

SENATE BILL REPORT

ESHB 2054

AS PASSED SENATE, APRIL 21, 1993

**Brief Description:** Reforming public employment law.

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

**HOUSE COMMITTEE ON APPROPRIATIONS**

**SENATE COMMITTEE ON LABOR & COMMERCE**

**Majority Report:** Do pass as amended.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Fraser, McAuliffe, Newhouse, Pelz, Sutherland, and Vognild.

**Staff:** Blaine Gibson (786-7457); Jonathan Seib (786-7427)

**Hearing Dates:** March 23, 1993; April 2, 1993

**BACKGROUND:**

**CIVIL SERVICE**

Administration. The State Personnel Board, composed of three members appointed by the Governor, sets overall policy for the civil service system. The director of Personnel (DOP) is responsible for administration of the civil service. The Governor appoints the director from a list of three names submitted by the board.

The Higher Education Personnel Board (HEPB), also composed of three members appointed by the Governor, 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, and executive heads of major administrative or academic divisions and their assistants.

Exempt Positions. Certain employees are exempt from 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; and officers of the State Patrol.

Layoffs, Hiring, and Promotions. By statute, layoffs of state employees must be made strictly according to seniority. Statute requires that when a vacancy is to be filled, either by initial hiring or promotion, the selection is made from a list of five names that scored highest on the eligibility list for a job. Agencies may add the names of three applicants from "protected groups" to promote diversity in the workforce and "affirmative action."

Contracting Out. Washington has the strictest prohibitions in the nation against contracting out for services. Under a 1978 Washington Supreme Court opinion, agencies may not purchase services by contract if the services were customarily 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 terminate civil service employees or positions.

### **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:**

**CIVIL SERVICE**

Administration. The Department of Personnel (DOP), the Higher Education Personnel Board (HEPB), and the State Personnel Board are abolished effective July 1, 1994. In their place, the Department of Human Resources (DHR) is created. Their powers, duties, and functions are transferred to the DHR, except for those relating to collective bargaining, which are transferred to the Public Employment Relations Commission (PERC).

Employees of the Department of Personnel and the Higher Education Personnel Board are transferred to the Department of Human Resources. Employees who work in collective bargaining are transferred to the Public Employment Relations Commission.

The director of the Department of Human Resources is appointed by the Governor with consent of the Senate, and serves at the pleasure of the Governor.

Rules adopted by the director of DHR will provide for the retention of local administration and management by higher education institutions, subject to periodic review by the DHR.

The DHR is funded by a charge to agencies of not more than 1 percent of classified state employees' salaries, and a charge to higher education institutions of not more than .5 percent of their classified employees' salaries. Appropriations made to the Department of Personnel for carrying out collective bargaining are transferred to the Public Employment Relations Commission.

The Washington Management Service is created effective July 1, 1993. It establishes a management identity in state government through separate personnel rules unique to management employees. Rules will be separate in the areas of recruitment, appointment, classification, examination, compensation, training, layoff, and other areas. In establishing these rules, the director must allow incentives for outstanding performance, emphasize efficient management of resources, value "affirmative action" and workplace diversity, permit flexible recruitment and hiring procedures.

The director of DHR determines which classified management positions are 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) administer and carry out policies and programs, (3) manage a local branch office of an agency or subdivision, (4) have a major role in personnel administration, legislative relations, public information, or administration of budgets, or (5) are above the first level of supervision.

The director of DHR is authorized to provide various career development services. Training services presently required

for management positions will focus on knowledge, skills, management abilities, and include instruction on managing and valuing diversity in the workplace. "Diversity" means the inclusion of varied racial, ethnic, and other protected groups.

Exempt Positions. In addition to the statutory exemptions from civil service, the Governor and other statewide elected officials may request additional exemptions from the director of the Department of Human Resources. If the director determines that the requested exempt position involves substantial responsibility for forming basic agency policy or operations, the director may approve the request. An employee who feels his or her position should not be exempt may appeal.

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. The expansion of exemptions takes effect July 1, 1993.

Additional statutory exemptions are provided in institutions of higher education for principal assistants to executive heads of major administrative or academic divisions, managerial employees who direct program operations, form institutional policy, or carry out legislative relations or public information functions.

Layoffs, Hiring, and Promotions. From July 1, 1993 to July 1, 1994, statute requires that layoffs be made according to seniority and the maintenance and implementation of approved "affirmative action" plans. Layoffs may not be based on the criteria of job performance. After July 1, 1994, layoffs become a subject of collective bargaining, but are not free from statutory mandate. Statute mandates that 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. Job performance is not mentioned as a criterion.

Effective July 1, 1993, certification of names for vacancies for initial hires and promotions will consist of the top 10 applicants rated highest on eligibility lists. Five additional names of members of "protected groups" must also be certified, taking into account the extent to which the protected group members are represented in the agency's workforce. "Protected groups" means racial and other groups that receive favored treatment under "affirmative action" plans.

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

Contracting Out. Effective July 1, 1993, agencies may contract to purchase services customarily 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.

Any prospective contractor must pay salaries to its employees that are similar to those generally paid for such work in the locality where the work is to be performed. The contractor must also provide health benefits that are similar to, but no less than, the benefits provided under the Washington Basic Health Plan.

A higher education institution or agency must select service contractors consistent with its own participation goals under the Minority and Women-Owned Enterprises Program.

An existing contract, or provision of an 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 the bill. Nothing in this legislation affects the purchase of services authorized 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, 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, but does not include management policy, retirement benefits, health care or state-provided insurance except that costs may be bargained, or merit system principles related to recruitment, classification, the career executive program, the Washington Management Services Program, and affirmative action plans. 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 labor-management committees.

Grievances. Collective bargaining agreements must provide for binding grievance arbitration. 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 statewide, with one unit for each of 18 categories specified in the act.

Representation. Procedures for the transition from existing bargaining units and bargaining representative to new bargaining units and new representatives are prescribed.

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.

On written authorization of the employee, the bargaining representative may have dues deducted from the employee's salary.

Negotiations. Negotiations under the new collective bargaining provisions commence by October 1, 1994, for agreements 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's collective bargaining responsibilities, who 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 submits 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.

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 the 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.

### **EFFECT OF SENATE AMENDMENT:**

The Higher Education Personnel Board (HEPB) and the State Personnel Board are combined into the Washington Personnel Resources Board.

The personnel director is appointed by and serves at the pleasure of the Governor. The personnel director is given rulemaking authority over managerial positions.

The Governor's pool of exempt positions is increased from 187 to 1 percent of the classified workforce (excluding higher education), approximately 450.

The top seven names on the register are certified eligible for employment.

An interim task force is created to study collective bargaining, contracting out, and all civil service reform issues. The task force will have representatives from both Houses, the Governor's office, and employee organizations.

**Appropriation:** none

**Revenue:** none

**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:**

This bill is necessary to improve efficiency in state government. Creation of the Department of Human Resources will give the Governor greater ability to manage government.

**TESTIMONY AGAINST:**

The issues of collective bargaining and civil service reform are complicated and should be subject to interim study. This bill is not necessary to improve government efficiency.

**TESTIFIED:** Governor Lowry (pro); Gary Moore, Washington Federation of State Employees (con); Rick Bender, Washington State Labor Council (con); Eugene St. John, WPEA (con); Joe Daniels, Professional and Technical Engineers (con); David Westberg, Stationary Engineers (con); Leonard Nord (con); Joan Meridian (con); Randy Parr (con)