

HOUSE BILL REPORT

ESHB 2054

As Passed House
March 15, 1993

Title: An act relating to state government.

Brief Description: Reforming public employment law.

Sponsors: By House Committee on Appropriations (originally sponsored by Representatives Peery, Reams, Anderson, Heavey, R. Fisher, G. Cole, Ogden and Lemmon; by request of Governor Lowry).

Brief History:

Reported by House Committee on:
Appropriations, March 6, 1993, DPS;
Passed House, March 15, 1993, 54-44.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Locke, Chair; Valle, Vice Chair; Appelwick; Basich; Dellwo; Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard; Linville; Peery; Rust; Sommers; Wang; and Wineberry.

Minority Report: Do not pass. Signed by 9 members: Representatives Silver, Ranking Minority Member; Carlson, Assistant Ranking Minority Member; Ballasiotes; Cooke; Sehlin; Sheahan; Stevens; Talcott; and Wolfe.

Staff: Dennis Karras (786-7102); Barbara McLain (786-7153); and Chris Cordes (786-7117).

Background:

CIVIL SERVICE

State Civil Service System

The State Personnel Board, composed of three members appointed by the governor, sets overall policy for the civil service system as it applies to state employees. The board has some appeals authority, but most state civil service appeals are heard by the Personnel Appeals Board.

The director of the Department of Personnel (DOP) is responsible for the central administration of the state civil service. The governor appoints the director from a list of three names submitted by the board, which selects candidates based on a competitive examination.

Certain employees are exempt from state civil service. A position may be designated exempt either by statute, or by the State Personnel Board on the request of the governor or another elected executive. The requested exemptions are limited to 187 positions for the governor and 25 for other elected officials. Examples of statutory exemptions include directors and assistant directors of state agencies; assistant attorneys general; officers of the State Patrol; and in agencies with more than 50 employees, deputy and division directors, and up to three principal policy assistants reporting to a director or deputy director.

The Career Executive Program was established in 1980 to promote excellence in managerial skills. No more than 2 percent of civil service employees may participate in the program. Currently, about 600 employees in 50 agencies take part. Other non-exempt management employees are generally treated the same as non-management employees under civil service rules.

By law, layoffs of state employees are to be made according to seniority. When a vacancy is to be filled, the selection is made from a list of the five names that scored highest on the eligibility list for the job.

DOP is funded through a charge to agencies of not more than 1 percent of the salaries of classified employees.

Higher Education Civil Service System

The Higher Education Personnel Board (HEPB) is also composed of three members appointed by the governor. Like the State Personnel Board, HEPB sets overall policy for classified employees of four-year institutions and community colleges. However, administration of the higher education civil service is decentralized and performed by each individual institution.

Statutory exemptions from higher education civil service include all academic personnel; executive heads of major administrative or academic divisions and their principal assistants and confidential secretaries; student employees; and employees engaged in research or continuing education.

HEPB is funded through a charge to institutions of not more than 0.5 percent of the salaries of classified employees.

Contracting for Services

Under a 1978 Washington Supreme Court opinion, agencies may not purchase services by contract if the services were customarily and historically performed by civil service employees. However, the Legislature authorized these contracts if the services were regularly purchased prior to 1979. These contracts may not be executed or renewed if it would have the effect of terminating civil service employees or positions existing at the time of the contract extension or renewal.

COLLECTIVE BARGAINING

Under the state civil service system and the higher education personnel law, classified employees have the right to collectively bargain with respect to 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.

If a collective bargaining agreement does not provide for a payroll dues deduction, an employee organization is entitled to a payroll deduction if 25 or more employees of a single agency, or 100 employees for a single employee organization, authorize the deduction.

Employees of cities, counties, political subdivisions of the state, classified employees at technical colleges, district and superior courts, and officers of the Washington State Patrol bargain under the Public Employees' Collective Bargaining Act (PECBA). PECBA is administered by the Public Employment Relations Commission.

Summary of Bill:

CIVIL SERVICE

Administration

The Department of Personnel, the Higher Education Personnel Board, and the State Personnel Board are abolished, effective July 1, 1994. Their powers, duties and functions are transferred to the newly created Department of Human Resources, except for those powers and duties pertaining to collective bargaining, which are transferred to the Public Employment Relations Commission.

Employees of the Department of Personnel and the Higher Education Personnel Board are transferred to the Department of Human Resources, except Department of Personnel employees engaged in performing collective bargaining functions, who are transferred to the Public Employment Relations Commission.

The director of the Department of Human Resources will be appointed by the governor, with the consent of the Senate, and serve at the pleasure of the governor. The director's salary will be set by the governor.

Rules adopted by the director will provide for the retention of local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the department of functions such as: appointment, dismissal, examinations, probationary periods, vacations, hours of work, lay-offs and subsequent reemployment, allocation and reallocation of positions, and training programs.

The director may also authorize local administration and management by agencies other than institutions of higher education and related boards.

The department will be funded through a charge to agencies of not more than 1 percent of classified state employees' salaries, and a charge to institutions of higher education of not more than 0.5 percent of classified higher education employees' salaries.

Appropriations made to the Department of Personnel for carrying out collective bargaining will be transferred and credited to the Public Employment Relations Commission.

Exempt Positions

In addition to the exemptions from civil service specifically provided in statute, the governor or other statewide elected officials may submit requests to the director of the Department of Human Resources for additional exemptions. If the director determines that the position

for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy, or one involving directing and controlling program operations of an agency or a major administrative division of an agency, the director may approve the request. An employee who feels that his or her position should not be exempt may appeal to the Personnel Appeals Board.

The total number of exemptions permitted under this provision may not exceed 1.5 percent of the number of employees in the civil service, not including employees of higher education. This expansion of exemptions takes effect July 1, 1993.

Additional statutory exemptions are provided in institutions of higher education and related boards for principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations.

Management Service

The Washington Management Service is created, effective July 1, 1993. Its stated purpose is to strive for excellence in the management of the state's resources and establish a management identity in state government through separate personnel rules unique to management employees. Rules established for the Washington Management Service will be separate from rules established for other employees in the areas of recruitment, appointment, classification, examination, training, compensation, lay-off, and other personnel practices.

In establishing these rules, the director will follow certain goals: (1) develop a simplified classification system; (2) create a compensation system that provides agency flexibility in setting and changing salaries; (3) allow incentives for outstanding performance; (4) establish a performance appraisal system that emphasizes individual accountability for efficient management of resources and valuing workplace diversity; (5) empower employees by enabling them to share in workplace decision making and promote a workplace where services can be improved; (6)

permit flexible recruitment and hiring procedures; and (7) provide that members of the classified management service may only be dismissed for cause.

The director of the Department of Human Resources will determine which classified management positions will be included in the Washington Management Service. The terms "managers" or "management employees" are defined as employees who: (1) formulate policy or direct the work of an agency or subdivision; (2) are responsible to administer and carry out policies and programs of an agency or subdivision; (3) manage, administer, and control a local branch office of an agency or subdivision; (4) have a major role in personnel administration, legislative relations, public information, or the preparation and administration of budgets; or (5) functionally or organizationally are above the first level of supervision.

Additional Civil Service Provisions

Certification of names for vacancies will consist of the top 10 names, representing applicants rated highest on eligibility lists, effective July 1, 1993. In addition, five additional names of members of protected groups on existing registers will be certified, taking into consideration the extent to which the protected group members are represented in the agency's workforce.

From July 1, 1993 to July 1, 1994, rules relating to layoffs and subsequent reemployment will be based on seniority and maintenance and implementation of approved affirmative action plans to the extent that consideration of an approved affirmative action plan is not inconsistent with applicable precedent of the United States Supreme Court. After July 1, 1994, the layoff and subsequent reemployment rules are not required to be based on seniority and the implementation and maintenance of affirmative action plans, but collective bargaining agreements must require that the factors to be considered in layoffs and subsequent reemployment include seniority and the implementation and maintenance of affirmative action plans.

At least 60 days before providing an employee a notice of layoff, the agency or institution of higher education or related board must provide each potentially affected employee with information showing the job security ranking of the employee within the employment unit.

The director may provide career development services that: assist in the establishment of mentor programs for state employees; provide a clearinghouse for information on successful career development programs; offer instruction

and resource materials on test taking, resume writing, interviewing, and other career skills; and provide career counseling.

Training courses presently required for supervisory or management positions in state service will focus on the knowledge, skills, and abilities for successful management performance, and include instruction on managing and valuing diversity in the workplace.

Contracting for Services

Effective July 1, 1993, agencies may contract to purchase services customarily and historically performed by state civil service employees if purchases would be fiscally prudent and result in reduced expenditures. A decision to contract out is subject to collective bargaining requirements and may be made only after an agency has conducted a feasibility study and the decision has been approved by the director of the Office of Financial Management. The factors to be considered in the study will be developed in consultation with representatives of the affected employees. Any prospective contractor must pay salaries to its employees that are similar to those generally paid for such work in the locality in which the work is to be performed. The contractor must also provide health benefits that are similar to, but in any case no less than, the benefits provided for basic health care services under the Washington Basic Health Plan.

An agency or institution of higher education must select service contractors consistent with the agency's or institution's participation goals under the Minority and Women-Owned Enterprises Program.

Any existing contract or provision of existing collective bargaining agreement in conflict with this contracting policy may not be renewed or extended beyond the next expiration date following the effective date of this bill.

Nothing in this proposal may be construed to modify, reduce, or affect the purchase of services that were authorized to be purchased by contract before July 1, 1993.

COLLECTIVE BARGAINING

Classified state employees

Administration. Beginning July 1, 1994, the authority to administer collective bargaining for classified state employees is transferred from the State Personnel Board and

the Department of Personnel to the Public Employment Relations Commission (PERC).

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.

"Employee" does not include confidential employees, management employees, internal auditors, and employees of PERC, the Personnel Appeals Board, the Office of Financial Management, the newly created Department of Human Resources, and the Office of the Attorney General.

Scope of bargaining. Collective bargaining is authorized over wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under an agreement, but does not include inherent management policy, retirement benefits, health care or state-provided insurance except that costs may be bargained, or merit system principles related to appointments, recruitment, certification, classification, the Career Executive Program, the Washington Management Services Program, and affirmative action costs. Agreements must contain provisions that require layoffs and subsequent reemployment to be implemented based on seniority and maintenance and implementation of approved affirmative action plans, that identify management rights, and that provide for joint labor-management committees.

Grievances. Collective bargaining agreements must provide procedures that culminate in final and binding arbitration for grievances arising under the agreement. An employee who has the right to contest a disciplinary action or termination must process the action under the procedures of the collective bargaining agreement.

Bargaining units. Bargaining units are structured on a statewide basis, with one unit for each of 18 specified categories, such as clerical employees, maintenance and services employees, health and human care professional employees, employees of direct care institutions, corrections custody employees, professional employees, engineering professionals, forestry and natural resources professional and technical employees, law enforcement officers, and supervisors.

Representation. Procedures for the transition from the bargaining units existing before the bill's effective date

to new bargaining units are prescribed. A previously certified exclusive bargaining representative may establish status as a petitioner or intervenor for determining representation by using the number of its regular dues paying members.

If only one employee organization has a majority of employees in the unit who are dues paying members, the organization is entitled to new certification. If two or more employee organizations have more than a majority of dues paying members, then an election must be held to determine representation.

A previously certified exclusive bargaining representative may continue to represent employees after the effective date until the employees are included in a new bargaining unit. However, no old agreements may be renewed or extended beyond the existing termination date of the agreement.

After transition to the new bargaining units, all questions concerning representation are resolved by PERC. If 30 percent of the membership petitions for representation, an election is held. Questions concerning representation may not be raised within one year after certification of an exclusive bargaining representative or within one year after employees have failed to designate an exclusive bargaining representative.

Union security. A union security provision may be negotiated as a condition of employment. The exclusive bargaining representative 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 charitable organization mutually agreed to with the exclusive bargaining representative.

On filing a voluntary written authorization of the employee, the exclusive bargaining representative has the exclusive right to have dues deducted from the employee's salary.

Negotiations. The first round of negotiations under the new collective bargaining provisions commences on or before October 1, 1994, for collective bargaining agreements that will become effective no earlier than July 1, 1995, in units for which an exclusive bargaining representative has been selected. After this, negotiations commence and contracts become effective as the parties agree.

The governor may appoint a designee to fulfill the state employer's collective bargaining responsibilities. The designee may consult with agencies as appropriate and may

agree with the exclusive bargaining representative to form negotiation subcommittees to address agency-specific issues.

After ratification of the tentative agreement, the items requiring funding are submitted to the Joint Committee on Collective Bargaining. If the committee approves the items, the governor will submit legislation necessary to implement the funding items. If the Legislature fails to act on or rejects the legislation, the agreement is returned to the parties for renegotiation.

If a salary increase provision is modified by the Appropriations Act, the parties are directed to renegotiate.

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; encourage or discourage membership in any employee organization; discriminate against an employee who has filed an unfair labor practice charge; or refuse to engage in collective bargaining.

Exclusive bargaining representatives may not restrain or coerce employees in the exercise of their collective bargaining rights or the employer in the selection of its representatives; cause or attempt to cause the employer to discriminate against an employee; discriminate against an employee who has filed an unfair labor practice; refuse to engage in collective bargaining; cause or attempt to cause the employer to pay for services that are not performed; or breach its duty of fair representation.

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

Work stoppages. Work stoppages are prohibited for essential employees, such as correctional officers in the Division of Prisons, Department of Corrections. If negotiations do not produce an agreement within 60 days of the start of negotiations, either party may request mediation. Until a new agreement is negotiated, the terms and conditions of the old agreement remain in effect.

Higher Education Classified Employees.

Administration. Beginning July 1, 1994, the authority to administer collective bargaining for classified higher education employees is transferred from Higher Education

Personnel Board (HEPB) to the Public Employment Relations Commission.

Bargaining units. The bargaining units certified under HEPB will be recognized by PERC.

Scope of bargaining. Bargaining is limited to matters over which the institutions of higher education have discretion unless the parties bargain to "opt out" of civil service.

If the parties choose to opt out of civil service, they are allowed to bargain all issues except retirement matters and health and other state insurance, except that the cost related to insurance benefits may be bargained. Salary increases are still appropriated by the Legislature. If a salary increase provision is modified by the Appropriations Act, the parties are directed to renegotiate. If salary increases are included in the agreement that are in addition to those provided by the Legislature, then the salary base for purposes of the Appropriations Act does not include those additional increases.

A bargaining unit's exclusive bargaining representative is authorized to meet with the governor or designee and the institution of higher education's representative before a legislative session concerning the total dollar amount for salary increases and health care contributions that will be contained in the governor's proposed budget.

Effective July 1, 1993, the salary increase limitation that applies to technical colleges is amended to clarify that salary increases for classified staff at technical colleges are governed by collective bargaining. Beginning July 1, 1994, bargaining over salary increases for classified staff at technical colleges is subject to the same standards that apply to classified employees at other institutions of higher education.

Fiscal Note: Requested March 8, 1993.

Effective Date: The bill takes effect on July 1, 1994, except for the following sections that take effect July 1, 1993: authorizing exemptions from state civil service of up to 1.5 percent of classified employees; permitting certification of the top 10 applicants to fill a vacancy; requiring layoffs and subsequent reemployment to consider both seniority and implementation of approved affirmative action plans; creating the Washington Management Service; and permitting contracting out for services traditionally performed by civil service employees. A section removing the authorization for certain employee payroll deductions for labor organization dues takes effect July 1, 1995.

Testimony For: The state needs to deliver services in the most effective and efficient way possible. Key to that is reform of the civil service system, including collective bargaining where management and labor come together to create solutions to problems and issues faced by the state. The civil service system gets in the way of the state's ability to manage effectively. There are over 930 management classes, each with specific job descriptions. These need to be consolidated to allow the flexibility simply to get the job done. Removing the prohibition on contracting of services also allows flexibility. It makes good management sense to have a range of options available. In times of imminent layoffs, there is a need to guard against layoffs by seniority only, which might prevent progress toward a diversified workforce. The higher education option represents complete, but voluntary reform. It continues the decentralized model that has worked well for higher education, and eliminates any leftover civil service where that is deemed to be in the best interest of the institution and the employees. Employees need full-scale collective bargaining over all aspects of employee interest.

Testimony Against: Maintaining an independent personnel board is still the best way to ensure that high standards of impartiality are maintained. There are already sufficient management exemptions from civil service. Recruitment of qualified candidates who want to spend a career in public service could be negatively affected if the only way to advancement is through an exempt position with an uncertain future. Broadly defined management service corps have been proposed in the past and rejected by state agencies who favored specific, limited job descriptions. Expanding the hiring list to 15 names will simply slow the filling of vacancies. There is support for a diversified workforce, but agencies need to make better use of the affirmative action tools available in hiring, rather than layoffs. A substantial part of the state budget already goes to the private sector. Competition and efficiency are not necessarily the end result of contracting out of services. This has been clearly shown by federal government studies. The collective bargaining proposal represents the destruction of established bargaining relationships. Employees need to participate at the table; large bargaining units preclude that and reduce agency flexibility.

Witnesses: Governor Mike Lowry (for); Gary Moore, Washington Federation of State Employees (against); Leonard Nord (against); Bob Edie, University of Washington (for, higher education collective bargaining); Nancy Bratton, Seattle Chamber of Commerce (for, contracting out); Glen Goldstein, Hospital and Health Care Employees, and Service Employees International Union (against); Susan Johnson,

Service Employees International Union (for, higher education collective bargaining); Gene St. John, Mark Lyon, and Wayne Gloger, Washington Public Employees Association (against); and Joe Daniels, Professional and Technical Engineers and United Food and Commercial Workers (expressed concerns).