
FOR YOUR INFORMATION

March 2009

News For School Clients

Preparing for 2009-2011 Teacher Bargaining

This newsletter is intended to provide you with a review of initial bargaining strategies, the preparation of bargaining forms, and suggestions concerning the school district's bargaining obligations.

Review Collective Bargaining Agreements

Now is an important time to review the existing collective bargaining agreements in your 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 professional staff and support staff agreements.

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 (or absence thereof); (4) address specific language provisions that relate to internal and/or external comparability; and (5) identify permissive subjects of bargaining that the Board may unilaterally discontinue after the agreement's expiration.

Based on this initial review, the Board will be able to discuss and determine bargaining

strategies and goals and develop initial proposals. The Board may also develop contingency positions that may prove to be common ground for a voluntary settlement.

Prepare QEO Costing Forms

Even though the 2009-2011 State budget proposes to eliminate the Qualified Economic Offer (QEO), the QEO costing deadlines are still in effect until a budget is passed that eliminates them. The QEO requires school districts to complete 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, 2009, which is the 60th day before the contract has expired. The calculations incorporated in these Forms must utilize a "snapshot" of the teacher bargaining unit assignments and benefit levels in place on April 2, 2009. Attached to this newsletter is Lathrop & Clark LLP's 2009-2011 Checklist to assist school districts in the preparation of WERC Forms A and B.

Forms A and B do not reflect an offer of settlement. They are merely submitted pursuant to the current WERC requirements. Therefore, the Board may wish to include a statement to remind the labor organization of this fact.

Issues Affecting Form B Calculations

The attached 2009-2011 Checklist for calculating Form B is nearly identical to the Checklist developed by Lathrop & Clark LLP for 2007-2009 because the statutes and regulations governing the calculation of a QEO are unchanged from those utilized to calculate a QEO in 2007-2009.

Remember 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. This is especially important for retirement costs.

The Wisconsin Department of Employee Trust Funds (DETF) announced decreases in the Wisconsin Retirement System (WRS) employer and employee contribution rates effective January 1, 2009. Therefore, the rule regarding costing benefit rate decreases will need to be utilized to cost the 2008-2009 base year fringe benefit costs. However, the DETF recently announced estimated WRS rate increases of at least .8% for each of the next five years beginning on January 1, 2010. If those estimates are correct, the rule regarding costing benefit rate increases will be in effect for the 2009-2010 and 2010-2011 school years.

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.

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File WERC Form D

If your school district has not already filed the WERC Form D upon ratification of the 2007-2009 teacher collective bargaining agreement, it is important to remember that, while the State budget is pending, each district is still required to submit to the WERC and to the labor organization representing the teachers the district's settlement information utilizing Form D. 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 QEO total package costing.

Links to Forms A, B, C and D are available for downloading as part of ERC 33 at: <http://www.legis.state.wi.us/rsb/code/erc/erc.html>

Continue To Create and Update QEO Costing Forms If The QEO Is Repealed

School districts have found the uniform costing format of the QEO to be helpful when comparing offers during negotiations. If the QEO is repealed, these costing forms will become even more beneficial during interest arbitration to compare settlements between comparable districts. It is anticipated that these costing forms and the costing principles that have been developed over time will remain useful whether or not the QEO is eliminated.

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
2009-2011 CHECKLIST FOR CALCULATING WERC FORM B

1. Identify all employees in the teacher bargaining unit on **April 2, 2009**.
2. Identify all fringe benefits and your percentage contribution toward them on **April 2, 2009**.
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 2009-2010 and 2010-2011 using the 2008-2009 (base year) salary schedule.
6. **Do not cost lane advancement costs** for 2009-2010 and 2010-2011.
7. **Maintain all miscellaneous compensation costs** (i.e. extracurricular, summer school and athletic events).
8. If any of the miscellaneous compensation costs from #7 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 teachers' union with WERC Forms A and B **60 days prior to contract expiration** or whenever a QEO is made, **whichever is earlier**. Include in this packet a statement confirming that the WERC Forms A and B are merely being provided pursuant to the current WERC QEO rules; i.e., a District's submission does not represent an offer for the 2009-2011 contract negotiation. Districts do not want the Union to mistakenly believe that a District, by forwarding the costing forms representing a 3.8% increase, is making an offer to fund at least a 3.8% total package increase, especially given the potential repeal of the QEO.
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 as described in #16. The repeal of the QEO may negate this obligation.