
FOR YOUR INFORMATION

July 2009
News For School Clients

New Wisconsin Laws and Their Impact on Collective Bargaining

On June 29, 2009, Governor Doyle signed 2009 Wisconsin Act 28, which is the executive budget act of the 2009 Legislature. This Act made significant changes to laws affecting school districts, including the repeal of the qualified economic offer (QEO), and significant modifications to interest arbitration criteria. This FYI will focus on the changes made by Act 28 and a second legislative enactment, and it will discuss the impact of these changes upon collective bargaining in school districts.

Except as otherwise noted below, changes under Act 28 first apply “to collective bargaining agreements entered into, extended, modified, or renewed, whichever occurs first, on the effective date of this subsection.” This language admittedly is somewhat unclear and vague and, therefore, school districts may want to confer with legal counsel regarding its application to a specific situation.

Duration of Agreements. One significant change made by Act 28 is that collective bargaining agreements between school districts and the bargaining representatives of their employees may now be for a duration of up to four years. Previously, such agreements were required to have a duration of two years (for teachers) or were permitted to have a duration of up to three years (for support staff). Although long-term agreements may reduce time spent at the bargaining table in some cases, school districts should be cautious about

entering into such long-term agreements, considering the unpredictable nature of future insurance costs, revenue limits, school aid, and pupil enrollment.

Bargaining Units. Another significant change made by Act 28 relates to the scope of the bargaining unit within a school district. First, the new law provides that professional and nonprofessional employees in a school district may combine into a single collective bargaining unit if a majority of the professional employees vote for inclusion. Second, the Act requires the Wisconsin Employment Relations Commission to combine two or more collective bargaining units consisting of school district employees into a single unit if a majority of the employees voting in each unit vote to combine upon the expiration of any collective bargaining agreement. Furthermore, this provision allows for the combining of school district employees working for different school districts into a single collective bargaining unit.

School districts, again, should be cautious in participating in the formation of such units, considering that such units of various constituencies may complicate bargaining and may result in added costs for school boards. Governor Doyle recently announced, however, that he would like to see the state cut down the number of teacher contracts (from 425 to possibly 100) and to see school districts work with other surrounding districts to form bargaining groups of at least 500 members.

He expressed that, in exchange, school districts could get relief, if future reforms are made, from the restrictive impact of state revenue caps.

Repeal of Interest Arbitration Criteria. Act 28 also makes important changes to the interest arbitration factors examined by arbitrators in making decisions on competing final offers for a collective bargaining agreement. Under the prior law, before considering other statutory factors in making their decision, arbitrators were required to give “greatest weight” to revenue limits and “greater weight” to local economic conditions. Act 28 now eliminates the ability for arbitrators to consider these factors in proceedings involving school district employees; only the remaining other statutory factors are available as considerations.

In light of this change, school districts will need to undertake a different assessment in determining whether to move forward to interest arbitration. Arbitrators may still consider the revenue limits and local economic conditions as part of the consideration under the remaining factors, but they are no longer obligated to give these issues additional weight. Further, with this change, there is now likely a greater emphasis on comparability, and school districts should be as informed as possible on this issue.

Repeal of the QEO. In the early 1990s, the Legislature adopted a system of financing K-12 education in Wisconsin, which included the QEO. The QEO was an offer to the professional employees of a school district that amounted to a 3.8% total package increase in wages and benefits in each year of the

bargaining agreement. With this offer, school districts could settle all “economic issues” with professional employees without proceeding to interest arbitration and could more easily control teacher compensation costs.

Act 28 repealed the QEO. This change first applies “to petitions for arbitration that relate to collective bargaining agreements that cover periods beginning on or after July 1, 2009.” The elimination of the QEO puts greater emphasis on interest arbitration and puts a premium on research and information. Further, school districts will have greater flexibility and, therefore, should assess costing methods, salary schedule structure, and the typical means of applying negotiated salary increases, which were previously governed by the QEO law. Finally, non-represented professional employees are no longer covered by statutory limits on salary and fringe benefit increases due to the related repeal of Wis. Stat. § 118.245.

Preparation Time. In addition to Act 28, another new law, 2009 Wisconsin Act 34, also impacts school district bargaining. Effective with collective bargaining agreements that cover any period that begins after June 30, 2011, school districts will be required to bargain collectively with respect to preparation time, that is, time spent during the school day, separate from pupil contact time, to prepare lessons, labs, or educational materials, to confer or collaborate with other staff, or to complete administrative duties. This is a dramatic change of the current law, and school boards may be interested in taking action to address and eliminate any affected permissive language prior to the laws effect.

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
William L. Fahey (608) 286-7234
David E. Rohrer (608) 286-7249

Frank C. Sutherland (608) 286-7243
Joanne Harmon Curry (608) 286-7248
Shana R. Lewis (608) 286-7202
Richard F. Verstegen (608) 286-7233

Carrie M. Benedon (608) 286-7208
Todd J. Hepler (608) 286-7160
Matthew J. Wheeler (608) 286-7157

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.