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Dispute Resolution Procedures for Municipal Employees

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Wisconsin's Municipal Employment Relations Act, codified as ss. 111.70 to 111.77 of the statutes, provides the basic framework for public employee collective bargaining at the local level. Municipal employers subject to the provisions of the Act are counties, cities, villages, towns, school districts, metropolitan sewerage districts, family care districts and any other political subdivisions of the state that engage the services of an employee.

The Act establishes specific procedures for resolving collective bargaining impasses for general municipal employees, including teachers, and for law enforcement and firefighting personnel. The principal purpose of these dispute resolution provisions is to establish mechanisms effectively guaranteeing the settlement of deadlocked collective bargaining disputes between public employers and their employees. In exchange for such guarantees, the employees become subject either to an outright prohibition against strikes or have only a limited right to strike.

In addition, as a result of legislation enacted in 1993, and continuing until its repeal in 2009, municipal teaching employees were subject to modified dispute resolution procedures that allowed a school district employer to avoid arbitration altogether on economic issues if the employer submitted a "qualified economic offer" (QEO). In such a case, during the period 1993 to 2009, the dispute resolution procedures available under Chapter 111 could be used only to resolve collective bargaining impasses on noneconomic issues. These QEO provisions are discussed below and in the appendix to this paper.

This paper provides a general description of the dispute resolution procedures authorized by the Wisconsin Municipal Employment Relations Act and highlights the changes made to the Act by legislation enacted since 1993.

Traditional Impasse Resolution Mechanisms

Before describing the specific procedures used in Wisconsin for dispute resolution applicable to different classes of municipal employees, it is first useful to define the various dispute settlement mechanisms that have traditionally been used in the public employment sector in the United States. Generally, these approaches may be categorized as either: (1) nonbinding procedures, primarily mediation and fact-finding conducted by a neutral third party; or (2) binding procedures where final and compulsory arbitration is conducted by a neutral third party.

Mediation is a voluntary process whereby a neutral third party (a "mediator") endeavors to serve as a catalyst to bring the deadlocked parties together to settle their dispute. Generally, mediation is a consensual process aimed at achieving a final, signed agreement between the parties. The parties, not the mediator, make the decisions regarding the final agreement. Further, the mediator possesses no authority to impose a settlement.

Fact-finding is a separate dispute settlement process. Under fact-finding, the fact-finder reviews the bargaining positions of the parties and issues written, nonbinding recommendations for achieving an agreement. The parties are then free to accept or to reject the fact-finder's recommendations as part of their effort to achieve a voluntary settlement. In Wisconsin, the use of fact-finding procedures is authorized to resolve disputes involving

police officers and firefighting personnel in municipalities with populations of less than 2,500.

Arbitration, in contrast to the above voluntary approaches, is a compulsory process whereby a neutral third party (the "arbitrator") first reviews all relevant evidence, then hears the arguments of the parties to the dispute, and finally renders a determination that is binding on the parties.

Arbitration may take several forms. Under "conventional arbitration," the arbitrator unilaterally determines all economic or noneconomic issues in dispute without regard to the parties' respective bargaining positions. In Wisconsin, conventional arbitration is an authorized procedure only for the resolution of disputes involving the City of Milwaukee and its police department and, under certain conditions, for firefighters and police officers in counties, as well as other municipalities with populations of 2,500 or more.

Under "entire package final offer arbitration," each party to the dispute submits to the arbitrator a single, final offer covering all matters in dispute. The arbitrator must then select one of the final offers in its entirety without modification. The offer selected then becomes the arbitration award and is incorporated into the new collective bargaining agreement between the parties. In Wisconsin, entire package final offer arbitration is authorized to resolve disputes involving nonprotective employees (including teachers), and firefighters and police officers in all counties, as well as other municipalities with populations of 2,500 or more, other than the City of Milwaukee.

Finally, under "issue-by-issue final offer arbitration," each party submits a final offer to the arbitrator on each issue in dispute. The arbitrator may then fashion an award on an issue-by-issue basis by incorporating in each case the final, unmodified offer of one of the parties. A variant of this approach allows the arbitrator to select a position on an issue in dispute that lies between the respective positions taken by the parties in their final offers. In Wisconsin, issue-by-issue final offer arbitration has not been statutorily authorized in any form as a dispute resolution procedure.

Development of Dispute Resolution Procedures in Wisconsin

In 1959, the Wisconsin Legislature adopted the nation's first state law regulating collective bargaining between local units of government and their employees. Chapter 509, Laws of 1959, specifically authorized municipal employees to form and join labor organizations; however, the new law did not provide any framework by which collective bargaining disputes that might arise could be resolved.

That issue was addressed in 1961 when the Legislature enacted Chapter 663, Laws of 1961, creating the Municipal Employment Relations Act. While the Act specifically prohibited strikes by municipal employees, it also established for the first time a procedure for resolving collective bargaining impasses. The new procedure required mediation efforts first by the Wisconsin Employment Relations Commission (WERC), followed by nonbinding fact-finding with written recommendations for settlement by a specially appointed neutral third party other than the WERC.

Subsequently, the Legislature enacted legislation in 1971 establishing separate dispute resolution procedures for most of the state's municipal police and firefighting personnel. These new provisions required final and binding arbitration, rather than mediation and fact-finding, to resolve disputes involving protective employees. Specifically, Chapter 246, Laws of 1971, provided for compulsory and final binding arbitration for collective bargaining disputes affecting City of Milwaukee police officers, and Chapter 247, Laws of 1971, applied compulsory and final binding arbitration procedures to resolve disputes involving other law enforcement and firefighting personnel in Wisconsin.

The 1977 Legislature enacted Chapter 178, Laws of 1977, which established new impasse resolution procedures for nonprotective municipal employees, including school teachers. Specifically, Chapter 178 created s. 111.70(4)(cm) of the statutes (often referred to as the state's "mediation-arbitration" or "med-arb" law). This new law assigned both the mediation and arbitration functions to a single, appointed neutral third party who was given authority to resolve an impasse through binding arbitration, but only in the event that voluntary methods of settlement first proved to be unsuccessful. These new mediation-arbitration procedures were originally subject to an October 31, 1981, sunset date. Subsequently, the sunset date was twice extended, first to July 1, 1987, (by Chapter 20, Laws of 1981) and then to July 1, 1991, (by 1985 Wisconsin Act 29).

With the passage of 1985 Wisconsin Act 318, the requirement that an arbitrator first seek to resolve an impasse through mediation efforts before proceeding to final and binding arbitration was repealed. As a result of eliminating the mandatory initial mediation stage prior to commencing arbitration, the state's current dispute resolution statute is now more accurately termed the "interest arbitration" law, although the old med-arb law designation continues to enjoy currency in some quarters. Further, Act 318 repealed the scheduled July 1, 1991, sunset date for the interest-arbitration statute, thereby making the law permanent.

Act 318 also imposed on the WERC the duty to train individuals on a regular basis to prepare them for service as arbitrators or arbitration panel members. Further, the Commission was directed to engage in appropriate promotional and recruitment efforts so that there would be a minimum of 10 resident arbitrators available in each of the state's congressional districts.

Since that time, the WERC has developed training procedures and guidelines for arbitrators. As a result of these activities, there are currently 36 resident and 31 nonresident arbitrators who have been certified to perform this service. Although there continue to be fewer resident arbitrators than the 10 per congressional district statutory requirement, the annual caseload has been manageable by the current complement of arbitrators. In recent years the annual arbitration caseload has averaged less than one per arbitrator.

The 1993 Legislature made a number of important modifications to the interest arbitration law with the enactment of 1993 Wisconsin Act 16. The Act 16 changes applied only to collective bargaining agreements involving municipal professional employees who were school teachers and were originally to apply only through June 30, 1996. During that period, any school district employer could avoid interest arbitration altogether on economic issues if the employer made a "qualified economic offer" (QEO) to its represented professional teaching employees.

In general, Act 16 defined a QEO as one which: (a) maintained both the existing employee fringe benefits package and the employer's percentage contribution to fringe benefits costs; (b) maintained the existing employee salary schedule structure; (c) provided a total annual increase in salary items (including the costs of a mandatory one-step, seniority-based increase and any promotion-related increases for each employee eligible for such adjustments) at least equal to 2.1% of total compensation and fringe benefits costs; and (d) funded the total annual increase in current fringe benefit cost items, including an increased new funding commitment from the employer that does not exceed 1.7% of total compensation and fringe benefits costs.

Act 16 contained sunset provisions that would have repealed both the new QEO language applicable to school teachers and the entire remaining interest arbitration law applicable to all other nonprotective municipal employees, effective July 1, 1996. Upon repeal of these provisions, the dispute resolution law in effect prior to the enactment of Chapter 178, Laws of 1977, would have been rein-

stated as the applicable dispute resolution procedure for all Wisconsin nonprotective municipal employees. However, provisions of 1995 Wisconsin Act 27 subsequently eliminated the sunset language contained in 1993 Wisconsin Act 16. As a result, these Act 27 changes made permanent the QEO provisions applicable to school district professional teaching employees and retained unchanged the existing interest arbitration law for all other nonprotective municipal employees.

Provisions of 1997 Wisconsin Act 237 further modified the definition of a QEO by requiring school district employers to add the amount of any "fringe benefits savings" to the employer's salary offer. Fringe benefits savings represent the amount by which 1.7% of total compensation and fringe benefits costs (the fringe benefits component of a QEO) exceeds the actual costs of providing and maintaining fringe benefits for professional school teacher employees.

Finally, provisions of 1999 Wisconsin Act 9 made three additional changes governing QEOs, first applicable to contracts starting after June 30, 2001:

First, the costs associated with salary increases due to promotion or the attainment of increased professional qualifications ("lane movement") were no longer included under the salary cost component that must be funded under a QEO. Since the school district employer is contractually required to fund any costs of lane movements under the existing salary schedule, any such amounts were deemed to represent additional costs to the employer outside of the QEO.

Second, the listing of items that constitute "economic issues" was changed from an illustrative listing of such items to an exclusive listing of such issues. As a result, only those economic issues expressly enumerated are no longer subject to interest arbitration when a QEO is made.

Third, with respect to the contracting or subcontracting of work that would otherwise be performed by school teachers, an impasse over the impact of such contracting or subcontracting on wages, hours or the conditions of employment is subject to interest arbitration regardless of whether a QEO has been made or not.

Under 2009 Wisconsin Act 28 (the 2009-11 biennial budget act) the QEO provisions affecting teacher and school district collective bargaining negotiations and arbitration procedures were repealed, effective July 1, 2009. As a result, with one exception, the dispute resolution procedures for teachers are the same as the procedures controlling disputes involving other general municipal employees. The exception is that the "greatest" and "greater" weight factors that must be considered in arbitration decisions for other general municipal employees do not apply to arbitrations decisions affecting school district employees (although certain other weight factors apply to all arbitration decisions for general employees, including school district employees). These arbitration weight factors are discussed in more detail in the next section of this paper.

[A detailed description of the QEO provisions in effect prior to July 1, 2009, can be found in the Appendix to this paper.]

These various enactments currently form the basis by which collective bargaining impasses are resolved involving Wisconsin municipal employees. The manner of dispute resolution differs depending on whether the collective bargaining dispute involves: (a) general municipal employees, including school teachers; (b) City of Milwaukee police officers; (c) police officers (other than those in the City of Milwaukee) and firefighters in counties, and cities, towns and villages having a population of 2,500 or more; and (d) police officers and firefighting personnel in cities, towns and villages with populations under 2,500. The different dispute settlement procedures applicable to each of these employee groups are described separately in the following sections.

Teaching and Nonteaching General Municipal Employees

Dispute resolution procedures governing both teaching and nonteaching general municipal employees are established under s. 111.70(4)(cm) of the statutes. Disputes may arise over the actual meaning or application of the terms of an existing collective bargaining agreement, or in the negotiation or renegotiation of such agreements.

Grievance Arbitration

The parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC, or by any other appropriate person. If the WERC is used to resolve a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Preliminary Impasse Resolution Procedures

The statutes also set forth, in step-by-step fashion, the procedures that must be followed by all parties involved in any collective bargaining negotiating dispute involving general municipal employees.

Initial Notice of Commencement of Bargaining

Whenever either party to a binding collective bargaining agreement requests the other party to reopen negotiations to develop a successor contract, or whenever the parties begin negotiations where no previous agreement exists, the party requesting the negotiations must immediately notify the WERC in writing of the request. If the requesting party fails to notify the WERC, the other party may notify the WERC. The notice to the WERC must provide all the following information:

- Date on which the party filing the notice notified the other party;
- Name of the municipal employer and its principal representative (including his or her name, title, address and telephone number);
- Name of the labor organization or other representative involved (including his or her name, title, address and telephone number);
- General description of the collective bargaining unit involved and the approximate number of employees in the unit;
- Effective date and termination date of the existing agreement, if any, and the date on which notice to open negotiations must be served on the other party;
- Statement indicating whether the parties have agreed to voluntary impasse resolution procedures; and
- Name, title and signature of the person filing the notice, and the date on which the notice was executed.

Initial Bargaining Proposals

Following the filing of this notice with the WERC, the bargaining sessions held for the purpose of presenting and exchanging the parties' initial bargaining proposals and supporting rationales must be open to the public. The materials exchanged in these sessions must be set forth in writing.

Mediation by the WERC

The WERC, upon the request of one or both of the parties or on its own initiative, must attempt to mediate any outstanding matters at issue. The goal of this WERC mediation is to encourage a voluntary settlement between the parties; however, the mediator has no power of compulsion with respect to this aspect of the settlement process. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Voluntary Impasse Resolution Procedures

In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties may agree at any time, in writing, as a permissive subject of bargaining, to utilize any other mutually acceptable dispute settlement procedure. Such an agreement may include binding arbitration or authorization for a strike by the municipal employees. A copy of any such supplemental agreement must be filed with the WERC.

Binding Arbitration Procedures

Petition for WERC Intervention

Either or both of the parties may petition the WERC to initiate compulsory, final and binding arbitration if: (a) a dispute involving wages, hours and conditions of employment has not been settled after a reasonable period of negotiation and mediation by the WERC; and (b) any other settlement procedures established by the parties have been exhausted. However, neither prior mediation efforts by the WERC nor use of any other settlement procedure is required before proceeding to the binding arbitration stage. The petition for WERC intervention requires that each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

Preliminary Final Offers

When a petition to initiate arbitration is filed with the WERC, the petitioning party must attach its written preliminary final offer on all disputed issues. The nonpetitioning party then has 14 calendar days in which to respond in writing with its preliminary final offer on those same issues. Where the parties have instead jointly stipulated to initiate arbitration, both parties' written preliminary final offers must be exchanged either before or at the time the stipulation is submitted to the WERC.

Withdrawal of a Petition or Stipulation

Any petition may be withdrawn by the petitioner, and any stipulation may be withdrawn by the parties with the consent of the WERC, if such actions would lead to a settlement of the matters in dispute.

WERC Investigation

Upon receipt of a petition from either or both parties for binding arbitration, the WERC must conduct an investigation of the dispute to determine whether the parties are deadlocked in their negotiations and arbitration should begin. The WERC may use either informal investigations or formal hearings in making these determinations. However, if, during any prior mediation by a commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing. During the investigation process, the WERC must also determine from the parties whether or not they would object to the appointment of a nonresident arbitrator.

Final Offers

Prior to the close of these informal investigations or following the filing of a stipulation to initiate arbitration, the parties must submit to the WERC their final written offers on all issues in dispute. The parties must also submit a written stipulation on all matters agreed upon to be included in a new or a successor collective bargaining agreement. The WERC may not close an investigation until it is satisfied that neither party, having knowledge of the contents of the other party's final offer, would amend any proposal contained in its final offer. Following the close of the WERC investigation, a party may modify its final offer only with the consent of the other party.

Only mandatory subjects of bargaining (that is, matters involving wages, hours and conditions of employment) may be included in the final offers. Proposals that do not relate primarily to wages,

hours and conditions of employment ("permissive" subjects of bargaining) may be included in a party's final offer only if the other party does not object to their inclusion. Where permissive subjects of bargaining are included in a final offer, they are then treated as mandatory subjects of bargaining for the remainder of the arbitration process.

If a question arises whether a proposal is a mandatory or permissive subject of bargaining, the WERC is required to resolve the matter by issuing a declaratory ruling within 15 days of receipt of final arguments regarding the issue. Any arbitration proceedings must be delayed until the Commission issues its decision. However, if the WERC's ruling is then appealed to the courts, the arbitration proceeding will not be further delayed pending the court's decision. If the courts subsequently reverse a WERC decision on mandatory subjects of bargaining, any arbitration award that has included the item is automatically amended to delete the provision.

Appointment of an Arbitrator

If the WERC certifies that binding arbitration is required because of a deadlock in negotiations, the Commission must submit a list of seven arbitrators to the parties (unless there is formal agreement for another method of arbitrator selection). Except as otherwise mutually agreed to in writing, the list may include only arbitrators who are residents of Wisconsin. The parties alternatively strike names from the list until only a single name remains. That person is then appointed by the WERC as the arbitrator. Alternatively, if both parties agree, the WERC may submit a list of seven arbitrators from which each party strikes one name. The WERC then selects the arbitrator by lot from the remaining list of five names. If requested by both parties, a third alternative is available that permits a three-member arbitration panel to be selected by the WERC. Any such tripartite panel consists of one member selected by each of the parties and a neutral member designated by the WERC who also serves as chairperson. Unless the parties have mutually agreed otherwise in writing, the chairperson must be a resident of Wisconsin.

The WERC then forwards the final offers submitted by the parties to the arbitrator or arbitration panel. These final offers are considered public documents and are available from the Commission.

Public Hearing

If a petition is signed by at least five citizens residing in the area served by the municipal employer and is filed with WERC within 10 days of the appointment of the arbitrator, the arbitrator must schedule and conduct a public hearing. The public hearing is designed to afford both parties the opportunity to explain and to justify their final offers. The hearing also gives the public an opportunity to offer comments and suggestions.

Arbitration Hearing

Within 10 days of appointment, the arbitrator must establish a time and place for a public arbitration hearing. The purpose of the hearing is to allow the parties to present information that will allow the arbitrator to make a compulsory, final and binding arbitration award. With the approval of the arbitrator, the parties may agree to waive the actual convening of the arbitration hearing, the preparation of transcripts or the filing of briefs.

The parties' final offers, as transmitted from the WERC to the arbitrator, serve as the basis for continuing negotiations. At any time prior to the actual arbitration hearing, either party, with the consent of the other, may modify its original final offer in writing. The dispute then proceeds to final and binding arbitration unless both parties choose to withdraw their final offers and any mutually agreed upon modifications. In the event that both parties withdraw their final offers, the statutes authorize the labor organization, with 10 days advance written notice, to strike. Strikes by municipal employees are described in greater detail in the concluding section of this paper.

Arbitration Award

Following the receipt of the parties' final arguments and briefs, if any, the arbitrator must issue the arbitration award in writing as expeditiously as possible. If the award is made by a tripartite panel, it must be signed by each member of the panel, whether affirming or dissenting to the final award. In making the arbitration decision, the arbitrator must adopt the entire final offer of either one of the parties, including any previously agreed to modifications. The award is final and binding on both parties and must be incorporated into the written collective bargaining agreement.

Factors Considered in Making the Arbitration Award

The statutes establish a variety of factors that the arbitrator must consider in arriving at the arbitration award decision. Except in arbitrations involving school district employees, the arbitrator must first give "greatest weight" to those state legislative and administrative directives that impose spending or revenue collection limitations on the municipal government. The arbitrator is required to provide a written accounting in the final arbitration decision of the consideration given to this "greatest weight" factor in making the award. Except in arbitrations involving school district employees, the arbitrator must next give "greater weight" to the economic conditions in the jurisdiction of the municipal employer. Lastly, in any arbitration involving general municipal employees, including school district employees, the arbitrator must give "weight" to a series of additional factors; however, there is no rank-ordering of these elements in terms of their relative importance. The statutory factors which the arbitrator must consider are listed in Table 1.

Duration of Settlement

Except for an initial contract between the parties and unless the parties otherwise agree, collective bargaining agreements covering municipal employees must be for a term of two years. In no case, however, may a contract for non-school district employees exceed a term of three years, or a contract for school district employees exceed a term of four years. Further, unless both parties agree, an arbitration award may not provide for a reopening of negotiations during the term of the collective bargaining agreement.

Table 1: Factors That Must Be Considered by an Arbitrator in Rendering Arbitration Awards

Factor To Be Given "Greatest Weight" [Not applicable to school district arbitration decisions.]
- State legislative and administrative directives which limit municipal employer spending or revenue collection.

Factor To Be Given "Greater Weight" [Not applicable to school district arbitration decisions.]
- The economic conditions in the jurisdiction of the municipal employer.

Factors To Be Given "Weight" [Applicable to any general employee arbitration decision.]
- The lawful authority of the municipal employer.
- The stipulations of the parties.
- The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- A comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of: (1) other employees performing similar services; (2) other employees generally in public employment in the same community and in comparable communities; and (3) other employees in private employment in the same community and in comparable communities.
- Changes in the cost-of-living.
- The overall compensation presently received by the municipal 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.
- Changes in any of the foregoing circumstances while arbitration proceedings are pending.
- Other factors normally and traditionally considered in collective bargaining in the public service or in private employment.

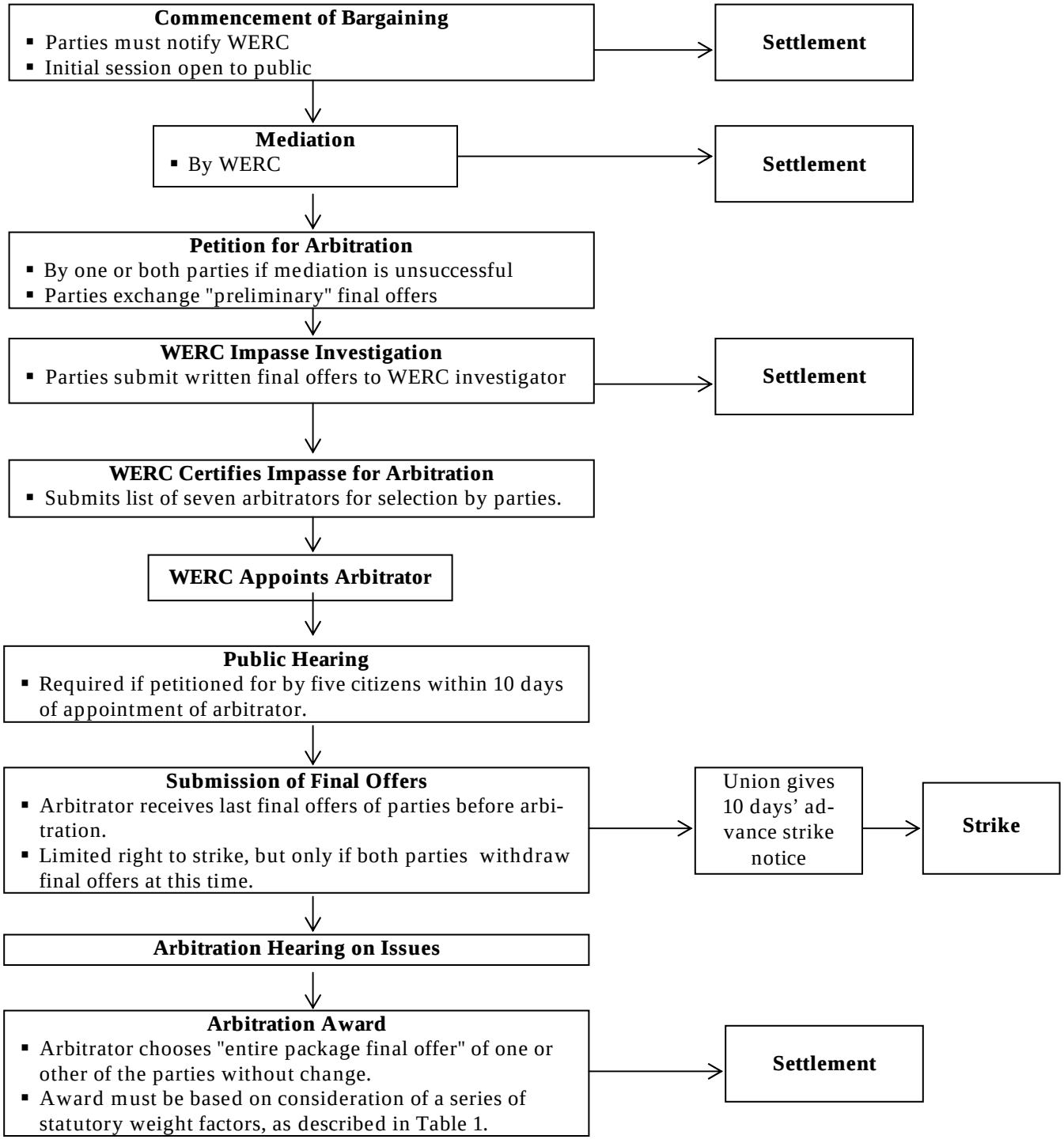
Arbitration Costs

The costs of the binding arbitration proceedings are borne equally by the parties. The arbitrator is required to submit a statement of his or her costs to the parties and to the WERC.

Summary

Table 2 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses as they apply to teaching and nonteaching general municipal employees.

Table 2: Bargaining and Impasse Resolution Steps for General Municipal Employees



City of Milwaukee Police Officers

Dispute resolution procedures for City of Milwaukee police officers are established under s. 111.70(4)(jm) of the statutes. This provision sets forth the compulsory, final and binding arbitration procedures that apply to City of Milwaukee employees with the power of arrest (exclusive of personnel with confidential, managerial or executive responsibilities). These arbitration procedures apply when the employee representatives and the City are unable to reach agreement over the terms of a proposed new collective bargaining agreement. In general, the provisions governing collective bargaining impasses affecting City of Milwaukee police are not as elaborate and detailed as those established for nonprotective municipal employees.

Preliminary Impasse Resolution Procedures

Initial Notice of Commencement of Bargaining

There are no statutory provisions comparable to those applying to nonprotective municipal employees which govern the presentation of initial proposals.

Grievance Arbitration

Under the general statutory procedures setting forth methods for the peaceful settlement of disputes, the parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC, or by any other appropriate person. If the WERC is used for the resolution of a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Mediation by the WERC

Under these same general dispute settlement procedures, the WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Binding Arbitration Procedures

Petition for WERC Intervention

If an impasse has been reached, either or both of the parties may petition the WERC for the appointment of an arbitrator to determine the terms of the collective bargaining agreement affecting wages, hours and conditions of employment or any other matter subject to arbitration. At the time the WERC is petitioned to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

During the period between the filing of the petition and the execution of a final arbitration award, neither party may unilaterally alter any existing contract term governing the wages, hours and conditions of employment of the members of the City of Milwaukee Police Department.

WERC Investigation and Determination of Impasse

The Commission must conduct either an informal investigation or a formal hearing, as it determines, on the petition to ascertain whether an impasse actually exists. During the course of these investigations or hearings, the WERC or its agent may continue mediation efforts on the issues in dispute. Prior to the close of the WERC's investigation or hearing, either party may amend its position on any matter in issue. The parties may also agree to file a stipulation to waive the informal investigation or formal hearing.

If the WERC ultimately determines that an im-

passe has been reached on matters relating to wages, hours and conditions of employment or any other matter subject to arbitration, it shall then select an arbitrator. The WERC may choose any individual whom it deems qualified, except that the arbitrator may not be a resident of the City of Milwaukee.

Following the close of the investigation, a party may modify its proposal on any of the subjects in dispute when the investigation was closed without the consent of the other party, unless and until the arbitrator declares otherwise. However, following the close of the investigation, a party shall not submit to the arbitrator a proposal on a subject not in dispute when the investigation was closed without the written consent of the other party.

Arbitration Hearing

Within 14 days of the arbitrator's appointment, a hearing must be conducted to determine the terms of the agreement relating to wages, hours and conditions of employment or any other matter subject to arbitration. The arbitrator may subpoena witnesses and take sworn testimony. The arbitrator may enter into the record all economic and social data presented by the parties deemed relevant to the wages, hours and conditions of employment of the members of the City of Milwaukee Police Department. The parties have the opportunity to examine and respond to any of the data presented.

Arbitration Award

The statutes authorize the arbitrator to determine or set an award on any of the following matters, without restriction because of enumeration:

- All items of compensation, including base wages, longevity pay, health, accident and disability insurance programs, life insurance, pension programs (including the amount of pension, relative contributions of employees and the employer, and eligibility conditions), terms and conditions of overtime compensation and compensatory time, vacation eligibility and pay, sick pay, uniform allowances, and any other similar item of compensation;

- Working hours, overtime standards, and the criteria for the assignment and scheduling of work;

- Seniority issues, promotional programs, criteria and procedures for merit increases, and work rules (except those work rules created by law);

- Any educational programs for police officers deemed appropriate;

- A system for resolving disputes under the contract, including final and binding arbitration;

- The duration of the contract; and

- A system for administration of the collective bargaining agreement between the parties by an employee of the Police Department who is not directly accountable to the Chief of Police or the Milwaukee Board of Fire and Police Commissioners in matters relating to that administration.

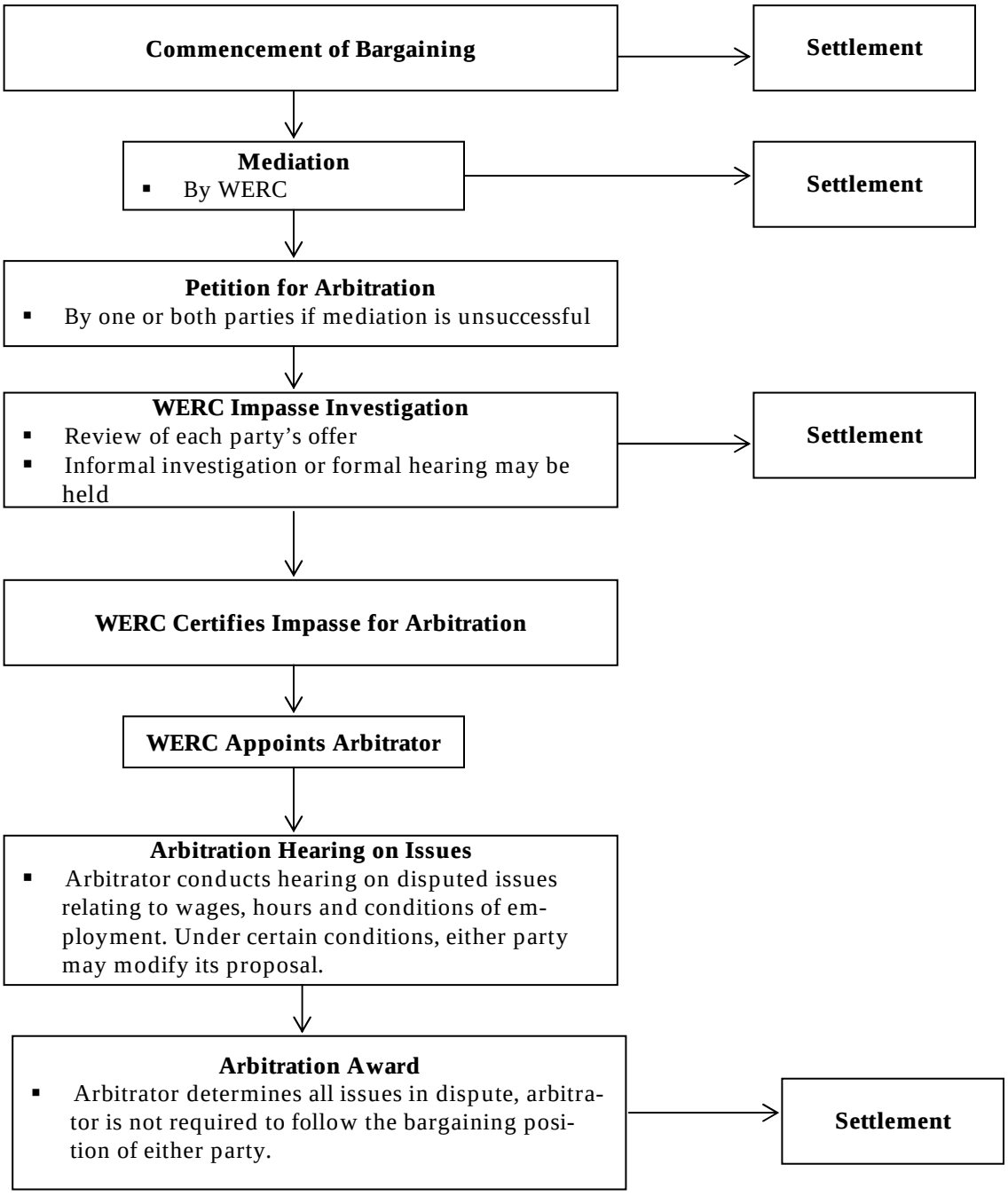
The arbitrator may determine each matter in dispute as he or she sees fit and need not adopt the bargaining position of either party. This procedure is in contrast to awards involving nonprotective municipal employees where the arbitrator must adopt the entire final offer of one of the parties to the dispute.

Factors Considered in Making the Arbitration Award

The statutes set guidelines that the arbitrator must utilize in determining the award. For compensation matters, these criteria are the following:

- U. S. Bureau of Labor Statistics standard household budget levels as they relate to determining the compensation necessary for City of Milwaukee police officers to enjoy a standard of

Table 3: Bargaining and Impasse Resolution Steps for City of Milwaukee Police Officers



living commensurate with their needs, abilities and responsibilities; and

• Changes in the Consumer Price Index ("cost of living") since the last compensation adjustment.

For noneconomic matters, the arbitrator must consider the following:

• Prevailing contract settlement patterns between technical and professional employees and their employers in both the public and private sectors.

Implementation of Award

Within 30 days after the arbitration hearing, the arbitrator must issue a written decision stating the reasons for arbitrator's determination on each issue in dispute. Within 14 days of the arbitrator's decision, the parties must execute a written contract implementing the arbitration award unless one of the parties seeks judicial review of the award.

A limited appeal of the award may be made within 60 days to circuit court in Milwaukee County. If the award was made within the statutory subject matter jurisdiction of the arbitrator, the court must enforce the decision (unless the court finds by a preponderance of the evidence that the decision was procured by fraud, bribery or collusion). The court is prohibited from reviewing the sufficiency of any of the evidence used by the arbitrator in making the award. Within 30 days of any final court judgment, the parties must execute a written contract, as modified by any court ordered changes. The parties are also required to bear equally all costs of the arbitration proceedings.

Summary

Table 3 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses as they apply to City of Milwaukee police officers.

Police Officers and Firefighting Personnel in Counties, Large Cities, Towns, and Villages

Dispute resolution procedures for police officers (other than those in the City of Milwaukee) and firefighters in counties, large cities, towns and villages are established under s. 111.77 of the statutes. "Large" cities, towns and villages are defined as those municipalities having a population of 2,500 or more. Covered under these dispute resolution procedures are those employees who either have the power of arrest or are engaged in active fire suppression. Except for law enforcement supervisors employed by Milwaukee County, these provisions do not apply to police and firefighting personnel with confidential, managerial or executive responsibilities.

Under the general statutory procedures setting forth methods for the peaceful settlement of disputes, the parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC or by any other appropriate person. If the WERC is used for the resolution of a grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Where collective bargaining disputes involving police and firefighting personnel have reached an impasse, s. 111.77 authorizes compulsory, final and binding arbitration in two distinct forms. The arbitrator may either:

• Determine or set all issues relating to wages, hours and conditions of employment ["Form 1" arbitration]; or

• Adopt the "entire package" final offer of one of the parties ["Form 2" arbitration].

These forms are discussed in more detail below.

Preliminary Impasse Resolution Procedures

Initial Notice of Commencement of Bargaining

Where a collective bargaining agreement is in effect, neither party may terminate or modify the contract unless the party wishing the change provides notice according to the following schedule.

The party requesting the new negotiations must notify the other party in writing 180 days prior to the scheduled expiration date of the contract. If there is no set expiration date to the current contract, the notice must be given 60 days prior to the time the new proposals would modify or terminate any aspect of the contract. In addition, the WERC must be notified within 90 days of the notice of the existence of any dispute between the parties.

Required Actions Following Initial Notice

During the applicable 60- or 180-day period, the party seeking modifications to the existing collective bargaining contract must:

- Offer to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

- Continue all terms of the existing contract in full force and effect without strike or lockout for the applicable 60- or 180-day period;

- Participate in mediation sessions by the WERC or it representatives, if requested to do so by the WERC; and

- Participate in procedures, including binding arbitration, agreed to by the parties.

Mediation by the WERC

Under these same general dispute settlement procedures, the WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Alternative Dispute Resolution Procedures

In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties are permitted to utilize any other dispute settlement procedure that is mutually acceptable to them.

Binding Arbitration Procedures

Petition for WERC Intervention

If an impasse has been reached and the parties have no other established procedure for resolving the dispute, either or both of the parties may petition the WERC for the appointment of an arbitrator to initiate compulsory, final and binding arbitration. Where a contract already exists, the statutes require that the parties participate in binding arbitration to resolve their differences. At the time the parties petition the WERC to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC mediation services in the same dispute, in which case no additional fee is required to initiate arbitration.

WERC Investigation and Determination of Impasse

Upon receipt of a petition for binding arbitration, the WERC must determine whether an impasse exists. The WERC must also ascertain whether the procedures that are required following the initial notice of commencement of bargaining have been met. The Commission may conduct a formal hearing if it chooses. At any time prior to the close of the investigation or formal hearing, either party may amend its position with respect to any matter at issue. Further, under WERC administrative rules, if, during any prior mediation by a

commission mediator, the parties have exchanged and submitted to the mediator their total final offers, as well as a stipulation on matters agreed upon, the parties may waive the informal investigation or formal hearing.

If the WERC finds that the required initial actions have not been complied with and that compliance with them would likely produce a settlement, the Commission may order compliance as a prerequisite to ordering arbitration. If the required initial actions have been complied with or the Commission finds that compliance would have little effect on reaching a settlement and that a deadlock exists, the WERC must issue a certification of impasse and order arbitration.

Where the form of arbitration requires that entire package final offer arbitration be used ["Form 2" arbitrations], the final offers must be attached to the certification at this stage.

Appointment of an Arbitrator

If the WERC certifies that binding arbitration procedures are required because of a an impasse, the Commission must submit a list of five arbitrators to the parties. The parties alternatively strike names from the list until only a single name remains. That person is then appointed by the WERC as the arbitrator. The parties, by mutual agreement, are also authorized under the Commission's administrative rules to use a three-member arbitration panel.

Arbitration Hearing

Following the appointment of an arbitrator or panel, an arbitration hearing must be set. After the close of the investigation, a party may modify its final offer only with the consent of the other party. Any modification must be in writing, supported by a written statement signed by the representative of the other party.

Form of Arbitration and Arbitration Award

The statutes authorize two different types of arbitration for dispute settlement.

• **Form 1.** Under "Form 1" arbitration, the arbitrator has the power to determine all issues in dispute involving wages, hours, and conditions of employment. These arbitration procedures are the same as those authorized for use in disputes involving City of Milwaukee police officers.

• **Form 2.** Under "Form 2" arbitrations, the WERC appoints an investigator (arbitrator) to determine the nature of the impasse. The investigator advises the WERC in writing of each issue in dispute and describes each party's final offer as known to the investigator at the time the investigation is closed. Neither party may amend its final offer at this stage, except by mutual consent. The arbitrator is then required to adopt the "entire package" final offer of one of the parties.

Arbitration proceedings must follow Form 2 unless the parties agree prior to the arbitration hearing that they will use Form 1. To date, all proceedings under this statute have been Form 2 arbitrations.

Factors Considered in Making the Arbitration Award

In arriving at the arbitration award decision, the statutes establish factors that the arbitrator must utilize. These factors are the same ones to which an arbitrator must give "weight" when resolving impasses affecting general municipal employees (refer to Table 1). The "greatest weight" and "greater weight" factors that an arbitrator must use for awards in the case of general municipal employees (exclusive of school district employees) do not apply when making awards governing police officers and firefighters in large municipalities (other than the City of Milwaukee).

As with other arbitration proceedings, the statutes require the parties to the dispute to share equally in the costs.

Summary

Table 4 provides a schematic outline of the steps just described that must be followed in resolving collective bargaining impasses involving police officers (other than City of Milwaukee police officers) and firefighters in large municipalities.

Police Officers and Firefighting Personnel in Small Cities, Towns, and Villages

Police officers and firefighting personnel in cities, towns and villages with populations under 2,500 are specifically excluded from the binding dispute resolution procedures of the Municipal Employment Relations Act that apply to other municipal law enforcement or firefighting personnel. Consequently, there are no compulsory, final and binding arbitration mechanisms available for the resolution of collective bargaining impasses for police officers or firefighters in small municipalities. Rather, the non-binding dispute resolution procedures established under s. 111.70(4)(c) of the statutes apply to such personnel.

Preliminary Impasse Resolution Procedures

Grievance Arbitration

The parties may agree, in writing, to have disputes over the actual meaning or application of the terms of a collective bargaining agreement resolved by an arbitrator designated by the parties, by the WERC, or by any other appropriate person. If the WERC is used to resolve the grievance arbitration matter, each party to the dispute must pay the Commission a $400 filing fee.

Mediation by the WERC

The WERC, upon the request of one or both of the parties or on its own initiative, may attempt to encourage a voluntary settlement between the parties. The mediator has no power of compulsion in this effort. If the WERC is requested by the parties to engage in mediation efforts, each party to the dispute must pay the Commission a $400 filing fee.

Alternative Dispute Resolution Procedure

In addition to any other procedures required or authorized by law to resolve disputes over the terms of a proposed contract, the parties are permitted to utilize any other dispute settlement procedure that is mutually acceptable to them.

Fact-Finding Procedures

Petition for WERC Intervention

If a dispute has not been settled after a reasonable period of negotiation and after any settlement procedures established by the parties have been exhausted, either or both of the parties may petition the WERC to initiate fact-finding and to make recommendations to resolve the impasse. At the time the parties petition the WERC to intervene, each party must pay the Commission a $400 filing fee, unless the parties have previously paid a filing fee for WERC or mediation services in the same dispute, in which case no additional fee is required.

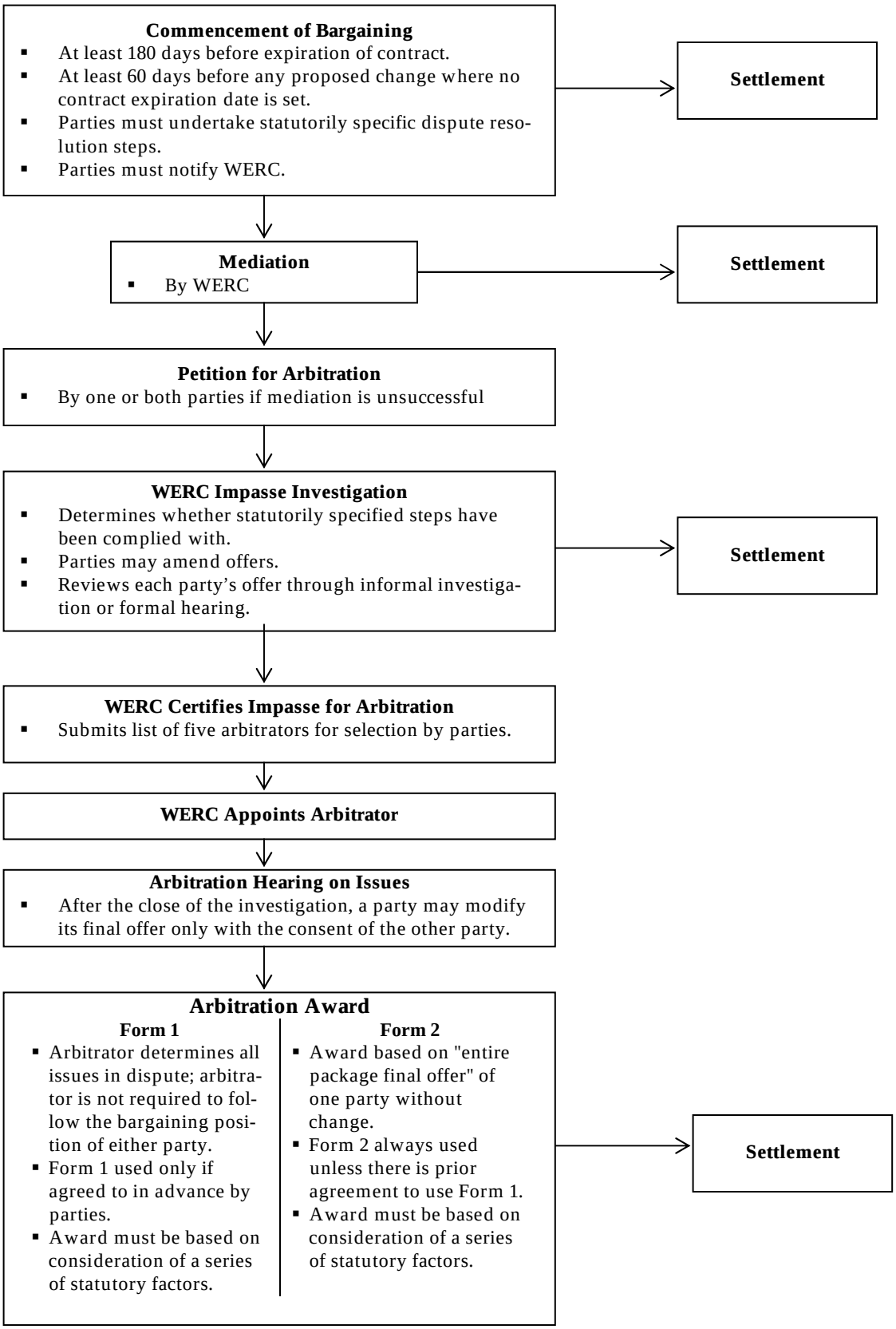
WERC Investigation

If petitioned, the WERC must undertake an investigation to determine whether the negotiations are deadlocked. The investigation may consist either of an informal investigation or a formal hearing, or both.

Appointment of a Fact-finder or Panel

If the WERC certifies the existence of a deadlock, fact-finding will be initiated. The WERC must appoint either a qualified, neutral third party or, if jointly requested by the parties, a three-member fact-finding panel.

Table 4: Bargaining and Impasse Resolution Steps Police Officers and Firefighting Personnel in Large Municipalities



Fact-finding Hearing

The fact-finder may conduct a hearing to determine the nature of the impasse. The fact-finder may have witnesses subpoenaed, may administer oaths and may endeavor to mediate the dispute.

Findings of Fact

Upon completion of the hearing, the fact-finder must make written findings of fact and recommendations for settlement of the dispute. These documents are provided to the parties and to the WERC. Within a period mutually agreed to by the parties, or within 30 days of receipt of the fact-finder's recommendations, each party must advise the other and the WERC in writing whether it accepts or rejects, in whole or in part, the fact-finder's recommendations for settlement. The parties are also required to bear equally all costs of the fact-finding proceedings.

Summary

Table 5 provides a schematic outline of the impasse resolution procedures applicable to police officer and firefighting employees in small municipalities.

Table 5: Bargaining and Impasse Resolution Steps for Police Officers and Firefighting Personnel in Small Municipalities

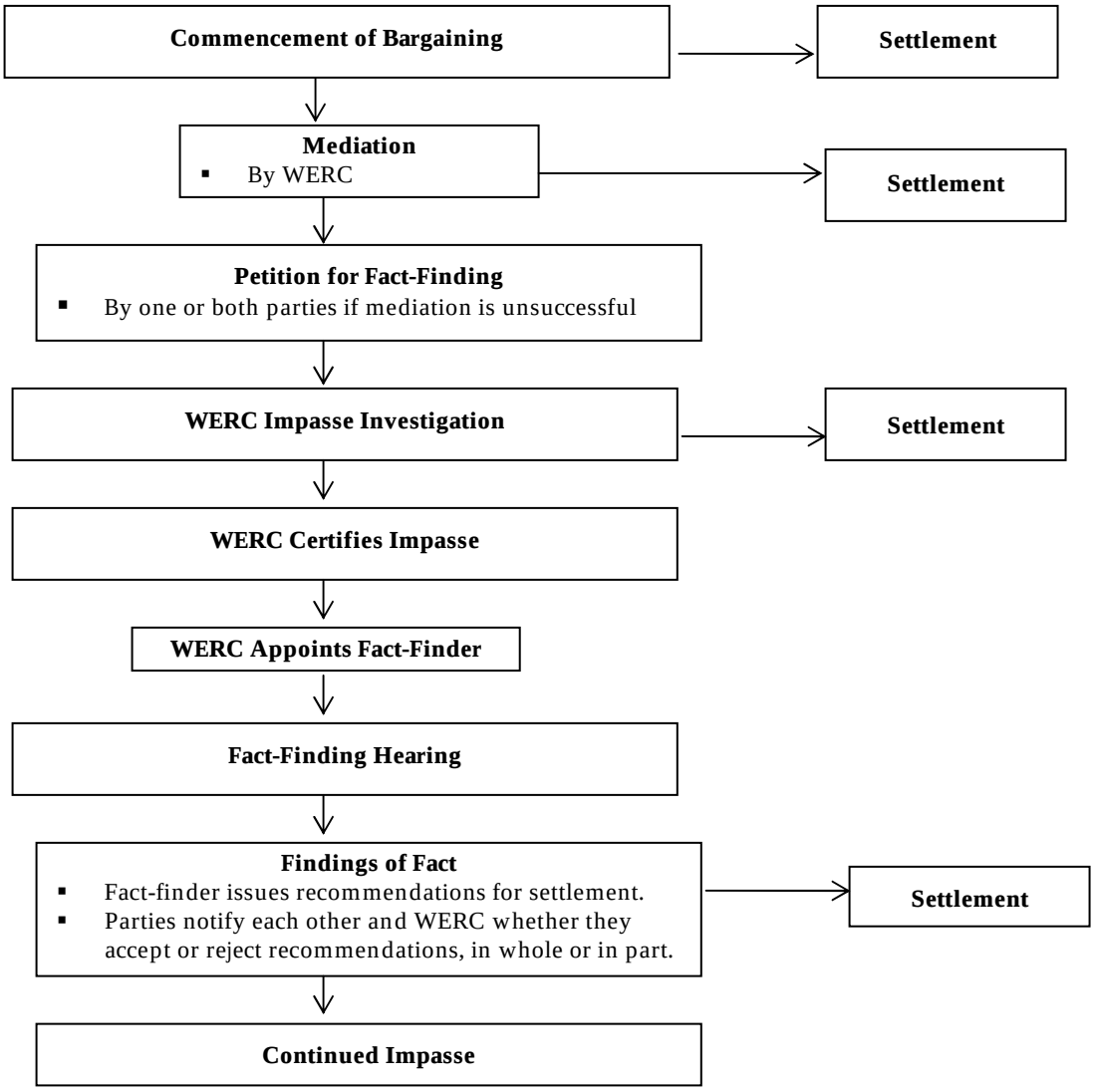
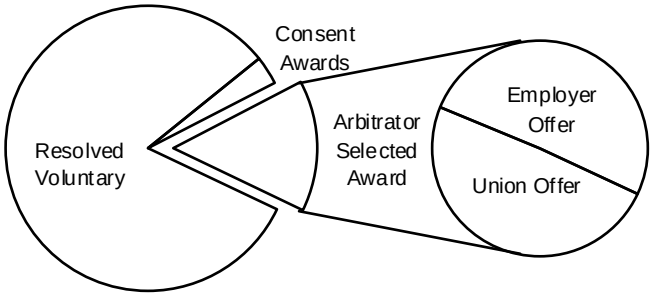


Table 6: Final Offer Settlements Involving Nonprotective Municipal Employees -- July 1, 1978 through June 30, 2010



	Total Cases		Arbitrator Awards	
	Number	%	Number	%
Resolved Voluntarily	9,634	82.2%		
"Consent Awards" Resolved Voluntarily With Arbitrator	375	3.2		
Arbitrator Selected Award	1,707	14.6		
Union Offer Selected			833	48.8%
Employer Offer Selected			874	51.2
TOTALS	11,716	100.0%	1,707	100.0%

General-Employee Settlements Under the Municipal Employment Relations Act

For most collective bargaining impasses that have arisen under the Wisconsin Municipal Employment Relations Act, agreement between the parties has typically been reached without the need for compulsory, final and binding arbitration. Based on the most recent complete annual compilations prepared by the WERC, for the period from July 1, 1978, through June 30, 2010, a total of 11,937 cases involving nonprotective municipal employees had been filed with the WERC for impasse resolution. Of these 11,937 cases, 221 were still pending as of June 30, 2010, leaving 11,716 that have been closed.

Of the 11,716 closed cases, 9,634 cases (82.2%) were resolved voluntarily by the parties prior to the issuance of an arbitrator's award. The remaining 2,082 cases (17.8%) were settled through an arbitration award. However, 375 of these cases actually involved "consent awards," or settlements mutually arrived at by the parties, usually in the presence of the arbitrator, that were then issued as awards. Therefore, when these 375 cases are added to the 9,634 cases settled voluntarily, a total of 10,009 cases (85.4%) have actually been settled in this manner. In only 1,707 cases (14.6%) were arbitration awards actually imposed. Of these 1,707 cases, the employer's offer was selected in 874 instances (51.2%) and the union's offer was selected in 833 instances (48.8%). These results are summarized in Table 6.

Strikes, Prohibitions, and Penalties

Strikes by municipal employees in Wisconsin are generally prohibited under the Municipal Employment Relations Act. This section describes those prohibitions and the penalties for striking. It

also reviews past strike activity by municipal employees.

Limited Right to Strike for Certain Employees

Notwithstanding the general prohibition against strikes by municipal employees, strikes involving nonprotective municipal employees, including teachers, are permitted under the following very limited circumstances:

• After an arbitrator is appointed, but prior to the arbitration hearing, either party has the opportunity to withdraw its final offer and any agreed modifications to that final offer. If both parties withdraw their final offers, the labor organization may strike, but only after having given 10 days' written, advance notice. Otherwise the dispute proceeds to final and binding arbitration.

• The parties to a proposed contract may, at any time, agree in writing to apply their own impasse resolution procedures which may, among other things, specifically authorize a strike by nonprotective municipal employees.

Injunctive Relief

Any strike prohibited by law may be enjoined automatically upon petition to the circuit court having jurisdiction by the municipal employer or any directly affected citizen. If the court determines that the strike is illegal, it shall immediately enjoin it and impose the penalties specified by law.

Any legal strike by nonprotective municipal employees may still be enjoined if the circuit court, after notice to the parties and after holding a hearing, determines that the strike poses an imminent threat to the public health or safety. In such cases, the court, after issuing an injunction, must also order the parties to submit a new final offer on all disputed points to the WERC for resolution under compulsory, final and binding arbitration. The Commission must forward these new final offers to the arbitrator, who is then to omit any preliminary steps and proceed directly to arbitrate the dispute.

Penalties

Any labor organization violating the strike prohibition is subject to the following penalties:

• Any dues check-off agreement or fair-share agreement between the labor organization and the municipal employer will be subject to a one-year suspension.

• Where an injunction has previously been issued, a forfeiture of $2 per member per day, but not more than $10,000 per day, will be imposed. Each day of continued violation constitutes a separate offense.

• Separate contempt of court penalties may also be imposed in addition to any of the foregoing penalties.

These penalties do not apply to a "wildcat" strike not authorized or condoned by the labor organization.

Any individual nonprotective municipal employee who engages in a strike after the issuance of an injunction is subject to the following penalties:

• A fine of $10 per day. Furthermore, nonprotective *and* protective employees absent from work because of a purported illness (unless verified by a physician) are deemed to be on strike and are subject to a fine of $10 per day.

• A fine of $15 per day where the nonprotective employee authorizes or otherwise participates in a strike after the issuance of an arbitration award. Each day of continued violation constitutes a separate offense.

• No employee may be paid wages or salaries covering the period that the individual engages in any strike.

• Unless good cause can be shown, any party to a nonprotective municipal employee arbitration award that refuses to include the award in a written collective bargaining agreement or fails to implement the award shall be liable for attorney fees, interest on delayed monetary benefits, and other costs incurred in any action by the nonoffending party to enforce the award.

• Separate contempt of court penalties may also be imposed in addition to any of the foregoing.

Municipal Public Employee Strike Activity

The compulsory, final and binding arbitration procedures established by Chapter 178, Laws of 1977, for resolving collective bargaining impasses for most municipal employees in Wisconsin, in concert with the strike prohibitions and penalties described above, have had the effect of virtually eliminating municipal employee strikes in recent years.

Based on information filed with the WERC, since January 1, 1970, 111 municipal employee strikes have occurred in Wisconsin. Of this total, 99 strikes (90%) took place prior to January 1, 1978, the general effective date of Chapter 178. Between 1978 and 1981, there were 11 strikes. Since 1982, there has been only one strike, in 1997 by the teachers of the Madison School District. In addition, following the enactment of 1993 Wisconsin Act 16 establishing procedures for a school district employer to avoid compulsory, final and binding arbitration on economic issues by submitting a QEO, there have been periodic "job actions" reported in at least several dozen different school districts. No actual strikes have been experienced, however.

APPENDIX

Qualified Economic Offer (QEO) Provisions

This appendix describes the statutory provisions related to the QEO that applied to school district municipal employees that were effective prior to repeal in 2009 Act 28.

Whenever a school district employer made a QEO to its professional teaching employees, the availability of binding arbitration procedures on the economic issues in dispute became subject to certain additional limitations. Upon making a QEO applicable to salary and fringe benefits adjustments for teaching employees, a school district employer could avoid compulsory, final, and binding arbitration on the unresolved economic issues. In such a case, the parties could proceed to interest arbitration only on the remaining unresolved noneconomic issue portions of the parties' final offers, if any, but only after agreement had been reached on the economic issues in dispute.

Up to the point where a school district employer made a QEO, the collective bargaining and impasse resolution procedures that had to be followed by a school district employer and its professional teaching employees were identical (with one exception) to the procedures previously described governing nonteaching, general municipal employees.

The one exception related to certain topics enumerated by statute on which the school district employer was specifically prohibited from engaging in collective bargaining. A school district employer could not bargain on any of the following subject matters:

• The requirement that sealed bids be solicited for the provision of group health care benefits for school district professional teaching employees;

• *Applicable only to the Milwaukee Board of School Directors,* any decision to contract for the management or operation of a charter school or to convert a school to a charter school and the impact of any such reassignments or decisions on the wages, hours, and conditions of employment of employees who perform the services;

• *Applicable only to the Milwaukee Board of School Directors,* any decision to reassign employees, with or without regard to seniority, as a result of the closing or reopening of a school and the impact of any such reassignments on the wages, hours, and conditions of employment of employees who perform the services; and

• *Applicable only to the Milwaukee Board of School Directors,* any decision to contract with a private, not-for-profit school or agency to provide educational programs or the impact of any such decision on the wages, hours, and conditions of employment of employees who perform the services.

General Requirements of the QEO

A school district employer could make a QEO at any time after the start of negotiations up to the point in the bargaining process where the parties actually submitted their final offers and the WERC concluded its investigation. If an employer did elect to make a QEO, it had to be developed and implemented in accordance with several statutory standards.

A QEO was any proposal under which the school district employer offered to provide the salary and fringe benefits increase minimums prescribed by the statutes governing collective bargaining agreements with professional teaching employees.

A valid QEO had to contain the following general elements:

• First, the employer had to maintain both the existing employee fringe benefits package and the district's percentage contribution effort to that package. The employer had to provide any annual funding increase required to maintain these fringe benefits provisions up to the equivalent of 1.7% of total compensation and fringe benefits costs per full-time equivalent employee for the total number of covered employees. Where the annual cost to continue the fringe benefits package and the employer's contribution effort to it required less than a 1.7% increase, the employer had to pass on the difference between the lower percentage level and 1.7% (these amounts were termed "fringe benefits savings") as an additional element of the salary offer, as described below.

Where the additional costs of meeting the fringe benefits continuation requirements were between 1.7% and 3.8% of total compensation and fringe benefits costs, the employer's QEO had to still fully fund the increased fringe benefits costs that were in excess of 1.7%. In providing this additional fringe benefits funding for amounts above 1.7%, the QEO's salary offer component could be reduced by the amount necessary to fund the higher fringe benefits costs. In the case where the additional costs of meeting the fringe benefits continuation requirements exceeded 3.8% of total compensation and fringe benefits costs, the employer's QEO had to still fund all of these higher fringe benefits costs. In providing this additional fringe benefits funding, the QEO's salary offer component could provide for decreases in current salaries sufficient to fund the fringe benefits costs in excess of 3.8%.

• Second, subject to any of the possible fringe benefits funding offsets described above, the employer had to provide an annual average increase in the aggregate cost for all salary items of at least 2.1% of total compensation and fringe benefits costs per full-time equivalent employee for the total number of covered employees. The combined amount of new salary and fringe benefits funding from the employer had to equal 3.8% of total compensation and fringe benefits costs for the proposal to have constituted a bona fide QEO.

• Third, as a first draw against the increased salary funding provided under the offer, the employer had to pay any salary increases to eligible employees due to attaining an additional year of teaching service with the employer. Teachers' salary schedules typically include annual, seniority-based pay increases (generally referred to as "step" progression) during the first dozen or so years of employment. If there was insufficient salary funding generated under the QEO to provide a full single step increase for each eligible employee, the amount of the required step increase had to be prorated. The salary funds generated under the QEO that remained once the employer had provided for all step costs had to then be used to fund general salary increases for all eligible employees in the bargaining unit.

• The salary range structure, number of steps, requirements for attaining a step, or assignment of a position to a salary range could not be modified unilaterally under a QEO. However, a school district employer and its represented professional employees could, by mutual agreement, have decided 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.

After July 1, 2001, the costs associated with any salary increases to eligible employees due to a promotion or the attaining of additional professional qualifications (generally referred to as "lane" progression) were no longer included under the salary component that had to be funded within the QEO. As a result, any such amounts represented additional costs to the employer that were funded outside the QEO.

Nonrepresented professional employees in a school district (primarily administrators, principals, and similar managerial employees) were also subject to an annual salary and fringe benefits increase limitation. Such increases for this group of

employees for any 12-month period ending on June 30 could not exceed the greater of:

• An amount generated by multiplying 3.8% of the total prior year's cost of salaries and fringe benefits for such employees; or

• The average total percentage increase in total salary and fringe benefits increases per employee provided by the school district for the most recent 12-month period ending on June 30 for its represented professional employees.

Developing a QEO

The determination of whether an employer's economic offer was "qualified" or not was based on whether the offer met the minimum statutory salary and fringe benefits thresholds described above. To aid in this determination, the WERC was required by law to establish costing forms that school district employers had to use to develop the funding parameters of a minimum QEO. Once an employer had completed and entered all of the required cost calculations, the appropriate forms had to then be provided to the teaching employees' labor organization 60 days prior to contract expiration or at the time the employer made the QEO, whichever was earlier. While the costing forms were relatively complex, the basic steps required of the employer in developing the QEO were essentially as follows.

The employer had to first identify the school district professional employee base to which the salary and fringe benefits costing calculations for the QEO applied. This employee base was defined by statute. It was comprised of those professional employees who were represented by a labor organization for the purposes of collective bargaining at a point 90 days prior to the expiration of the collective bargaining agreement (or 90 days prior to the commencement of negotiations in cases where no previous collective bargaining agreement existed between the parties).

Persons who were originally employed on that date but subsequently retired, resigned, or terminated were still included in the employee base. Persons on layoff, sick leave, or leave of absence were also included if they continued to be represented by the labor organization. However, those persons replacing employees who were on leave status were not included in the calculation unless they were represented by the same labor organization in the same bargaining unit as the employee being replaced. Finally, any new employees added to the bargaining unit after the 90th day prior to the expiration of the contract could not have been included in the determination of the employee base. Even though some new employees could not actually have been included in the employee base count on which the QEO salary and fringe benefits minimum thresholds were ultimately computed, these employees, as members of the bargaining unit, were still covered by the terms of that offer.

Once the employee base was identified, the employer had to then determine the corresponding total annualized salary amounts. These wage amounts were taken from the employer's existing salary schedule. To these basic wage amounts were added the costs of all of the following types of supplemental wages: extended contract pay, co-curricular or extra duty pay (such as football or debate team coaching salaries), summer school pay, severance pay, and any sick leave payout. Further, any salary increase that occurred during the year had to be costed as if it had been in effect for the entire year.

The employer had to also identify all fringe benefits and the employer's percentage contribution towards the costs of such benefits as of 90 days prior to the expiration of the collective bargaining agreement. Where the employer's contribution level was expressed as a dollar amount, this amount had to be converted into a percentage for the purpose of the calculation.

The employer had to then make a number of calculations using this salary and fringe benefits base compensation data. The employer must: (a) determine the total salary and fringe benefits costs for the identified employee base and then calculate amounts equal to 3.8%, 2.1%, and 1.7% of that total; (b) calculate the net additional annual costs, as a percentage of total compensation and fringe benefits, of continuing the fringe benefits package and the employer's contribution effort towards it for the identified employee base; and (c) ascertain the net additional annual costs, as a percentage of total compensation and fringe benefits, of providing a full step increase for all eligible employees. Any additional salary costs associated with a promotion or the attainment of increased professional qualifications were funded outside of the QEO.

Once these basic calculations were determined, the employer then developed the actual QEO in accordance with the range of options outlined in Table 7.

Effect of Making a Qualified Economic Offer

The existence of a QEO did not relieve either party of the obligation to continue to engage in collective bargaining to resolve any remaining issues in dispute. However, if after a reasonable period of negotiations a WERC investigator found the parties still deadlocked, the employer was statutorily authorized to implement its QEO unilaterally. In so doing, the employer had to provide the employees' labor organization at least 15 days notice of the exact manner in which the QEO would be implemented.

Upon implementing any QEO, if the exact percentage of the salary increase (or decrease) was not precisely known because the salary adjustments were contingent on a future determination of exact

Table 7: The Range of Qualified Economic Offer Options For Collective Bargaining Agreements

Results of Employer's Salary and Fringe Benefits Calculations	Required Components for Developing a Qualified Economic Offer
• Combined costs for fringe benefits and step progressions were less than 3.8%.	1. Maintain all current fringe benefits and contribution effort. 2. Pay all eligible employees a one step increase. 3. Pay an average salary increase to all employees using the remaining available salary funds (difference between 3.8% of total base costs and the combined costs of fringe benefits and step increases).
• Combined costs for fringe benefits and step progressions were 3.8%.	1. Maintain all current fringe benefits and contribution effort. 2. Pay all eligible employees a one step increase.
• Combined costs for fringe benefits and step progressions were more than 3.8% but the cost of fringe benefits was less than 3.8%.	1. Maintain all current fringe benefits and contribution effort. 2. Pay all eligible employees a prorated portion of a step increase using the remaining salary funds (difference between 3.8% of total base costs and the cost of fringe benefits). Proration percentage identified by dividing the amount of funding available for step increases by the total amount necessary to fully fund the increases.
• Fringe benefits costs were 3.8%.	1. Maintain all current fringe benefits and contribution effort.
• Fringe benefits costs were in excess of 3.8%.	1. Maintain all current fringe benefits and contribution effort. 2. Employer could decrease the salary of all employees in an amount equal to the difference between the cost of maintaining all fringe benefits and the district's contribution effort and 3.8% of total base costs. The decrease could not alter the relationship between steps and lanes on the existing salary schedule.

fringe benefits costs, the employer could only implement the maximum possible salary increase under the offer. This type of situation was most likely to occur for the second year of a two-year agreement. Once the actual fringe benefits costs were determined for the period in question, the employer could then implement the exact salary increase (or decrease). Depending on whether the exact salary increase was more or less than the provisional increase actually paid, the employer had to either provide its employees with an additional amount for any underpayments or require its employees to reimburse the employer for any overpayments.

The employees' labor organization could request that the WERC review the manner of implementation of a QEO by the employer. The WERC had to then determine if the implementation was consistent with the QEO provisions of statute and administrative code. If the WERC determined that implementation was not consistent with those provisions, the employer had to take appropriate action to attain compliance.

Where an employer had implemented a QEO, the parties had to continue to bargain to reach agreement on all economic issues in dispute before any unresolved noneconomic issues become subject to interest arbitration. For the purposes of delineating economic issues from noneconomic issues, the statutes defined economic issues as those that created a new or increased financial liability upon the employer. For contracts first effective on and after July 1, 2001, economic issues were limited solely to the following: salaries, overtime pay, sick leave, payments in lieu of sick leave usage, vacations, clothing allowances in excess of the actual cost of clothing, length of service credit, continuing education credit, shift premium pay, longevity pay, extra duty pay, performance bonuses, health insurance, life insurance, dental insurance, disability insurance, worker's compensation and unemployment insurance, Social Security benefits, vacation pay, holiday pay, lead worker pay, temporary assignment pay, retirement contributions, supplemental retirement benefits, severance or other separation pay, hazardous duty pay, certification or license payment, limitations on layoffs that created a new or increased financial liability on the employer, and contracting or subcontracting of work that would otherwise be performed by municipal employees in the collective bargaining unit with which there was a labor dispute.

Where the employer had submitted a QEO and the parties had an agreement or stipulation to agreement on all economic issues, a WERC investigator had to then determine whether the parties were still deadlocked on noneconomic matters. Where an impasse was determined, the investigator had to obtain each party's final offer on all noneconomic issues in dispute and each party's stipulation of all noneconomic matters where agreement had been reached. The procedures followed to arbitrate the remaining noneconomic issues in dispute were the same as described in this paper on interest arbitration procedures applicable to nonteaching, general municipal employees.

Effect of an Employer's Unilateral Implementation of a QEO

In those instances where the employees' labor organization had not reached an agreement with the employer on the economic issues in dispute and the employer had acted unilaterally to implement a QEO, all provisions of the QEO had full force and effect; however, the parties could not move to arbitration on any of the outstanding unresolved noneconomic issues. In effect, the employees continued to work with unresolved issues on the table and with no signed agreement.

Furthermore, if the parties remained deadlocked at a point 90 days prior to the expiration of the contract period covered by the QEO, they were deemed to have agreed and stipulated to the inclusion in the new collective bargaining agreement of all of the economic provisions of the predecessor agreement, except as otherwise modified by the terms of the unilaterally

implemented QEO. Also at that juncture, the employer's unilaterally implemented QEO was deemed to operate as a full, final, and complete settlement of the economic issues in dispute. The employer could not have been deemed to have committed a prohibited labor practice by taking such actions.

Duration of Agreement

The duration of the collective bargaining agreement between school district municipal employers and their professional teaching staff who were subject to interest arbitration procedures was modified by 1993 Act 16. Following a transitional period that ended June 30, 1997, all collective bargaining agreements in Wisconsin involving school teacher employees had a uniform two-year duration, corresponding to the state's fiscal biennium (from July 1 of each odd-numbered year through June 30 of the ensuing odd-numbered year).

Summary

Table 8 provides a schematic outline of the steps just described that had to be followed in resolving collective bargaining impasses involving school teacher municipal employees. In general, these procedures were identical to those presented in Table 2 for general municipal employees, except where the employer submitted a QEO, thereby avoiding binding arbitration on economic matters. The shaded portions of Table 8 depict the alternate procedures that then applied once the employer submitted a QEO.

Table 8: Bargaining and Impasse Resolution Steps for School Teacher Municipal Employees That Existed Under Prior QEO Law (Repealed by 2009 Act 28)