

Collective Bargaining with Represented Employees & The Meet and Confer Process

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Collective Bargaining with Represented Employees

Act 10

**Base Wages
& CPI**

**Collective
Bargaining**

**Meet &
Confer**

2011 Wisconsin Act 10

- ▶ Collective Bargaining Changes (effective June 29, 2011)
 - **Duty to Bargain**: Prohibits bargaining collectively with respect to any condition of employment except wages, which includes only total base wages and **excludes any other compensation, such as overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.**
 - **Ceiling on Base Wages**: Limited to bargaining over a percentage of a total base wage increase no greater than the percentage change in the consumer price index.

Collective Bargaining – School District Employees – Base Wages

- ▶ Collective bargaining is prohibited for all subjects other than base wage increases:
 - 111.70(4)(mb)
 - 1. Any factor or condition of employment **except wages**, which **includes only total base wages** and excludes any other compensation, which includes, but is not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

Collective Bargaining – School District Employees - CPI

- ▶ **2.** Except as provided in s. [66.0506](#) or [118.245](#), whichever is applicable, any proposal that does any of the following:
 - **a.** If there is an increase in the consumer price index change, provides for total base wages for authorized positions in the proposed collective bargaining agreement that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the consumer price index change.
 - **b.** If there is a decrease or no change in the consumer price index change, provides for any change in total base wages for authorized positions in the proposed collective bargaining agreement from the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement.
- ▶ **(mbb)** *Consumer price index change.* For purposes of determining compliance with par. [\(mb\)](#), the commission shall provide, upon request, to a municipal employer or to any representative of a collective bargaining unit containing a general municipal employee, the consumer price index change during any 12-month period. The commission may get the information from the department of revenue.

Collective Bargaining – School District Employees - CPI

- ▶ **CPI Rate for 2023-2024 School District Collective Bargaining Agreements:**
 - The CPI-U increase applicable to one-year collective bargaining agreements with a term beginning on July 1, 2023, is officially set at **8.00%**. http://werc.wi.gov/doaroot/cpi-u_chart.htm.
- ▶ **Ceiling, not a floor:** The above number is the maximum total base wage increase for purposes of the 2023-2024 collective bargaining agreement absent a referendum.

Referendum to Exceed CPI – Base Wages

- **Wis. Stats. §§[66.0506](#), [118.245](#)** provides that unless approved by referendum, the law prohibits any increase in base wages that exceeds the total base wages for authorized positions 180 days before the expiration of the previous collective bargaining agreement by a greater percentage than the increase in the consumer price index (CPI).
- If a local governmental unit (including a school district) wishes to increase the total base wages of its general municipal employees in an amount that exceeds these CPI limits, it must adopt a resolution to that effect.

Referendum to Exceed CPI – Base Wages

- **Wis. Stats. §§[66.0506](#), [118.245](#)** The resolution must specify the amount by which the proposed total base wages increase will exceed the CPI limit and may not take effect unless approved in a referendum.
- For school districts, the referendum would occur in April for collective bargaining agreements that begin in July of that year.

Collective Bargaining – School District Employees - Costing

- ▶ School District Employee Collective Bargaining negotiations are exclusively limited to total base wages.
- ▶ At the present time there are no rules from the Wisconsin Employment Relations Commission (WERC) that directly address how the base wage for an individual employee would be calculated, but there is guidance in the statute as to how base wage is defined.
- ▶ By operation of Sec. 227.24(1)(c), Stats., the WERC's emergency base wage administrative rules (chs. ERC 90 and 100) expired on September 15, 2012.
- ▶ The Commission ultimately let the rules expire and did not replace them.

Collective Bargaining – School District Employees - Costing

- ▶ The parties (the Board and the Union), theoretically, now have the authority to adopt their own rules for calculating total base wages provided such rules are consistent with the base wage definition in the statute.
- ▶ Any disagreement is still subject to challenge, however, by either the employer, union or any other party with standing (i.e., a taxpayer).

Collective Bargaining School District Employees

- ▶ Unions are required to seek recertification of their status as collective bargaining representative annually.
 - Unions must receive votes from at least 51% of eligible voters to maintain certification.
- ▶ Fair share and voluntary union dues deductions are prohibited.
- ▶ Collective bargaining agreements are limited to one-year terms.
- ▶ Public employers must create a grievance process for terminations, employee discipline and employee safety.

Compensation Systems

- ▶ School boards are prohibited from bargaining over:
 - The salary schedule
 - Pay for additional years of service (step movement)
 - Pay for professional development (lane movement)
- ▶ School boards are not prohibited from having a salary schedule or paying step or lane movement – these are now unilateral decisions made outside of bargaining.
- ▶ 2011 Wisconsin Act 10 gives school boards the power to design new teacher compensation systems outside of bargaining.

Collective Bargaining – School District Employees - Negotiations

- ▶ **Notice of Commencement of Negotiations:** File notice of commencement of negotiations with the Wisconsin Employment Relations Commission and the Union.
- ▶ **Initial Exchange:** The parties initial exchange of proposals for base wages is subject to the open meetings law and is done in open session.
- ▶ **Bargaining:** Both parties typically exchange proposals at that time. After the proposals are exchanged, either party may request that the contract negotiations are in closed session. If no request is made the meeting continues in open session. The meet and confer, as noted below, would be in open session unless a specific exemption under the open meetings law would require a closed session.
- ▶ **Settlement and Ratification:** If the parties reach a voluntary settlement, the vote to approve the settlement is in open session and has to be posted as such.

Collective Bargaining - School District Employees - Impasse

I have advised districts that are at impasse that there are four potential paths to take in dealing with an impasse in bargaining underneath the law:

- ▶ **Do nothing.** Remain unsettled and do not implement any pay increases affecting base wages until negotiations are completed. The Board could implement supplemental pay, e.g., step movement, lane movement or other pay items (payment for the master's degree, National Board, performance-based pay, merit pay, etc.) outside of base wages.
- ▶ **Consent to Implementation.** Ask the Association if they would consent to the District's imposition of its last offer without the District filing for mediation. The Association would not be agreeing to your offer, but would not be contesting the District's implementation of its last offer to Association.

Collective Bargaining - School District Employees - Impasse

I have advised districts that are at impasse that there are four potential paths to take in dealing with an impasse in bargaining underneath the law:

- ▶ **File for Mediation.** In the mediation stage inform the mediator that the District's offer is all that it is going to provide to the Association. The Association may agree to the offer. If the Association does not agree to the offer, ask the mediator to provide a "declaration of impasse letter." Once the declaration of impasse letter is issued, the District may implement its final offer.
- ▶ **Unilateral Implementation.** Notify the Association that the District intends on implementing its final offer on (insert the date that works for you logistically). *Riskiest path – potential prohibited practice complaint regarding refusal to bargain.*

Meet and Confer

- ▶ Public sector employers have a long history of “**meeting and conferring**” with employees even in the absence of collective bargaining.
- ▶ Even “**before states enacted laws mandating or permitting collective bargaining in the public sector in the 1970s, meet-and-confer was the primary way for public sector unions to represent their members’ interests to employers.**” (Freeman et al, pg. 9) *Public Sector Unionism without Collective Bargaining, Mr. Richard B. Freeman and Ms. Eunice S. Han, December, 2012 American Economist Association Meetings, January 6, 2012, San Diego, CA.*

Meet and Confer

- ▶ The key distinctions between the term “**meet and confer**” as used in this context and “meet and confer” in the context of “collective bargaining” are as follows:
 - there is **no legal requirement to “meet and confer”** with the union or exclusively with the union on matters beyond base wages;
 - the “**meet and confer**” meetings are not covered by the procedural requirements in Wis. Stats. 111.70(4)(cm) [e.g. initial exchanges of proposals, mediation, etc.];
 - Open Meeting Law issues may be different depending upon the topics discussed (e.g., individual supplemental compensation vs. group supplemental compensation);

Meet and Confer

- ▶ The key distinctions between the term “**meet and confer**” as used in this context and “**meet and confer**” in the **context of “collective bargaining**” are as follows (continued):
 - there is **no legally binding contract** that results from the “meet and confer” meeting(s); and
 - the **Board ultimately decides the issues** (other than base wages) to put forward for a “meet and confer” meeting absent other legal constraints, for example, modifications to a teacher’s individual contract.

Meet and Confer

- ▶ If a Board chooses to meet with employees for “meet and confer” meetings, it is my suggestion that such meetings **not be limited solely to union participants.**
- ▶ I would suggest that the Board could **invite union members and other staff to such meetings without requiring the staff to identify themselves by any affiliation with the union, any affiliation with any other representative organization, or an announcement of no affiliation at all.**
- ▶ The reason for this suggestion is so that the dialogue **steers clear of any employee concerted activity rights.**

Presenter Bio

Bob Butler has been a WASB staff counsel since 1990. He is also, along with attorney Barry Forbes, the Association's co-associate executive director. Bob directly represents more than 40 school districts in Wisconsin on employment, human resources and school law matters. Bob also provides membership services, including general legal information, to all school districts that are members of WASB.

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