

HOUSE BILL REPORT

HB 1655

*As Reported By House Committee on:
Commerce & Labor*

Title: An act relating to state employees.

Brief Description: Providing for state employee collective bargaining.

Sponsor(s): Representatives Heavey, Winsley, D. Sommers, Orr, Moyer, Cole, Wood, Jones, Tate, Kremen, Miller, Riley, Phillips, Belcher, R. Johnson, Sheldon, Dellwo, Zellinsky, Cooper, H. Myers, O'Brien, Morris, Prentice, Basich, Anderson, Spanel, Day, Franklin, Peery, Leonard, Cantwell, Ogden, G. Fisher, Grant, Dorn, Hargrove, Rayburn, Ludwig, R. Fisher, Nelson, Holland, P. Johnson, Rasmussen, Van Luven, Fraser, Bowman and Pruitt.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 28, 1991, DPS.

**HOUSE COMMITTEE ON
COMMERCE & LABOR**

Majority Report: *That Substitute House Bill No. 1655 be substituted therefor, and the substitute bill do pass.*
Signed by 8 members: Representatives Heavey, Chair; Cole, Vice Chair; Franklin; Jones; R. King; O'Brien; Prentice; and Vance.

Minority Report: *Do not pass.* Signed by 2 members: Representatives Fuhrman, Ranking Minority Member; and Lisk, Assistant Ranking Minority Member.

Staff: Chris Cordes (786-7117).

Background: Under the state civil service system and the higher education personnel law, classified employees have the right to collectively bargain on grievance procedures and personnel matters over which the agency or institution may "lawfully exercise discretion." Because state civil service and the higher education personnel law provide rules for most major personnel functions such as recruitment, hiring, discipline, sick leave, vacations and salary schedules; collective bargaining for these classified employees is limited.

A typical bargaining agreement might contain provisions dealing with bargaining unit procedures and union activity rules, management and employee rights, labor-management committees, procedures for communicating impacts of changes in civil service rules, provisions supplementing civil services rules, such as vacation scheduling or education and training opportunities, and items specific to the work of the bargaining unit, such as uniforms and clothing, safety rules, and duty stations.

Summary of Substitute Bill: Collective bargaining for classified state employees is expanded to include bargaining over wages, hours, insurances, and terms and conditions of employment. Bargaining is authorized for all employees classified under a consolidated civil service system that includes employees under both the state civil service and the higher education personnel law. Contract bargaining, except for supplemental agreements, takes place with the governor's office. The agreements are effective for two years from July 1, 1993, to June 30, 1995, and each succeeding fiscal biennium. The right to strike is granted for all employees except for "essential employees."

COLLECTIVE BARGAINING

Rights of employees. Classified state employees have the right to self-organization, to join employee organizations, to bargain collectively, and to engage in other lawful concerted activities for mutual aid and protection, free from interference or restraint, or to refrain from such activities except for a fee requirement under a union security provision.

Management rights. The employer has the right to carry out the statutory mandates and goals of an agency and is not required to bargain over matters of inherent managerial policy. Management must, however, bargain on policy matters affecting wages, hours, insurances, and terms and conditions of employment as well as the impact on these matters, at the request of exclusive bargaining representatives.

Scope of bargaining. Collective bargaining is authorized over wages, hours, insurances, and other terms and conditions of employment, and the negotiation of any question arising under an agreement, but may not include matters pertaining to: (1) recruitment and rating of candidates for employment; or (2) retirement benefits. The parties may not agree to any provision that is inconsistent with the principle of comparable worth.

In case of any conflict with civil service law or administrative rules or with a health insurance issue as

adopted by the State Health Care Authority, the provisions of the collective bargaining law or agreement prevail.

Grievances. Agreements must provide for final and binding arbitration of grievances arising under the agreement. An employee who has the right to contest a disciplinary action or termination under either the civil service system or the collective bargaining agreement must elect one of these dispute resolution procedures.

Representation. Certification of exclusive bargaining representatives and representation elections are conducted by the State Employees' Relations Commission (SERC). The commission must certify an employee organization as the exclusive bargaining representative when the organization shows proof that it represents a majority of the employees and the proof is not contested by the agency, the director, or any other interested party. The commission may require an election if proof of representation is not satisfactory to the commission. Elections are also required if an employee organization shows proof of at least 30 percent representation in the bargaining unit.

Decertification elections are required if no less than 30 percent of the employees in a bargaining unit petition to the commission. However, decertification elections may not be held if less than 12 months has elapsed since the last certification or election, or a valid collective bargaining agreement exists for the unit (except during the period between 60 and 90 days prior to the expiration of the agreement).

Bargaining units. Bargaining unit determinations will be made by SERC, taking into consideration the duties, skills and working conditions of the employees and the history of organization and collective bargaining among the employees. No bargaining unit may contain: (1) supervisors and non-supervisory employees; or (2) more than one institution of higher education. Employees from an old bargaining unit may not be included as part of a new bargaining unit unless the employees vote to be included. Procedures for the transition from old bargaining units to new bargaining units are prescribed. Units may be consolidated when the units are both represented by the same employee organization.

Union security. Union shop fees are required as a condition of employment upon designation of an exclusive bargaining representative. However, bargaining representatives must establish a procedure for rebating that part of the fee that represents expenditures for purposes not germane to collective bargaining. Persons asserting a right of nonassociation may designate their fee for a program within

the employee organization that is in harmony with their conscience.

Negotiations. The first round of negotiations under the new collective bargaining provisions commences on July 1, 1992, for an agreement to take effect July 1, 1993. Thereafter, negotiations will begin on July 1 of each even-numbered year for two year contracts, effective on July 1 of the odd-numbered year. Collective bargaining agreements, except for supplemental agreements, are negotiated with the governor's office. Supplementary agreements on matters that uniquely affect employees in part of a bargaining unit may be negotiated with the agencies. The act does not prohibit cooperation and coordination of bargaining between two or more bargaining units. Compensation and fringe benefits may be negotiated for one year at a time.

Compensation and fringe benefit provisions must be submitted to the Legislature for approval. The submission to the Legislature is deemed approved if the Legislature fails to act by March 31. If the Legislature rejects the submission, either party may reopen all or part of the agreement. The agreement may be reopened for renegotiation if a significant revenue shortfall occurs.

Unfair labor practices. Unfair labor practices for employers and employee organizations are enumerated. Employers may not interfere with or coerce employees in the exercise of their collective bargaining rights; control or interfere with the exclusive bargaining representative; discriminate against an employee who has filed an unfair labor practice charge; or refuse to engage in collective bargaining. Exclusive bargaining representatives may not interfere with or coerce employees in the exercise of their collective bargaining rights; induce the employer to commit an unfair labor practice; discriminate against an employee who has filed an unfair labor practice; or refuse to engage in collective bargaining.

SERC is authorized to determine unfair labor practice complaints. Complaints must be filed within six months of the unfair labor practice.

Right to strike. The right to strike is granted, except for essential employees, if (1) the employees are represented by a certified exclusive bargaining representative; (2) the employer and the bargaining representative have not mutually agreed to submit the dispute to final and binding arbitration; (3) the parties have participated, in good faith mediation; and (4) the employees have given 10 days' notice of the strike. A strike may not restrict access to the workplace for essential employees.

Binding interest arbitration. Final and binding interest arbitration is authorized for essential employees. An essential employee is one performing functions so essential that the interruption of the function would constitute a clear and present danger to the health and safety of the state. Essential employees are not permitted to strike.

If essential employees have not reached agreement within 60 days of the commencement of negotiations, then either party may declare an impasse and submit the dispute to the commission for mediation. If the dispute has not been resolved after a reasonable period of negotiations, either party may request interest arbitration. The parties may agree to limit the arbitrator to selecting: (1) between the entire final offer of either party at the close of mediation; or (2) on each impasse item, between the final offers of the parties at the close of mediation.

Administration and enforcement. A new State Employees' Relations Commission is created to provide administration and adjudication of the collective bargaining provisions. The three member commission is appointed by the governor. Commission members are compensated on a per diem basis.

The commission must appoint a director who will perform administrative functions and to whom the commission may delegate authority with respect to various commission duties, including representation elections, unfair labor practices, mediation and arbitration.

Unless otherwise provided, the act does not prohibit the parties from seeking to enforce collective bargaining rights in court.

CIVIL SERVICE

The Higher Education Personnel Board and the State Personnel Appeals Board are abolished. All personnel functions for both state agency classified employment and higher education classified employment is consolidated under the Department of Personnel and the State Personnel Board.

The State Personnel Board is authorized to hear and determine personnel appeals.

The civil service rules of the Higher Education Personnel Board remain in effect until superseded by action of the State Personnel Board.

Substitute Bill Compared to Original Bill: The substitute bill: (1) deletes the language that provides authority to the commission to determine bargaining units in a dispute

and, instead, provides that the commission, after a hearing, will determine the appropriate bargaining unit for each application for certification as an exclusive bargaining representative; (2) allows petitions for consolidation of two or more units when both units are represented by the same employee organization; (3) makes unfair labor practices apply to all employee organizations, whether or not the organization is certified as a exclusive bargaining representative; and (4) for the purpose of requesting the employer to bargain on policy matters affecting bargainable subjects, requires that the request be made by an exclusive bargaining representative rather than any employee representative.

Fiscal Note: Available.

Effective Date of Substitute Bill: The governor must appoint the members of SERC by January 1, 1992. The new collective bargaining chapter takes effect January 1, 1992.

The elimination of the Higher Education Personnel Board and the State Personnel Appeals Board and the transfer of authority to the State Personnel Board occur on July 1, 1993.

Provisions are made for collective bargaining agreements that expire before and after July 1, 1993. All new agreements are effective beginning July 1, 1993.

Testimony For: All employees should have the right to bargain over wages and working conditions. There is no logic to the way in which public employee salaries are determined. This bill builds on the current strengths in the civil service system and deals with conflicts between the systems. Most of its provisions are in current law or are found in other state collective bargaining laws. The transition to bargaining units under the new system protects small units by allowing them to vote before being consolidated. A new agency is needed to administer the law because of the unique nature of state collective bargaining. Many of the provisions that are being criticized are commonly found in other laws, or are addressing problems that were expected to arise, such as reopening agreements when a state revenue shortfall occurs. The bill serves the public interest by setting out the procedures that apply and providing mechanisms for resolving labor disputes.

Testimony Against: Although collective bargaining for state employees is supported, this bill as drafted will not serve the public interest and will not be efficient or cost effective. A bill should be drafted through a task force process that involves all of the parties. Issues that need

to be addressed include: (1) defining essential employees; (2) determining what is bargainable and what is excluded as "management rights;" (3) determining what is the role of the Legislature in appropriating funds to implement a bargaining agreement; (4) defining the relationship between civil service and collective bargaining; (5) limiting the reopening of contracts and the use of supplemental bargaining; and (6) deleting provisions that consolidate the decentralized Higher Education Personnel Board with the State Personnel Board. There is also a need to clarify the transition to bargaining units under the new system, to preserve the bargaining relationships that have already been established. As the bill is drafted, smaller employee organizations would be at a disadvantage because of the expense and complexity of multiple elections. For faculty bargaining, the current model used by community college faculty should be considered.

Witnesses: (in favor) Larry Kenney, Washington State Labor Council; Gary Moore, Washington State Federation of State Employees; Tony Vivenzio, Service Employees International Union; Dave Gaba and John Clark-Mahoney, Washington State Nurses Association; Joe Daniels, International Federation of Professional and Technical Engineers. (in favor, but with concerns) Karl Nagel, Washington State Correction Employees. (in favor of concept, but opposed as written) Len McComb, Office of Financial Management; Eugene St. John, Mark Lyon, Dawn Tozer, Jane Dudley, Shirley Bledsoe, Dick Williams, and Diana Parkinson, Washington Public Employees Association; Donn Wells, University of Washington; and Larry Lael, State Board for Community Colleges.