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Details:

(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2007-08

(session year)

### Senate

(Assembly, Senate or Joint)

### Committee on ... Labor, Elections and Urban Affairs (SC-LEUA)

### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)  
(**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)  
(**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**



- Deb Sybell — WEAC
- Gabe Kirchner — AFT Wisconsin
- Stephanie Findley — SEIU
- Alicia Treadwell
- Joe Strohl — Professional Firefighters
- Carrie Budahn — SEIU Local 150
- Nathan Hoffmann

Registrations Against

- John Forester — School Administrators Alliance
- Curt Witynski — League of Wisconsin Municipalities
- Jason Johns — Alliance of Cities

Registrations for Information Only

- None.

September 11, 2007 **EXECUTIVE SESSION HELD**

Present: (5) Senators Coggs, Wirch, Lehman, Grothman  
and A. Lasee.

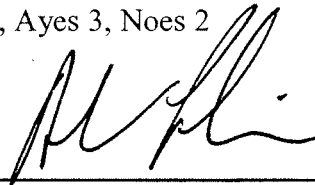
Absent: (0) None.

Moved by Senator Lehman, seconded by Senator Wirch that  
**Senate Bill 121** be recommended for passage.

Ayes: (3) Senators Coggs, Wirch and Lehman.

Noes: (2) Senators Grothman and A. Lasee.

PASSAGE RECOMMENDED, Ayes 3, Noes 2



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Adam Plotkin  
Committee Clerk



## Vote Record

### Committee on Labor, Elections and Urban Affairs

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Date: September 11, 2007

Moved by: ~~W.~~ LEHMAN      Seconded by: WIRCH

AB \_\_\_\_\_ SB 121      Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_ Appointment \_\_\_\_\_  
 AR \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_

A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

Be recommended for:  
 Passage       Adoption       Confirmation       Concurrence       Indefinite Postponement  
 Introduction       Rejection       Tabling       Nonconcurrency

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
<b>Senator Spencer Coggs, Chair</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Robert Wirch</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator John Lehman</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Glenn Grothman</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Senator Alan Lasee</b>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Totals:</b>	<u>3</u>	<u>2</u>	_____	_____

Motion Carried       Motion Failed





WISCONSIN STATE SENATOR  
**DAVE HANSEN**  
SENATOR – 30TH DISTRICT  
ASSISTANT MAJORITY LEADER

Testimony on SB 83, 121, 165  
Senate Committee on Labor, Elections and Urban Affairs  
**Tuesday, August 28, 2007**

Chairman Coggs and members

Thank you for the opportunity to speak today in favor of three proposals I have introduced this session that I believe will help all working families in Wisconsin. Senate Bill 83 exempts all unemployment compensation from state taxes. When a family is struggling to pay their bills with the loss of employment, I don't think the state should be taking more money out of their pockets. We should be doing all we can to help them get back on their feet. This bipartisan legislation will provide a little more help to families struggling through the economic hardship of job loss.

Senate Bill 121 was introduced on behalf of Teamsters Local 75 to remedy a situation that recently occurred in Brown County.

After over two years of bargaining with Brown County, the union and

**Committees**

Joint Committee on Finance, Senate Vice Chair  
Education  
Commerce, Utilities and Rail  
Transportation, Tourism and Insurance  
Senate Organization  
Joint Committee on Legislative Organization

**State Capitol**

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the county went to interest arbitration. After arbitration, the county took the union's dues check off away. They had taken the arbitration rights away in the summer of 2004 after contracts had expired in December, 2003. During this time, the union was reduced to filing prohibitive practice charges for minor infractions but was left with no ability to protect their members from discharge during this time. They were, in effect, "employees at will" even though they were represented. While the dues check off was taken away, members were required to pay their dues directly to the local union without payroll deduction. While the union is now trying to convince Brown County to recoup the delinquent dues from the employees, the county is not complying. This is all unreasonable because both taking away the dues check off and denying the grievance arbitration procedures is aimed at union busting. Neither helps the employer in any way other than putting a hardship on the union. This gives the employer an advantage over the union in bargaining. The dispute resolution process was put in place to avoid strikes. This loophole only fuels tension between employees and their employers.



Senate Bill 121 closes this loophole by making it a prohibited practice under MERA for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus.

And finally, Senate Bill 165, the Equal Pay Enforcement Act. This legislation is long overdue and I very much appreciate your and the committee's consideration, Mr. Chair.

SB 165 is needed because Wisconsin families lose more than \$4,000 per year due to unequal pay. While women nationally earn approximately 77 cents on the dollar compared to men, here in Wisconsin women earn 75% of that earned by their male coworkers. Wisconsin ranks 39<sup>th</sup> nationally on this issue.

The Equal Pay Enforcement Act sends an important message about the value that we, as a society, place on the efforts of individual workers. People deserve to be fairly compensated for putting in a hard day's work. We need to find ways to make sure people are paid in a fair and equitable manner for being productive, contributing

members of our workforce and to encourage policies that help working families become independent and economically secure.

The wage gap is not going to correct itself quickly, or without our intervention. The wage gap has narrowed, on average a half a penny per year over the 30 years since the federal Equal Pay Act was passed. The Equal Pay Enforcement Act will allow the Department of Workforce Development to order payment or damages in cases of employment discrimination. This bill also directs the Secretary of DWD to appoint a committee to study the issue of wage disparities between men and women and between minority group members and nonminority groups.

It is time for the State of Wisconsin to return to its progressive roots and set an example for the rest of our country.

The Equal Pay Enforcement Act will ensure that wages are based on skill, effort, responsibility and working conditions, and not race or gender.

Thank you Mr. Chairman and members. I'd be happy to answer any questions.



# WISCONSIN ALLIANCE OF CITIES

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Janesville  
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La Crosse  
Madison  
Manitowoc  
Marinette  
Marshfield  
Menasha  
Merrill  
Milwaukee  
Monroe  
Neenah  
Oak Creek  
Oshkosh  
Racine  
Sheboygan  
Stevens Point  
Superior  
Two Rivers  
Watertown  
Waukesha  
Wausau  
Wauwatosa  
West Allis  
West Bend  
Whitewater  
Wisconsin Rapids

August 28, 2007

TO: Committee on Labor, Elections and Urban Affairs

FROM: Edward J. Huck, Executive Director

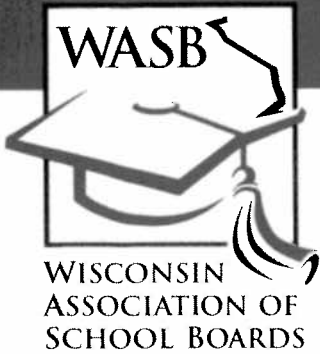
RE: SB 121

The Wisconsin Alliance of Cities is in opposition to SB 121 for the following reasons:

- The bill does not take into consideration the possibility that it is the union that is not bargaining in good faith in order to continue benefits at status quo. If, for instance, health insurance benefits were the sticking point, it may be in the interest of the union to NOT bargain in good faith in order to continue their current benefits.
- Union members not paying dues voluntarily seem to be a union problem, not a management problem.
- To my knowledge, no arbitration case in Wisconsin has ever been won that didn't include retroactive pay, so the union gets their raise sooner or later. And, the employer owes the WRS interest on late contributions.
- Finally, most employers know that it is important to settle as quickly as possible in order to maintain moral and productivity. Mostly deductibles, coinsurance and co-pays should be maintained because of the difficulty of administering after the fact. Sometimes, however, management needs leverage. Take away this option and what has a union got to lose?

Thank you for your consideration of this memo.





122 W. WASHINGTON AVENUE, MADISON, WI 53703  
PHONE: 608-257-2622 • FAX: 608-257-8386

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Senate Committee on Labor, Elections and Urban Affairs  
FROM: Dan Rossmiller, Legislative Services Director  
DATE: August 28, 2007  
RE: **Senate Bill 121**, relating to arbitration and fair-share agreements during collective bargaining negotiations under the Municipal Employment Relations Act.

The Wisconsin Association of School Boards (WASB) strongly **opposes** Senate Bill 121. The current bargaining law allows school boards and other local governments to refuse to honor fair-share and grievance arbitration provisions during a collective bargaining agreement hiatus period.

Employers almost never refuse to honor fair-share provisions. Occasionally, an employer will refuse to honor a grievance arbitration provisions during a contract hiatus. Usually, this happens when the alleged contract violation is based on permissive contract language—language the employer was not obligated to bargain over in the first place.

Senate Bill 121 would make it a prohibited practice under Wisconsin's Municipal Employment Relations Act (MERA) for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus, a period during which negotiations over a new contract are underway.

Under the current law, an employer violation of contract language that is a mandatory subject of bargaining (i.e., a subject on which the employer has a statutory duty to bargain) during a contract hiatus can be contested by a prohibited practice complaint under s.111.70 (3)(a)4, Stats.(refusal to bargain). A prohibited practice complaint (based on a refusal to bargain) is not available if an alleged contract violation concerns permissive contract language. This is because an employer cannot be accused of refusing to bargain over matters it has no duty to bargain over in the first place.

Senate Bill 121 would obligate the parties to use grievance arbitration to resolve disputes that arise during a contract hiatus as to the meaning or application of the expired contract, including those involving permissive subjects of bargaining. This effectively converts any permissive subject of bargaining in a collective bargaining agreement into binding contract language during the hiatus.

The WASB urges members to **oppose** Senate Bill 121.

## APPENDIX

As stated above, Senate Bill 121 would make it a prohibited practice under Wisconsin's Municipal Employment Relations Act (MERA) for an employer or an employee to end any grievance arbitration agreement during a contract hiatus and for an employer to end any fair-share agreement during a contract hiatus. To understand what this bill does, it is necessary to understand the definitions of these terms.

*What is a "grievance arbitration agreement"?*

Grievance arbitration is one means for resolving disputes that arise as to the meaning or application of contract provisions. If the contract calls for such disputes to be decided through grievance arbitration, that provision is called a grievance arbitration agreement. Under current law, such a dispute can also be litigated before the WERC as a complaint. The filing fee for a complaint is \$80. The filing fee for grievance arbitration is \$500 (split equally between the union and the employer).

*What is a "fair-share agreement"?*

Section 111.70(1)(f), Wis. Stats., defines a "fair-share agreement" as "an agreement between a municipal employer and a labor organization under which all or any of the employees in the collective bargaining unit are required to pay their proportionate share of the cost of the collective bargaining process and contract administration measured by the amount of dues uniformly required of all members." Under this definition, such an agreement shall contain a provision requiring the employer to deduct the amount of dues as certified by the labor organization from the earnings of the employees affected by said agreement and to pay the amount so deducted to the labor organization.

*What is a "contract hiatus"?*

When a collective bargaining agreement has expired and no successor agreement has yet been ratified, the situation is referred to as a "contract hiatus." It is currently the case that hundreds of Wisconsin districts that have not ratified their successor agreements are in a "contract hiatus" period.

A series of Wisconsin Employment Relations Commission (WERC) decisions interpreting an employer's duty to bargain hold that mandatory subjects of bargaining dealt with in the collective bargaining agreement do not evaporate during a contract hiatus. Rather they must remain intact per the terms of the expired agreement. That is, the district must maintain what is called the "**dynamic status quo**" regarding most mandatory subjects of bargaining.

*What is a "mandatory subject of bargaining"?*

**"Mandatory** subjects of bargaining" are those subjects that are primarily related to the wages, hours, and working conditions of the employees in the bargaining unit.

Examples of mandatory subjects of bargaining are: wages; fringe benefits; disciplinary procedures; rights of employees on layoff. Employers (and employees) have duty to bargain mandatory subjects of bargaining.

The **dynamic status quo** rule severely limits what would otherwise be the district's right to act unilaterally under the theory that if a district has a duty to bargain insurance coverage, for example, it must make changes through negotiations rather than by unilateral action. As a public policy matter, the **dynamic status quo** rule provides a number of protections for teachers. (For example, even though the agreement has expired, the district is bound to abide by any provision regarding the nonrenewal or termination of teachers during a contract hiatus—e.g., termination only for good cause.)

One the other hand, there are subject on which the district and union have no obligation to bargain. These are called “permissive” subjects of bargaining. The district and union, can, if they wish, to bargain on these issues, but are not required to do so. The district need not maintain the “**dynamic status quo**” regarding permissive subjects of bargaining. Permissive subjects of bargaining dealt with in the collective bargaining agreement evaporate during a contract hiatus.

*What is a “permissive subject of bargaining”?*

“**Permissive**” subjects of bargaining are those subjects that are primarily related to educational policy and management of the school district. Examples of permissive subjects of bargaining are: the qualifications for a position; a decision to offer summer school; class size; need for layoff; the tasks teachers will be assigned to perform during their normal working hours.

*What is a “prohibited practice”?*

Section 111.70(3) (a), Stats., describes a list of prohibited practices for school districts. A school district is NOT permitted to:

1. Interfere with, restrain or coerce employees from exercising their right to organize for the purposes of collective bargaining.
2. Involve itself in the formation or administration of any labor organization.
3. Encourage or discourage membership in any labor organization.
4. Violate the district’s duty to bargain.
5. Bargain with individuals or groups of employees who hold positions within the bargaining unit. EXAMPLES: Retirement benefits, starting bonuses, pay for extracurricular activities.
6. Violate a collective bargaining agreement.
7. Fail to implement an arbitrator’s decision.

There is a similar list of “prohibited practices” that apply to employees and their representative. Prohibited practices are resolved in proceedings before the Wisconsin Employment Relations Commission.







STATE REPRESENTATIVE  
**CORY MASON**

WISCONSIN STATE ASSEMBLY  
62ND ASSEMBLY DISTRICT

**TO:** Wisconsin state Senate Committee on Labor, Elections, & Urban Affairs

**FROM:** State Representative Cory Mason

**DATE:** 28 August 2007

**RE:** Senate Bill 121—Arbitration and fair-share agreements during collective bargaining negotiations under MERA

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Senate Bill 121 is a bill that would restore fairness to the bargaining process regulated by the Municipal Employment Relations Act under §111.70 of the Wisconsin State Statutes.

Labor agreements are contracts between the employer and the employees represented in a collective bargaining unit. Those contracts are an agreement between the two parties that define the wages, hours, and working conditions that both the employer and employees can rely upon. Contracts last a mutually agreed upon length of time.

If the terms of a contract have expired and the employer and employee have not yet reached a new contract, usually the status quo of the previous contract stays in place until a new contract is mutually agreed upon by both parties. It is similar to the way we as a state have continued spending levels from the previous biennium while both parties negotiate the budget, even though the biennium ended on July 1<sup>st</sup>.

There seems to be confusion that this bill seeks to reconcile. It says that while the employer and employee are at impasse, they must continue the status quo of the previous contract. It makes it clear that the employer cannot simply refuse to acknowledge the employees' collective bargaining unit and pass through its dues as it is required to do under the contract. It would be the equivalent of the state refusing to give cities, towns, and school districts their shared revenue and state funding because the conference committee had not yet completed its work.

I urge my legislative colleagues to pass SB121 because it is the fair thing to do; it respects the rule of law in contract disputes; and it maintains the integrity of public sector collective bargaining in Wisconsin.