

HOUSE BILL REPORT

HB 2810

As Reported By House Committee On:
Appropriations

Title: An act relating to civil service and collective bargaining reform for state government.

Brief Description: Enacting the civil service reform and collective bargaining act.

Sponsors: Representatives Heavey, King, Brumsickle, J. Kohl, Conway, Wolfe, Romero, Eide, Chandler, Jones, Kessler, Brown, Zellinsky, Mielke, Chappell, Patterson, Flemming, Morris, Veloria, Reams, G. Cole, Karahalios, Dunshee, Wood, Ogden, Mastin, Johanson, Carlson, Anderson, R. Johnson, Wineberry, Campbell, Sheldon, Rayburn, Kremen, Caver, Dellwo, Van Luven, Leonard, Holm, Roland, Pruitt, Lemmon, Thibaudeau, Basich, Shin, Finkbeiner and Springer.

Brief History:

Reported by House Committee on:
Appropriations, March 8, 1994, DPS.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Sommers, Chair; Valle, Vice Chair; Carlson, Assistant Ranking Minority Member; Basich; Dellwo; Dorn; Dunshee; G. Fisher; Jacobsen; Lemmon; Leonard; Linville; H. Myers; Peery; Rust; Wang and Wolfe.

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

Staff: Chris Cordes (786-7117).

Background:

CIVIL SERVICE

State Civil Service System

The Washington Personnel Resources Board (WPRB), 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, subject to confirmation by the Senate.

Certain employees are exempt from state civil service. A position may be designated exempt either by statute, or by the Washington Personnel Resources Board on the request of the Governor or another elected executive.

The WPRB adopts civil service rules, including rules regarding the classification system. 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 seven names that scored highest on the eligibility list for the job.

The director of the DOP is authorized to adopt rules for managers. The rules are separate from the board's rules governing other civil service employees and govern all aspects of the employment of managers.

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, classified employees, including employees of institutions of higher education, have the right to collectively bargain with respect to grievance procedures and personnel matters over which the agency or institution may lawfully exercise discretion. Bargaining is limited because the state civil service rules govern most major personnel functions such as recruitment, hiring, discipline, sick leave, vacations and salary schedules.

Agencies or institutions of higher education bargain for an agreement with each bargaining unit of employees in the agency or institution. Bargaining units are determined by the WPRB. Supervisors and nonsupervisors may be in the same unit under certain criteria. The WPRB administers representation elections.

Civil service law does not permit or grant the right to strike. Mediation of disputes is provided by the DOP, and the WPRB conducts impasse arbitration.

To have union security provisions, a majority of employees in the bargaining unit must vote for union security.

Unfair labor practices are specified and complaints are adjudicated by the WPRB.

Summary of Substitute Bill:

CIVIL SERVICE

Contracting for services

Beginning July 1, 1994, state agencies and institutions of higher education may contract for services provided by employees in classified service. If contracting proposals will affect existing classified employees or positions, the mitigation of the effects is subject to bargaining under the civil service collective bargaining law.

Until the agency or institution of higher education has entered into a collective bargaining agreement under the reformed collective bargaining system established in the bill, the agency or institution must also: (1) demonstrate that classified employees could not provide the services or have conducted a feasibility study demonstrating that the purchase would be fiscally prudent and why savings cannot be achieved through alternative management practices; (2) consider alternative proposals offered by the exclusive bargaining representative when contracting is likely to affect the status of classified employees or positions; and (3) until July 1, 1997, not have involuntary layoffs result from the contracting for services.

The new contracting provisions do not apply to the purchase of services that was authorized before the effective date of the new provisions.

Job classification system

Effective July 1, 1994, the Washington Resources Personnel Board (WRPB) is directed to begin a study of the job

classification system under state civil service. A new classification system must be implemented beginning March 15, 1996.

Civil service rules

Beginning July 1, 1996, civil services rules will be adopted by the director of DOP, instead of the WRPB. The requirement is deleted for seven names to be considered for vacancies and, after July 1, 1997, for seniority to be the basis for layoffs.

The director will also determine exemptions from civil service, rather than the board.

Civil service appeals

On July 1, 1997, the Personnel Appeals Board (PAB) is repealed. The WRPB assumes the appellate functions of the PAB for those employees not covered by a collective bargaining agreement. The board may use hearings officers to conduct appeals.

COLLECTIVE BARGAINING

Timelines for negotiations

On July 1, 1995, the State Employment Relations Commission (SERC) is created and will begin the process of preparing for and administering negotiations under the reformed collective bargaining system.

Negotiations under the new law are to commence no later than October 1, 1996. The new agreements may take effect no earlier than July 1, 1997. Collective bargaining agreements in effect under the civil service law that expire after July 1, 1995, may remain in effect, unless superseded by a new agreement under the new law, until July 1, 1997, or until superseded, whichever is later.

Covered employees

The new collective bargaining system covers all civil service employees, except (1) employees of institutions of higher education, (2) those employees covered by another bargaining law, (3) managers, (4) confidential employees, and (5) employees of the Office of Financial Management, the DOP, the Public Employment Relations Commission, the SERC, and the Attorney General's Office.

Negotiation process

For negotiating collective bargaining agreements, the employer is represented by the Governor. For agencies headed by separately elected officials, the elected official will select management representatives to participate in the negotiations.

Exclusive bargaining representatives must negotiate one master collective bargaining agreement that covers all the bargaining units represented by that exclusive bargaining representative. Exclusive bargaining representatives representing fewer than 500 employees must bargain in a coalition of exclusive bargaining representatives that together represent 500 or more employees.

The Governor will submit a request for funds necessary to implement the compensation and fringe benefit provisions in the collective bargaining agreements, and for legislation necessary to implement the agreements, within 10 days of ratification of the agreement or within 10 days after the Legislature next convenes. If the Legislature rejects or fails to act on the submission, the parties may reopen negotiations or the exclusive bargaining representative may exercise the right to strike under limited conditions.

The terms of a collective bargaining agreement negotiated under the new law remain in effect after expiration of the agreement until a new agreement is negotiated, up to one year. After the one-year period, the employer may unilaterally implement according to law.

Scope of bargaining

Bargaining is required over wages, hours, and other terms and conditions of employment, with the following exceptions: (1) the retirement system and retirement benefits may not be bargained, and (2) employers may bargain, but are not required to bargain, inherent managerial policy, health care benefits (except the dollar amount expended per employee), and certain civil service rules regarding examinations, appointments to service, job classifications, and affirmative action (other civil service rules may be superseded by the collective bargaining agreement).

Bargaining for the number of names to be certified for vacancies, promotional preferences, and the health-care dollar amounts must be conducted in one state-wide coalition.

Collective bargaining agreements may not contain provisions that conflict with statute. The agreements will prevail over conflicting executive orders, administrative rules, or agency policies.

Collective bargaining agreements must contain grievance procedures and all disciplinary actions or employee terminations must be processed under the procedures of the agreement.

Impasse resolution/right to strike

The right to strike is granted. The strike must be authorized by an affirmative vote in which all the bargaining units represented by the exclusive bargaining representative participate. The right to strike may not be exercised by a single bargaining unit of the exclusive bargaining representative, unless the exclusive bargaining representative represents only one unit.

A strike may occur: (1) if the collective bargaining agreement has expired or the parties are at impasse, there is a majority strike vote, and the parties have participated in mediation; or (2) the Legislature rejects or fails to act on the funds necessary to implement the agreement and there is a majority strike vote. The exclusive bargaining representative must give 10 days' notice of the strike.

The employer may seek an injunction if the strike has begun to or will likely threaten the health, safety, or welfare of the public. If the strike is enjoined, the dispute will be submitted for final and binding arbitration. The arbitrator's award with respect to funding must, however, be submitted to the Legislature for approval.

Bargaining units/representation

Bargaining units existing under the civil service collective bargaining law are considered appropriate units unless the unit contains both supervisors and nonsupervisors. The SERC will determine appropriate units and unit modifications.

The SERC will determine all questions of representation and administer elections.

Union security

A union security provision requiring the payment of agency shop fees by bargaining unit employees may be bargained. Employees who assert the right of nonassociation based on religious beliefs may pay the fee to the employee organization for a program within the organization that is in harmony with the employee's conscience. Employee organizations entitled to union security under the civil service law will continue to be entitled to union security.

Unfair labor practices

Unfair labor practices are enumerated. SERC is directed to prevent unfair labor practices and to adjudicate unfair labor practice complaints.

Substitute Bill Compared to Original Bill: The substitute bill makes the following changes to the original bill: (1) the provisions governing contracting for services are changed to permit contracting but to require the parties to negotiate the mitigation of the effects under the civil service collective bargaining law. Until collective bargaining agreements under the new collective bargaining law have been entered into, agencies and institutions of higher education must demonstrate that classified employees could not provide the services or must have conducted a feasibility study demonstrating why savings cannot be achieved through alternative management practices, must consider alternative proposals offered by the exclusive bargaining representative when contracting is likely to affect the status of classified employees or positions, and, until July 1, 1997, may not have involuntary layoffs result from the contracting for services; (2) the date for implementing the new classification system is changed from March 15, 1997, to March 15, 1996, as a date to begin implementing the system; (3) civil service rules regarding layoffs must be based on seniority until July 1, 1997; (4) civil service collective bargaining agreements for classified employees, except institutions of higher education, cannot take effect after July 1, 1997 (bargaining is under the new provisions); (5) institutions of higher education are deleted from the coverage of the new collective bargaining law; (6) agencies headed by separately elected officials have the right to select management representatives to participate in collective bargaining; (7) the civil service rules that may be superseded by a collective bargaining agreement under the new collective bargaining system do not include rules with regard to recruitment, the selection of applicants for initial recruitment to state service, or the financial basis for layoffs; (8) a new provision is added that provides for management rights under the new collective bargaining law; (9) negotiations over retirement is prohibited; (10) negotiations on the number of names to be certified for vacancies and the dollar amount expended on each employee for health care benefits must be bargained in one state-wide coalition; (11) a provision is added providing that salary increases in collective bargaining agreements are subject to modification by the Legislature and if a salary increase is changed by subsequent modification of the appropriations act, the parties must bargain a replacement provision; (12) if a bargaining dispute is settled by arbitration, the Legislature's review of the arbitrator's award must be approved or rejected as a whole; and (13) effective dates

are changed to provide that the authority to contract for services will begin on July 1, 1994, the director of the Department of Personnel's authority to adopt the civil service rules will begin on July 1, 1995, the new collective bargaining law will take effect July 1 1995, with bargaining to begin no later than October 1, 1996, and new contracts to take effect no earlier than July 1, 1997, and the Personnel Appeals Board is repealed on July 1, 1997.

Fiscal Note: Available.

Effective Date of Substitute Bill: Sections 101, 102 (intent sections), 204 through 207 and 402 (contracting for services and job classification) take effect July 1, 1994. Sections 202, 231, 301 through 319, and 404 through 408 (providing a new collective bargaining system) take effect July 1, 1995. Sections 201, 203, 208 through 230, 232 and 401 (providing rule-making authority to the director of the Department of Personnel), take effect July 1, 1996. Sections 233 through 238, 320 through 325, and 403 (repeal of the Personnel Appeals Board) take effect July 1, 1997.

Testimony For: This bill represents a compromise solution for contracting out state services and providing for both civil service and collective bargaining reform. The interim task force worked to address many of the issues and the parties have continued to work toward a system that responds to the need for improvements in the system and involves the employees in making changes. The substitute bill makes important revisions, such as delayed implementation for some parts of the bill, changes in contracting out rules beginning July 1, 1994, and clarification of management rights. The bill will result in the Governor being accountable for civil service. The bill moves the public sector toward the private sector model, but with a "hybrid" bargaining system that takes into account this state's history of bargaining.

Testimony Against: Some changes made in the bill were not discussed with all the interested parties and are issues that were not resolved by the interim task force. The bill does not eliminate civil service, but adds full scope collective bargaining to the current system. The institutions of higher education and their employees should not be covered. This bill would affect the positions at institutions of higher education that are not funded by state money. The contracting out provisions are not workable. It is not clear what the impact is of the requirement to bargain mitigation of the effects of contracting out.

Witnesses: (In favor) Representative Mike Heavey, prime sponsor; Jennifer Belcher, Commissioner of Public Lands (with concerns); Bill Daley, Office of the Governor; Dennis Karras, Director of Personnel; Gary Moore, Washington Federation of State Employees; and Eugene St. John and Wayne Gloger, Washington Public Employees Association. (Opposed) Bob Eide, University of Washington; Larry Lael, State Board for Community and Technical Colleges; Carolyn Logue, National Federation of Independent Business; Krista Eichler, Seattle Chamber of Commerce; and Larry Ganders, Washington State University.