



---

## FOR YOUR INFORMATION

---

February 2007  
News For School Clients

### **Preparing for 2007-09 Teacher Bargaining**

If your school district has settled the 2005-07 bargaining agreement with the labor organization representing teachers, you are likely preparing for the 2007-09 round of negotiations. This newsletter is intended to provide you with a review of initial teacher bargaining strategies, the preparation of bargaining forms, and suggestions concerning the school district's bargaining obligations.

#### **Review Collective Bargaining Agreements**

This is an important time to complete a review of the existing collective bargaining agreement in the school district, either on your own or with legal counsel. In fact, it is advisable to complete such a review prior to the expiration of each collective bargaining agreement, including support staff agreements. A review prior to the expiration of the collective bargaining agreement will allow the Board to identify permissive subjects of bargaining that the Board may unilaterally discontinue after the agreement's expiration.

In addition, it is particularly helpful to review collective bargaining agreements before the commencement of negotiations to: (1) consider "housekeeping" proposals to clean up messy or inconsistent agreement language; (2) identify ambiguous and difficult to administer provisions; (3) consider past practices in relation to agreement language;

and (4) address specific language items as they relate to internal and/or external comparability.

Based on this initial review, the Board's bargaining strategies and goals may be discussed and initial proposals may be developed. The Board may also develop contingency positions that may prove to be common ground for a voluntary settlement.

#### **Prepare QEO Costing Forms**

The Qualified Economic Offer (QEO) law and its regulations require school districts to complete the costing forms developed by the Wisconsin Employment Relations Commission (WERC). Each school district must provide the labor organization representing its teachers with completed WERC Forms A and B by May 2, 2007, which is the 60<sup>th</sup> day before June 30, 2007. The calculations incorporated in these Forms must utilize a "snapshot" of the teacher bargaining unit assignments and benefit levels in place on April 2, 2007. Attached to this newsletter is Lathrop & Clark LLP's 2007-09 Checklist to assist school districts in the preparation of WERC Forms A and B.

#### **File WERC Form D**

If your school district has not already filed the WERC Form D upon ratification of the

2005-07 teacher collective bargaining agreement, it is important to remember that each district is required to submit to the WERC and to the labor organization representing the teachers the district's settlement information utilizing Form D. The WERC has recently published a reminder regarding this requirement on its website and has issued requests via e-mail for districts to comply. Form D is to be submitted as soon as possible after the effective date of each teacher bargaining agreement. Form D requires the QEO costing method be utilized to determine and report the total package increase even if the parties did not settle the collective bargaining agreement using total package costing.

Please note that during the WERC's recent regulation revision it updated Form D in format (not substance). Links to the new WERC Form D, as well as Forms A, B and C, are available for downloading from the WERC's website at:

[www.werc.wi.gov/rules\\_codified\\_nov\\_2006.pdf](http://www.werc.wi.gov/rules_codified_nov_2006.pdf)

### **Issues Affecting Form B Calculations**

The attached 2007-09 Checklist for calculating Form B is nearly identical to the 2005-07 Checklist because the statutes and regulations governing the calculation of a QEO are unchanged from those utilized to calculate a QEO in 2005-07. However, the WERC's position regarding one issue has been clarified

by a recent decision. In *Maple-Dale Indian Hill School District* (2004), the WERC provided guidance regarding a district's future obligations if an implemented QEO results in partial step movement. The WERC explained that unpaid step movement must be provided in a subsequent QEO before any future salary schedule increase is provided. As a result, an employee's placement on the salary schedule is not compromised over time due to the implementation of successive QEOs. The attached 2007-09 Checklist has been updated to include a possible obligation toward partial step payments from a prior implemented QEO before salary schedule increases are made.

Another issue that could impact QEO calculations that has not yet been decided at the WERC level involves how a district's obligations to the Wisconsin Retirement System (WRS) should be treated within the context of a QEO calculation if the district has refinanced its unfunded actuarial liability obligation. In such a case, it would be necessary to analyze how, if at all, the new refinancing loan should be treated within the district's QEO calculation.

Finally, remember that when costing the change in the rate for any fringe benefit obligation, any rate increase is calculated as if it is in effect for an entire 12-month period (July 1 – June 30). On the other hand, a rate decrease is calculated utilizing a blended rate consisting of the number of months or pay periods that the fringe benefit(s) were at each rate.

*If you have any questions regarding this topic, please call any of the following members of the Lathrop & Clark LLP School, Municipal, Labor and Employment Law Team.*

Michael J. Julka (608) 286-7238  
Joanne Harmon Curry (608) 286-7248

Shana R. Lewis (608) 286-7202  
Richard F. Versteegen (608) 286-7233

Please note that Michelle Moe, the team paralegal, is very knowledgeable with respect to the QEO law, costing calculations and comparability studies. Feel free to call Michelle for assistance at (608) 286-7211.

*Disclaimer:* Lathrop & Clark LLP provides this material as information about legal issues and not to give legal advice. In addition, this material may quickly become outdated. Anyone referencing this material must update the information presented to ensure accuracy. The use of the materials does not establish an attorney-client relationship, and Lathrop & Clark LLP *recommends* the use of legal counsel on specific matters.

## LATHROP & CLARK LLP'S 2007-09 CHECKLIST FOR CALCULATING WERC FORM B

1. Identify all employees in the teacher bargaining unit on **April 2, 2007**.
2. Identify all fringe benefits and your percentage contribution toward them on **April 2, 2007**.
3. Prepare **WERC costing forms** using employees and fringe benefits identified above. Include in your fringe benefit calculation the cost of any benefits that employees (identified in #1) who retire will receive/have received prior to the expiration of the contract.
4. **If step movement was unpaid or prorated** during a previously implemented QEO(s), fund the remaining portions of step movement due each employee who was employed during a previously implemented QEO(s). This should be labeled on the WERC Form B as "catch-up" step movement.
5. Cost actual **step advancement** for 2007-08 and 2008-09 using the 2006-07 (base year) salary schedule.
6. **Do not cost lane advancement costs** for 2007-08 and 2008-09.
7. **Maintain all miscellaneous compensation costs** (i.e. extracurricular, summer school and athletic events).
8. If any of the miscellaneous compensation costs from #6 increase **due to an increase in the salary schedule or an additional year of service**, the increase should be calculated and included each year.
9. **Maintain all fringe benefits, and the district's percentage contribution to fringe benefits.** Use the base year employees from #1 and the benefit contributions toward each base year employee from #2 to cost the cast-forward benefits at the new benefit rates (if known) or at the estimated benefit rates.
10. Assume **any cost increase** incurred during a contract year is in effect for the entire contract year.
11. Assume **any cost decrease** or credit received during a contract year is in effect for the number of months applicable.
12. Provide a **salary increase** in the first contract year (QEO Year 1) which, when **added to the cost of maintaining all fringe benefits, equals 3.8%** above the base year's total compensation (include "roll-up" fringe benefit costs associated with increased salary, e.g., social security and retirement costs). If the fringe benefit increase alone is more than a 3.8% increase in total compensation costs, an average salary decrease will be necessary, see WERC Form C.

13. Provide a **salary increase** in the second contract year (QEO Year 2) which, when **added to the cost of maintaining all fringe benefits, equals 3.8%** above the prior year's (QEO Year 1) total compensation (include cast-forward step costs, as well as resultant roll-up fringe benefit costs associated with the increased salary, e.g., social security and retirement costs). If the fringe benefit increase alone is more than a 3.8% increase in total compensation costs, an average salary decrease will be necessary, see WERC Form C.
14. Attach a **scattergram** showing the salary schedule placement and FTE of base year employees to your costing.
15. Have the Superintendent/Business Manager and the Board Treasurer sign and date WERC Form B.
16. Provide the employee Union with WERC Forms A and B **60 days prior to contract expiration** or whenever a QEO is made, **whichever is earlier**.
17. Make adjustments to WERC Form B if/when errors are discovered or as benefit rate increases become known (rather than estimates). Every "adjusted" Form B must be signed as described in #15 above and provided to the Union.