

*legislative issues*

## **Protective Occupation Status: The Hidden Mandate**

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**F**or years, labor unions representing county jailers (AFSCME and the Wisconsin Professional Police Association) have introduced legislation mandating county jailers' classification in the Wisconsin Retirement System (WRS) as protective occupation participant (POP) status. The last time the legislation was introduced, 2005 Assembly Bill 225 and 2005 Senate Bill 114, neither bill draft had a vote before the full Assembly or Senate. This session, AFSCME and the WPPA are back with a modified bill draft aimed at providing all employees of county jails with protective status, regardless of their job classification and duties.



### **The Legislation**

Under current law, participants in the WRS whose principal duties involve law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning are classified as POPs. Current law classifies police officers, fire fighters and various other individuals as POPs. Under the WRS, the retirement age of a POP is lower and the percentage multiplier used to calculate retirement annuities is higher than that of a typical WRS participant.

2009 Assembly Bill 634, introduced by Representative Joe Parisi and Senator Dave Hansen, classifies as POPs county jail employees, county employees of a juvenile detention facility, and state employees who are employed at state correctional institutions, juvenile correctional facilities, Mendota and Winnebago Mental Health Institutes, the Wisconsin Resource Center or secure mental health or facilities for sexually violent persons; but only if collective bargaining agreements covering the employees require the employees to be classified as POPs. The bill also makes POP status under the WRS and a county retirement system, if such status is available, a mandatory subject of collective bargaining under the Municipal Employment Relations Act and the State Employee Labor Relations Act.

**How This Bill Differs From Previous Versions**

Legislation introduced over the past 20 years has mandated that jailers receive POP status. Assembly Bill 634 does not mandate POP status automatically; rather, the bill makes POP status a mandatory subject of collective bargaining. In addition, the bill expands the types of employees eligible for POP status to cover all employees of county jails, regardless of whether or not their job duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning.

Previous versions of the bill only affected county jailers. This bill adds to the list employees of county juvenile detention facilities, as well as state workers employed in juvenile correctional institutions, state correctional institutions, juvenile correctional institutions, mental health institutes and the Wisconsin Resource Center.

**The Union Argument**

For years, the unions have argued that protective status determined on a county-by-county basis provides inequity for employees of county jails across the state.

According to the WPPA, “In order to strike a balance between correcting this inequity, being sensitive to the state’s current economic environment, and the historic concerns of the WCA, the most appropriate approach would be to simply make the POP classification for county jailers a subject of bargaining. This approach wouldn’t mandate anything – it would only require that the county employers and jailer bargaining units discuss it at the bargaining table.” (*Wisconsin Police Journal, January 2010, Page 4*)

“For the last 25 years, the WPPA has advocated for legislation to have county jailers specifically classified as POPs. The only opposition to this legislation has been from the Wisconsin Counties Association (WCA) ... Unfortunately, the Wisconsin Court of Appeals held in 1993 that POP status is a prohibited subject of bargaining.” (*Wisconsin Police Journal, January 2010, Page 4*)

In 1996, the WERC ruled that protective occupation status was a prohibited subject of bargaining.

With both houses of the Legislature under Democratic control, the unions believe this legislative session provides them with the greatest opportunity to

legislative  
issues

achieve success. According to the WPPA, "...we believe that this may be the legislative session in which we can finally make some progress towards restoring a much-needed sense of fairness for the county jailers in this state." (*Wisconsin Police Journal, January 2010, Page 5*)

**WCA's Position**

WCA's position on the proposed statutory changes on protective status has not changed with the new approach proposed by the unions. *Wisconsin Statutes*, Section 40.02 (48)(c) governs POP status for jailers (and other county employees) by allowing the participating employer to determine protective occupation participation according to the statutory criteria. WCA continues to support current law.

Just over half of the counties statewide have designated their county jailers as POPs. In a few of the counties in which the jailers do not have POP status, the union has negotiated away the status (which previously existed) for other contractual gains, such as increased wages or health insurance benefits.

**County Concerns**

***Increased WRS Costs***

As most, if not all, counties contribute both the employer and employee share of Wisconsin Retirement System (WRS) contributions, the increased cost to counties if this bill is enacted will be significant. Although the bill does not directly mandate protective status for county jail employees, the effect of mandatory negotiations will increase costs through either: 1) the addition of the benefit; or 2) concessions made in other areas of the contract (wages and benefits) in exchange for not receiving the benefit.

Several counties responded to a survey requesting the possible fiscal implications to their county if this legislation is enacted. The estimated cost per county regarding increased WRS contributions ranged from \$121,000 per year for 29 employees up to \$553,500.

In addition, in several counties, if jailers are made protective, similar benefits must be provided for supervisory staff who are also under general retirement status, more than doubling the cost of the benefit statewide.

### ***Duty Disability***

The Duty Disability program offers special disability insurance for state and local participants in the Wisconsin Retirement System who are in protective occupations. Benefits are payable for duty-related injuries and diseases that are likely to be permanent and that cause the employees to retire, accept reduced pay or a light-duty assignment, or that impair the employee's promotional opportunities.

According to the fiscal estimate prepared by the Wisconsin Department of Employee Trust Funds, "claims for duty disability benefits would be expected to increase over several years..." if this bill is enacted. "Duty disability claims under s. 40.65 would increase at a rate proportional to the current protective occupation employees."

Counties also report increased costs associated with their increased exposure to duty disability. One county even reported interest from current employees in filing for duty disability if they were granted protective status.

If duty disability is expanded to all employees of a county jail, one county suggested that program modifications occur to provide for annual review of an individual's health status following initial qualification for the program.

### ***State Institution Costs***

The legislation not only affords protective occupation status to county jail and secure detention center employees, but also provides the benefit to employees of state correctional institutions, juvenile correctional institutions, mental health institutes and the Wisconsin Resource Center. If employees of the state's juvenile correctional institutions and Winnebago and Mendota Mental Health Institutes are afforded protective occupation status, facility operating costs will increase. Counties will pay these increased costs through increased daily rates for placements made in the state facilities.

### **Conclusion**

At a time when counties are facing significant budget shortfalls due to increasing state mandate costs and decreasing state aid, forcing counties to take unprecedented action (employee furloughs, layoffs), counties cannot support any legislation whose effect increases county operating expenditures. The property taxpayers of this state simply cannot afford 2009 Assembly Bill 634. ❏