

## WERC Announces Proposed Draft Rules Regarding Calculating "Total Base Wages"

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The Wisconsin Employment Relations Commission issued their Proposed Rules for how to calculate the maximum dollar amount subject to collectively bargained increases in a general municipal employee bargaining unit's base wages. The Proposed Rules provide clarity for a new statutory provision from the Budget Repair Bill that restricts the scope of collective bargaining with represented general municipal employees to only require negotiations over "total base wages" up to a CPI-adjusted cap. The Budget Repair Bill did not define "total base wages," but the Bill did indicate that total base wages does not include "any other compensation, including, but not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions." The Proposed Rules apply to municipal, county, state and school district public-sector unions except protective services bargaining units and transit bargaining units. The Proposed Rules are not final and will be reviewed by the Governor's office for approval or revision.

The Proposed Rules provide guidance for employers and unions when determining the total base wages in the first Post-Budget Repair Bill Collective Bargaining Agreement and then for determining total base wages when negotiating those successor collective bargaining agreements. Following is a summary of the Proposed Rules.

### **The First Negotiated Collective Bargaining Agreement After June 29, 2011.**

According to Proposed Rule ERC 90.03, to calculate the maximum dollar amount subject to collective bargaining over base wages for the first collective bargaining agreement entered into on or after June 29, 2011, the following steps must be taken:

**Step 1.** Identify all of the authorized positions that existed 180 days prior to the stated expiration date of the most recent collective bargaining agreement.

**Step 2.** For the one year prior to the commencement of the first collective bargaining agreement entered into on or after June 29, 2011, calculate the annual wages or salary (excluding overtime and pay for extra duties) to be received by the individuals holding the authorized positions identified in Step 1.

**Step 3.** Add the wages or salary referenced in Step 2 for all individuals holding the authorized positions identified in Step 1.

**Step 4.** Multiply the total wage or salary amount calculated in Step 3 by the consumer price index change applicable to the collective bargaining agreement. The resulting dollar amount is the maximum amount subject to collective bargaining for the first bargaining agreement entered into on or after June 29, 2011.

**Total Base Wages for the Successor Collective Bargaining Agreement.** According to Proposed Rule ERC 90.04, to calculate the maximum dollar amount subject to collective bargaining over base wages for a successor collective bargaining agreement to the first collective bargaining agreement entered into on or after June 29, 2011, the following steps must be taken:

**Step 1.** Identify all of the authorized positions that existed 180 days prior to the stated expiration date of the most recent collective bargaining agreement.

**Step 2.** For the one year prior to the commencement of the new collective bargaining agreement, calculate the base wages to be received by the individuals holding the authorized positions identified in Step 1. Base wages includes only total bases wages and excludes any other form of compensation, which includes, but is not limited to, overtime, premium pay, merit pay, performance pay, supplemental compensation, pay schedules, and automatic pay progressions.

**Step 3.** Add the base wages from Step 2 for all individuals holding the authorized positions identified in Step 1.

**Step 4.** Multiply the total base wage calculated in Step 3 by the consumer price index change applicable to the collective bargaining agreement. The resulting dollar amount is the maximum amount subject to collective bargaining for successor agreements.

In application, the Proposed Rules for negotiating the first post-Budget Repair Bill collective bargaining agreement appear to require the parties to calculate the total base wage from the last salary earned by the individual holding that position rather than using the "start rate" or "base rate" on the wage schedule as the base wage. Under this interpretation, the employer, union, and employees will have some stability and will operate from the employee's last position on the wage schedule rather than from the wage schedule's base or start rate for the position.

The Proposed Rules will result in a maximum pool of money that the employer and union can use to negotiate changes to the wage schedule. The Rules are silent on how the employer and union must distribute this money. As a result, the parties may continue to discuss proposals to distribute wage increases to specific personnel or specific positions in order to attract and retain the highest quality employees rather than as across-the-board increases designed to treat all employees as the same.

Furthermore, the Proposed Rules do not affect an employer's ability to unilaterally offer merit-based compensation bonuses to employees on an individualized basis. The Proposed Rules also appear to retain the employer's flexibility to unilaterally address how overtime is calculated, step and lane movement, and other compensation enhancers such as longevity pay or shift differentials.

Every salary schedule is different and the goals of every organization are unique in what they seek to achieve through collective bargaining negotiations. Each employer should carefully analyze how the Proposed Rules, if implemented, will impact their global strategy for effectively structuring the wage schedule to attract and retain high quality talent and an appropriately compensated workforce.

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