original grant funding, it sought additional grant funding from the federal government and other sources such as private

foundations to continue the project but was unsuccessful in those efforts. Consequently, some continued funding of this project was obtained in the following ways. In December of 2000, the Wisconsin Employment Relations Commission (WERC) and DER jointly submitted a s. 16.515 request to DOA for an increase in WERC's collective bargaining training appropriation of $50,000 PR in 2000-01. This funding was to be used to allow WERC to contract with DER for continuation of the labor-management project. As approved by DOA, the request submitted to the Joint Committee on Finance provided for an increase of $20,200 PR in 2000-01 and $29,800 PR in 2001-02 (in the next fiscal biennium).

8. The Joint Committee on Finance approved the requested increase for 2000-01 but directed that the amount requested for 2001-02 be addressed as a part of the 2001-03 biennial budget process. As a part of the 2001-03 biennial budget process, the Joint Committee on Finance took action to add $29,800 PR in 2001-02 to WERC's collective bargaining training appropriation to allow WERC to further contract with DER for continuation of the project. However, in the final adopted biennial budget that funding was not included.

9. Subsequent to the 2001-03 biennial budget action, DER submitted two s. 16.515 requests to obtain increased spending authority under its employee development and training services appropriation to permit continuation of this project. In each request, the revenues to support the increased PR expenditures would have come not from new revenues assessed the trainees, as is normally the case for training services provided under this appropriation, but rather by using a portion of the available cash balance in the employee development and training services program revenue account.

10. On February 12, 2002, a s.16.515 request from DER for increased funding of $75,000 PR in 2001-02 and $125,000 PR in 2002-03 in DER's appropriation for employee development and training services was submitted to the Joint Committee on Finance. This request was objected to and DER was notified that a meeting of the Committee would be scheduled to consider the request.

11. On June 6, 2002, DER withdrew its original s. 16.515 request and submitted a revised request for funding of $150,000 PR for fiscal year 2002-03 only. An objection to this second request was also made.

12. Finally, because the agency's second s. 16.515 request had not been acted upon by the time its biennial budget request for the 2003-05 biennium was due, the Department was advised by DOA to submit its funding request for this project as a part of its biennial budget request. Consequently, DER's 2003-05 budget request included a request for an increase of $150,000 PR in 2003-04 and $25,000 PR in 2004-05 for continued funding of the labor-management project. This budget request was approved by the Governor, but deleted by the Legislature.

13. In the period during which these funding requests were pending, DER was able to continue some level of activity in the labor-management project by means of the following: (a) it continued to use a loaned project position from the Department of Corrections to serve as assistant

director and project coordinator for the program; (b) it obtained a $25,000 grant from AFSCME International and a grant of $8,000 from the WSEU; and (c) DER and the WSEU provided administrative support, office space, furniture and equipment for the project. Most of this activity was to continue work with the trained groups already in place, although DER was able to add the UW-Stevens Point campus as a participant in the program. However, the project was subsequently impaired when, due to budget reductions, the Department of Corrections had to lay off the project coordinator. Following the failure of the 2003-05 funding provision, the initiative was discontinued.

14. This history illustrates the persistent efforts made to provide permanent funding for the labor-management initiative. The commitment to the initiative, shown by both DER (now OSER) and union representatives, indicates that the program was viewed as a valuable labor relations tool by both parties.

15. The basis for this view was the potential for the program to reduce the number of grievances initiated in state agencies, and the number of grievances appealed to the arbitration stage. Reducing this caseload could result in a significant reduction in lost productivity due to the loss of staff time required to process these grievances. OSER indicates that in the first year following the original implementation of the program (2000) the number of grievances being filed in five state agencies where the LMC program had a presence, dropped by 396 (from 1,135 in 1999 to 739 in 2000), a 35% reduction. At the time, the cost savings of not having to process these grievance filings was estimated at approximately $300,000. The agencies in which the LMC program operated included the Departments of Corrections, Health and Family Services, Natural Resources, and Transportation, and the University of Wisconsin System.

16. OSER also documented a decline in discharge arbitrations (contested terminations) between 1999 and 2000, as a result of the program. Discharge arbitrations were reduced by 72% (from 46 in 1999 to 13 in 2000) with associated savings to the state of approximately $150,000. In addition to OSER staff time, the costs of arbitration include the expenses of an arbitrator and a court reporter. The projected savings of $150,000 was based on the estimated average cost of an arbitration in 2000, which was $4,600. OSER now projects the average cost of an arbitration at $6,000.

17. OSER indicates that the number of state agency grievances and arbitrations has grown in the last five years. In 2002 and 2003, agency grievances averaged approximately 1,600 annually and in the three-year period 2004 to 2006, grievances averages 2,200. Grievances reaching the arbitration stage have also increased. In 2002, the number of grievances appealed to OSER for arbitration totaled 735 cases. The number of these appeals increased each year to 1,065 cases in 2005, before declining to 981 cases in 2006.

18. These increases are not attributable to the termination of the LMC program. There are many factors affecting grievance rates and it is not possible to isolate the effect of any one factor on changing rates. However, the increase in agency grievances and appeals to arbitration in recent years may indicate that the LMC program could have a positive effect if reinstituted.

19. The bill would provide \$55,400 PR in 2007-08 and \$72,600 PR in 2008-09 and 1.0 PR four-year project position annually for the LMC program. OSER indicates that the program revenue would be produced through a per-grievance charge assessed to state agencies. Under this plan, each agency would pay a share of the program's costs proportional to the number of grievances being filed in that agency. Administration officials indicate that a project, rather than a permanent, position was provided in order that the effectiveness of the program in reducing grievance caseload can be evaluated before a permanent position is considered.

20. If the LMC program has the effect of reducing the number of grievances filed and the number of grievances actually taken to arbitration, the savings to state agencies would outweigh the additional charges that would be made to state agencies to cover the program's operating costs. For example, based on 2006 grievance filings, if the LMC program could reduce grievances by 3% (approximately 70 grievances), the savings in agency staff time spent processing these grievances (estimated at \$1,090 per grievance) would cover the annualized LMC program costs (\$72,600). As noted above, data from 2000 indicates that, in agencies where the LMC program was operating, grievances were reduced by 35% from the prior year.

21. Given the potential benefits of a labor-management cooperation program, which include possible cost savings, a decrease in the amount of lost staff time and productivity for state agencies, and improved labor-management relations, the Committee may want to approve the Governor's recommendation to reinstitute the program.

22. As noted above, the program model originally used in 1999, involved two-day forums, which led to the creation of 40, two-person volunteer teams from 11 different state agencies. These teams then underwent additional training activities designed to allow the teams to address workplace issues at their individual worksites with the goal of improving labor-management relations. While the original model worked well, it appears that the model is unlikely to be utilized if the program is reinstituted. According to OSER officials, WSEU has indicated that they do not wish to continue using the original model, but would like to develop an approach that focuses on specific problem areas in agencies. This new approach would need to be developed jointly by WSEU and OSER. However, this planning has not yet taken place and no detailed information is currently available on how a redesigned program would operate. Because of the uncertainty regarding how a new LMC program model would be approached, there are also no specific program activities, goals, or objectives that can be discussed at this time.

23. Given this situation, the Committee could delete the provision and OSER could resubmit a more developed request for the program in its 2009-11 budget request.

24. Alternatively, the Committee could approve the Governor's recommendation to authorize OSER to receive revenue to reimburse the state’s share of costs for training relating to grievance arbitrations, but delete the funding and position authority for the proposed LMC program. Under this alternative, nonstatutory language would direct OSER to request the funding and position authority under ss. 16.505/515 of the statutes based on a detailed program plan that specifies the labor-management cooperation model to be utilized and specific program goals and

measurable objectives. This would provide the Committee with the opportunity to approve the expenditure and position authority based on a detailed program plan approved under a 14-day passive review process.

ALTERNATIVES TO BILL

1. Approve the Governor's recommendation to provide $55,400 PR in 2007-08 and $72,600 PR in 2008-09 and 1.0 PR four-year project position annually for a labor-management cooperation program. Authorize OSER to receive revenue to reimburse the state's share of costs for training relating to grievance arbitrations.

ALT 1	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
PR	$0	0.00	$128,000	1.00

2. Approve the Governor's recommendation to authorize OSER to receive revenue to reimburse the state's share of costs for training relating to grievance arbitrations. Delete $55,400 PR in 2007-08 and $72,600 PR in 2008-09 and 1.0 PR four-year project position annually for a labor-management cooperation program. Direct OSER to request expenditure and position authority under s. 16.515 and s. 16.505 of the statutes respectively. Require that the request include a detailed program plan that specifies the labor-management cooperation model to be utilized and specific program goals and measurable objectives.

ALT 2	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
PR	- $128,000	- 1.00	$0	0.00

3. Delete provision.

ALT 3	Change to Bill		Change to Base	
	Funding	Positions	Funding	Positions
PR	- $128,000	- 1.00	$0	0.00

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