

2001 SENATE BILL 145

April 18, 2001 – Introduced by Senators GROBSCHMIDT, BURKE, SCHULTZ, PLACHE, GEORGE and MOEN, cosponsored by Representatives MUSSER, CARPENTER, POCAN, LA FAVE, RICHARDS, BOYLE, PLOUFF, J. LEHMAN, MILLER, BOCK, BERCEAU and PLALE. Referred to Committee on Universities, Housing, and Government Operations.

1 **AN ACT** *to renumber* 111.81 (1); *to renumber and amend* 111.83 (4); *to amend*
2 36.09 (4), 36.09 (4m), 111.83 (3), 111.83 (5) (a) to (c), (h) and (i), 111.84 (2) (c),
3 111.91 (2) (a), 111.91 (4), 111.93 (2) and (3), 230.10 (2) and 230.34 (1) (ar); *to*
4 *repeal and recreate* 111.81 (10); and *to create* 111.81 (1g), 111.81 (7) (f),
5 111.81 (8m), 111.815 (4), 111.825 (2) (em) to (j) and (2m), 111.83 (4) (b) and 111.91
6 (2) (br) of the statutes; **relating to:** employment relations for members of the
7 University of Wisconsin System faculty and academic staff.

Analysis by the Legislative Reference Bureau

This bill extends the state Employment Labor Relations Act to cover the members of the faculty and academic staff of the University of Wisconsin (UW) System. Excluded from coverage are management employees and confidential employees.

Under the bill, UW faculty and academic staff members are expressly guaranteed the right of self-organization. Collective bargaining is expressly authorized and required with certified representative organizations in relation to specified subjects of bargaining. Mandatory subjects of bargaining are salaries, fringe benefits, and hours and conditions of employment. Bargaining is not required on certain subjects reserved to the management and direction of the university, except that procedures for the adjustment of grievances arising out of disciplinary

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actions are a mandatory subject of bargaining. In addition, bargaining is not permitted regarding the structure, mission, and goals of the UW System, and matters affecting the statutory rights and responsibilities of students.

Bargaining units are structured so that the faculty and academic staff of the UW–Madison bargain as two separate units; the faculty and academic staff of the UW–Milwaukee bargain as two separate units; the faculty and academic staff of the UW–Extension bargain as two separate units; and the faculty and academic staff of each of the other UW campuses and the faculty and academic staff of the UW Colleges bargain as two separate units, with one unit for all faculty members on all of these campuses and one unit for all academic staff members on all of these campuses. Employees may vote to merge units, and employees in a merged unit may vote to redivide the unit. The faculty and academic staff of each campus or the UW Colleges may decide individually whether to participate in bargaining. In the multicampus collective bargaining units, once a campus elects to participate in collective bargaining, it may not elect to withdraw from participation except in conjunction with the other campuses that have elected to participate, and in conjunction with the UW Colleges if the center system elects to participate. Once the UW Colleges elects to participate in collective bargaining, it may not elect to withdraw from participation except in conjunction with the campuses in the multicampus unit that have elected to participate.

Employees in the bargaining units have the right to vote in an election conducted by the employment relations commission as to whether there shall be collective bargaining and, if so, with which representative. The votes for representative are counted at a campus or at the UW Colleges only if the campus or the center system elects to participate in collective bargaining. Responsibilities of the state as an employer are handled under the bill by the department of employment relations (DER). However, DER is directed to maintain close liaison with the board of regents of the UW System with respect to collective bargaining activities involving UW faculty and academic staff.

The unfair labor practices currently applicable to represented employees are extended to apply to the members of the UW faculty and academic staff, to their labor unions, and to the state as their employer. No compulsory means of dispute settlement are provided. Strikes are prohibited. Strikes constitute an unfair labor practice and may be enjoined by a court. Currently, strikes by faculty and academic staff members are not authorized, but no law specifically treats the matter.

“Fair–share” (agency shop) and “maintenance of membership” agreements similar to those currently provided for represented employees are authorized. Under a fair–share agreement, the UW must deduct the amount of dues uniformly required of all members of a union for the cost of the collective bargaining process and contract administration from the paychecks of all employees in the bargaining unit represented by that union, regardless of whether the employees are union members, and pay the total amount deducted to the union. A fair–share agreement requires the approval of two–thirds of the employees voting in a unit before it may take effect; it may also be discontinued according to a similar procedure. Under a maintenance of membership agreement, the UW must deduct the amount of dues uniformly

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required of all members of a union for the cost of the collective bargaining process and contract administration from the paychecks of all employees in the bargaining unit who are members of the union, and all employees who are hired after the effective date of the agreement, and pay the total amount deducted to the union. A maintenance of membership agreement requires the approval of a majority of the employees voting in a unit before it may become effective, and may also be discontinued according to a similar procedure. If the faculty or academic staff at any institution votes not to participate in collective bargaining, that group does not participate in any fair-share or maintenance of membership agreement.

Currently, faculty and academic staff members are entitled to participate in the immediate governance and policy development at the institutions where they serve. The bill provides that, when a labor union is certified to represent faculty or academic staff members at an institution, this participation in governance and policy development does not extend to mandatory subjects of bargaining with the union or subjects that are treated in a collective bargaining agreement with the union.

Currently, no employment relations act applies to members of the UW faculty or academic staff. Although members of the faculty and academic staff may organize and join labor unions, the state is not required to recognize or bargain collectively with them by statute. The employment relations commission has no responsibility to conduct elections, mediate disputes, arbitrate grievances, or adjudicate alleged unfair labor practices involving members of the faculty or academic staff and their employer.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 36.09 (4) of the statutes is amended to read:
2 36.09 (4) FACULTY. The faculty of each institution, subject to the responsibilities
3 and powers of the board, the president and the chancellor of such institution, shall
4 be vested with responsibility for the immediate governance of such institution and
5 shall actively participate in institutional policy development. As such, the faculty
6 shall have the primary responsibility for academic and educational activities and
7 faculty personnel matters. The faculty of each institution shall have the right to
8 determine their own faculty organizational structure and to select representatives
9 to participate in institutional governance. This subsection does not apply to

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1 governance and policy development by the faculty at an institution at which a labor
2 organization is certified under subch. V of ch. 111 to represent the faculty with
3 respect to any subject that is a mandatory subject of bargaining with that labor
4 organization, or with respect to any subject that is treated in a collective bargaining
5 agreement with that organization covering the faculty at that institution.

6 **SECTION 2.** 36.09 (4m) of the statutes is amended to read:

7 36.09 (4m) ACADEMIC STAFF. The academic staff members of each institution,
8 subject to the responsibilities and powers of the board, the president and the
9 chancellor and faculty of the institution, shall be active participants in the
10 immediate governance of and policy development for the institution. The academic
11 staff members have the primary responsibility for the formulation and review, and
12 shall be represented in the development, of all policies and procedures concerning
13 academic staff members, including academic staff personnel matters. The academic
14 staff members of each institution shall have the right to organize themselves in a
15 manner they determine and to select their representatives to participate in
16 institutional governance. This subsection does not apply to governance and policy
17 development by academic staff members at an institution at which a labor
18 organization is certified under subch. V of ch. 111 to represent the academic staff
19 members with respect to any subject that is a mandatory subject of bargaining with
20 that labor organization, or with respect to any subject that is treated in a collective
21 bargaining agreement with that organization covering academic staff members at
22 that institution.

23 **SECTION 3.** 111.81 (1) of the statutes is renumbered 111.81 (1m).

24 **SECTION 4.** 111.81 (1g) of the statutes is created to read:

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1 111.81 **(1g)** “Academic staff” has the meaning given in s. 36.05 (1), but excludes
2 individuals who hold appointments under s. 36.13 or faculty appointments under s.
3 36.15 (2m).

4 **SECTION 5.** 111.81 (7) (f) of the statutes is created to read:

5 111.81 **(7)** (f) Faculty and academic staff of the University of Wisconsin System,
6 excluding supervisors, management employees, and individuals who are privy to
7 confidential matters affecting the employer–employee relationship.

8 **SECTION 6.** 111.81 (8m) of the statutes is created to read:

9 111.81 **(8m)** “Faculty” means individuals who hold the rank of professor,
10 associate professor, assistant professor or instructor in an academic department or
11 its functional equivalent or individuals who hold appointments under s. 36.13 (4) at
12 any institution, but excludes individuals who hold appointments under s. 36.15 (1),
13 (2), or (3) or academic staff appointments under s. 36.15 (2m).

14 **SECTION 7.** 111.81 (10) of the statutes is repealed and recreated to read:

15 111.81 **(10)** “Institution” means any university of the University of Wisconsin
16 System, the University of Wisconsin Colleges, the University of
17 Wisconsin–Extension or an organizational equivalent designated by the board of
18 regents of the University of Wisconsin System.

19 **SECTION 8.** 111.815 (4) of the statutes is created to read:

20 111.815 **(4)** With regard to collective bargaining activities involving employees
21 who are members of the faculty or academic staff, the secretary of the department
22 shall maintain close liaison with the board of regents of the University of Wisconsin
23 System.

24 **SECTION 9.** 111.825 (2) (em) to (j) and (2m) of the statutes are created to read:

25 111.825 **(2)** (em) The faculty of the University of Wisconsin–Madison.

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1 (f) The faculty of the University of Wisconsin–Milwaukee.

2 (fr) The faculty of the University of Wisconsin–Extension.

3 (g) The faculty of the universities of Wisconsin Colleges, Green Bay, La Crosse,
4 Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout, Superior and
5 Whitewater and the University of Wisconsin–Center System.

6 (h) The academic staff of the University of Wisconsin–Madison.

7 (i) The academic staff of the University of Wisconsin–Milwaukee.

8 (ir) The academic staff of the University of Wisconsin–Extension.

9 (j) The academic staff of the universities of Wisconsin–Eau Claire, Green Bay,
10 La Crosse, Oshkosh, Parkside, Platteville, River Falls, Stevens Point, Stout,
11 Superior and Whitewater and the University of Wisconsin Colleges.

12 **(2m)** (a) Notwithstanding sub. (2), 2 or more collective bargaining units
13 specified in sub. (2) (em) to (j) may be combined into a single unit. If 2 or more
14 collective bargaining units seek to combine into a single collective bargaining unit,
15 the commission shall, upon the petition of at least 30% of the employees in each unit,
16 hold an election to determine whether a majority of those employees voting in each
17 unit desires to combine into a single unit. A combined collective bargaining unit shall
18 be formed including all employees from each of those units in which a majority of the
19 employees voting in the election approves a combined unit. The combined collective
20 bargaining unit shall be formed immediately if there is no existing collective
21 bargaining agreement in force in any of the units to be combined. If there is a
22 collective bargaining agreement in force at the time of the election in any of the
23 collective bargaining units to be combined, the combined unit shall be formed upon
24 expiration of the last agreement for the units concerned.

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1 (b) If 2 or more collective bargaining units have combined under par. (a), the
2 commission shall, upon petition of at least 30% of the employees in any of the original
3 units, hold an election of the employees in the original unit to determine whether the
4 employees in that unit desire to withdraw from the combined collective bargaining
5 unit. If a majority of the employees voting desires to withdraw from the combined
6 collective bargaining unit, separate units consisting of the unit in which the election
7 was held and a unit composed of the remainder of the combined unit shall be formed.
8 The new collective bargaining units shall be formed immediately if there is no
9 collective bargaining agreement in force for the combined unit. If there is a collective
10 bargaining agreement in force for the combined collective bargaining unit, the new
11 units shall be formed upon the expiration of the agreement. An election to change
12 or discontinue representation under s. 111.83 (6) may be held in the petitioning
13 collective bargaining unit concurrently with an election under this paragraph. The
14 ballots for the election under s. 111.83 (6) shall only be counted if a majority of the
15 employees voting at the election votes to withdraw from the combined collective
16 bargaining unit. While there is a collective bargaining agreement in force for the
17 combined collective bargaining unit, a petition for an election under this paragraph
18 may only be filed during October in the calendar year prior to the expiration of the
19 agreement.

20 **SECTION 10.** 111.83 (3) of the statutes is amended to read:

21 111.83 **(3)** Whenever a question arises concerning the representation of
22 employees in a collective bargaining unit the commission shall determine the
23 representative thereof by taking a secret ballot of the employees and certifying in
24 writing the results thereof to the interested parties and to the secretary of the
25 department. There shall be included on any ballot for the election of representatives

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1 the names of all labor organizations having an interest in representing the
2 employees participating in the election as indicated in petitions filed with the
3 commission. The name of any existing representative shall be included on the ballot
4 without the necessity of filing a petition. The commission may exclude from the
5 ballot one who, at the time of the election, stands deprived of his or her rights under
6 this subchapter by reason of a prior adjudication of his or her having engaged in an
7 unfair labor practice. The ballot shall be so prepared as to permit a vote against
8 representation by anyone named on the ballot. For elections in collective bargaining
9 units composed of employees who are members of the faculty or academic staff,
10 whenever more than one representative qualifies to appear on the ballot, the ballot
11 shall be prepared to provide separate votes on 2 questions. The first question shall
12 be: “Shall the employees of the (name of collective bargaining unit) participate
13 in collective bargaining?” The 2nd question shall be: “If the employees of the
14 (name of collective bargaining unit) elect to participate in collective bargaining,
15 which labor organization do you favor to act as representative of the employees?”.
16 The 2nd question shall not include a choice for no representative. All employees in
17 the collective bargaining unit may vote on both questions. Unless a majority of those
18 employees voting in the election votes to participate in collective bargaining, no votes
19 for a particular representative may be counted. If a majority of those employees
20 voting in the election votes to participate in collective bargaining, the ballots for
21 representatives shall be counted. In the collective bargaining units specified in s.
22 111.825 (2) (g) and (j), only those ballots for representatives cast at those institutions
23 at which a majority of the employees voting in the election votes to participate in
24 collective bargaining shall be counted in determining the representative. The

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1 commission's certification of the results of any election is conclusive as to the findings
2 included therein unless reviewed under s. 111.07 (8).

3 **SECTION 11.** 111.83 (4) of the statutes is renumbered 111.83 (4) (a) and amended
4 to read:

5 111.83 (4) (a) Whenever an election has been conducted under sub. (3) in a
6 collective bargaining unit specified in s. 111.825 (1) or (2) (a) to (e) in which the name
7 of more than one proposed representative appears on the ballot and results in no
8 conclusion, the commission may, if requested by any party to the proceeding within
9 30 days from the date of the certification of the results of the election, conduct a runoff
10 election. In that runoff election, the commission shall drop from the ballot the name
11 of the representative who received the least number of votes at the original election.
12 The commission shall drop from the ballot the privilege of voting against any
13 representative if the least number of votes cast at the first election was against
14 representation by any named representative.

15 **SECTION 12.** 111.83 (4) (b) of the statutes is created to read:

16 111.83 (4) (b) Whenever an election has been conducted under sub. (3) in a
17 collective bargaining unit specified in s. 111.825 (2) (em) to (j) in which a majority of
18 the employees voting indicates a desire to participate in collective bargaining but in
19 which no named representative is favored by a majority of the employees voting, the
20 commission may, if requested by any party to the proceeding within 30 days from the
21 date of the certification of the results of the election, conduct a runoff election. In that
22 runoff election, the commission shall drop from the ballot the name of the
23 representative who received the least number of votes at the original election. In the
24 collective bargaining unit specified in s. 111.825 (2) (g) or (j), only the employees at

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1 those institutions at which a majority of those employees voting in the election votes
2 to participate in collective bargaining shall be permitted to vote in the runoff election.

3 **SECTION 13.** 111.83 (5) (a) to (c), (h) and (i) of the statutes are amended to read:

4 111.83 (5) (a) This subsection applies only to the collective bargaining ~~unit~~
5 units specified in s. 111.825 (2) (c), (g), and (j).

6 (b) Upon filing of a petition with the commission indicating a showing of
7 interest of at least 30% of the employees at an institution who are included within
8 a collective bargaining unit to be represented by a labor organization, the
9 commission shall hold an election in which the employees in that unit at that
10 institution may vote on the question of representation. The labor organization
11 named in any such petition shall be included on the ballot. Within 60 days of the time
12 that an original petition is filed, another petition may be filed with the commission
13 indicating a showing of interest of at least 10% of the employees at the same
14 institution who are included in the same collective bargaining unit to be represented
15 by another labor organization, in which case the name of that labor organization
16 shall be included on the ballot. If more than one original petition is filed within a
17 30-day period concerning employees in the collective bargaining unit specified in s.
18 111.825 (2) (c), ~~the results of (g), or (j)~~, all elections held pursuant to the petitions shall
19 be announced by the commission at the same time. ~~The ballot elections shall be held~~
20 on the same day and the ballots for all of the elections shall be prepared in accordance
21 with sub. (3), except as otherwise provided in this subsection.

22 (c) Notwithstanding s. 111.825 (2) (c), (g), and (j), the employees at any
23 institution included within the collective bargaining unit at which no petition is filed
24 and no election is held or at which the employees indicate, by a majority of those
25 voting in an election, a desire not to participate in collective bargaining are not

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1 considered to be a part of that collective bargaining unit. In the collective bargaining
2 units specified in s. 111.825 (2) (g) and (j), once the employees at any institution vote
3 to participate in collective bargaining, the commission shall not determine the votes
4 of employees on that question at that institution at a future election except in
5 conjunction with the votes of the employees at the other institutions in the collective
6 bargaining unit.

7 (h) If a petition is filed under sub. (6) for the discontinuance of existing
8 representation indicating a showing of interest by 30% of the total number of
9 employees at all institutions at which employees in the collective bargaining unit
10 have voted to become a part of the unit, the commission shall hold an election on that
11 question at all such institutions. If In the collective bargaining unit specified in s.
12 111.825 (2) (c), if a petition is filed under sub. (6) for the discontinuance of existing
13 representation indicating a showing of interest by 30% of the employees at one or
14 more, but not all, of the institutions at which employees in the collective bargaining
15 unit have voted to become a part of the unit, the commission shall hold an election
16 on that question only at the institution or institutions at which the showing is made.
17 In such an election, the only question appearing on the ballot shall be whether the
18 employees desire to participate in collective bargaining.

19 (i) If a petition is filed under sub. (6) for a change of existing representation,
20 the commission shall hold an election on the question in accordance with par. (b),
21 except that participation shall be limited to employees at those institutions included
22 in the collective bargaining unit who have previously voted to become a part of the
23 unit. Runoff elections shall be held, as provided in par. (e), when necessary. At any
24 such election, if a majority of the total number of employees included in the collective
25 bargaining unit at all institutions at which employees have voted to become a part

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1 of the unit elect not to participate in collective bargaining, regardless of the result
2 of the vote at any single institution, no representative may be certified by the
3 commission to represent the employees at any institution within that collective
4 bargaining unit, unless a new petition and election is held under par. (b). However
5 In the collective bargaining unit specified in s. 111.825 (2) (c), if a majority of the total
6 number of employees included in the collective bargaining unit at all institutions at
7 which employees have voted to become a part of the unit elect to participate in
8 collective bargaining, but a majority of the employees at one or more of the
9 institutions elect not to participate in collective bargaining, then only the employees
10 at those institutions electing not to participate shall not be considered a part of that
11 collective bargaining unit. In the collective bargaining unit specified in s. 111.825
12 (2) (g) or (j), if the employees at an institution vote to become a part of the unit, the
13 commission shall not accept a petition for an election on the question of withdrawal
14 from the unit.

15 **SECTION 14.** 111.84 (2) (c) of the statutes is amended to read:

16 111.84 (2) (c) To refuse to bargain collectively on matters set forth in s. 111.91
17 (1) with the duly authorized officer or agent of the employer which is the recognized
18 or certified exclusive collective bargaining representative of employees specified in
19 s. 111.81 (7) (a) in an appropriate collective bargaining unit or with the certified
20 exclusive collective bargaining representative of employees specified in s. 111.81 (7)
21 (b) ~~or (e)~~ to (f) in an appropriate collective bargaining unit. Such refusal to bargain
22 shall include, but not be limited to, the refusal to execute a collective bargaining
23 agreement previously orally agreed upon.

24 **SECTION 15.** 111.91 (2) (a) of the statutes is amended to read:

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1 111.91 (2) (a) The structure, mission, and goals of state agencies as set forth
2 in the statutes.

3 **SECTION 16.** 111.91 (2) (br) of the statutes is created to read:

4 111.91 (2) (br) Matters affecting the rights and responsibilities of students as
5 provided in s. 36.09 (5).

6 **SECTION 17.** 111.91 (4) of the statutes is amended to read:

7 111.91 (4) The secretary of the department, in connection with the development
8 of tentative collective bargaining agreements to be submitted under s. 111.92 (1) (a),
9 shall endeavor to obtain tentative agreements with each recognized or certified labor
10 organization representing employees or supervisors of employees specified in s.
11 111.81 (7) (a) and with each certified labor organization representing employees
12 specified in s. 111.81 (7) (b) ~~or (c)~~ to (f) which do not contain any provision for the
13 payment to any employee of a cumulative or noncumulative amount of compensation
14 in recognition of or based on the period of time an employee has been employed by
15 the state.

16 **SECTION 18.** 111.93 (2) and (3) of the statutes are amended to read:

17 111.93 (2) All civil service and other applicable statutes concerning wages,
18 fringe benefits, hours and conditions of employment apply to employees specified in
19 s. 111.81 (7) (a) who are not included in collective bargaining units for which a
20 representative is recognized or certified and to employees specified in s. 111.81 (7)
21 (b) ~~or (c)~~ to (f) who are not included in a collective bargaining unit or part of a
22 collective bargaining unit for which a representative is certified.

23 (3) Except as provided in ss. 40.05, 40.80 (3), 119.91 (1) (cm), 230.35 (2d), 230.35
24 (3) (e) 6., and 230.88 (2) (b), if a collective bargaining agreement exists between the
25 employer and a labor organization representing employees in a collective bargaining

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1 unit, the provisions of that agreement shall supersede the provisions of civil service
2 and other applicable statutes, as well as rules and policies of the board of regents of
3 the University of Wisconsin System, related to wages, fringe benefits, hours and
4 conditions of employment whether or not the matters contained in those statutes,
5 rules and policies are set forth in the collective bargaining agreement. This
6 subsection does not apply to the provisions of s. 36.09 (4) or (4m) concerning the
7 application of those subsections.

8 **SECTION 19.** 230.10 (2) of the statutes is amended to read:

9 230.10 (2) The compensation plan in effect at the time that a representative
10 is recognized or certified to represent employees in a collective bargaining unit and
11 the employee salary and benefit provisions under s. 230.12 (3) (e) in effect at the time
12 that a representative is certified to represent employees in a collective bargaining
13 unit under subch. V of ch. 111 constitute the compensation plan or employee salary
14 and benefit provisions for employees in the collective bargaining unit until a
15 collective bargaining agreement becomes effective for that unit. If a collective
16 bargaining agreement under subch. V of ch. 111 expires prior to the effective date of
17 a subsequent agreement, and a representative continues to be recognized or certified
18 to represent employees specified in s. 111.81 (7) (a) or certified to represent
19 employees specified in s. 111.81 (7) (b) ~~or (e)~~ to (f) in that collective bargaining unit,
20 the wage rates of the employees in such a unit shall be frozen until a subsequent
21 agreement becomes effective, and the compensation plan under s. 230.12 and salary
22 and benefit changes adopted under s. 230.12 (3) (e) do not apply to employees in the
23 unit.

24 **SECTION 20.** 230.34 (1) (ar) of the statutes is amended to read:

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1 230.34 (1) (ar) Paragraphs (a) and (am) apply to all employees with permanent
2 status in class in the classified service and all employees who have served with the
3 state as an assistant district attorney for a continuous period of 12 months or more,
4 except that for employees specified in s. 111.81 (7) (a) in a collective bargaining unit
5 for which a representative is recognized or certified, or for employees specified in s.
6 111.81 (7) (b) ~~or (c)~~ to (f) in a collective bargaining unit for which a representative is
7 certified, if a collective bargaining agreement is in effect covering employees in the
8 collective bargaining unit, the determination of just cause and all aspects of the
9 appeal procedure shall be governed by the provisions of the collective bargaining
10 agreement.

11

(END)