

SENATE BILL REPORT

EHB 2011

As of March 18, 2011

Title: An act relating to enhancing the safety of employees working for the department of corrections through collective bargaining and binding interest arbitration.

Brief Description: Enhancing the safety of employees working for the department of corrections through collective bargaining and binding interest arbitration.

Sponsors: Representatives Sells, Pearson and Reykdal.

Brief History: Passed House: 3/07/11, 59-36.

Committee Activity: Labor, Commerce & Consumer Protection: 3/21/11.

SENATE COMMITTEE ON LABOR, COMMERCE & CONSUMER PROTECTION

Staff: Ingrid Mungia (786-7423)

Background: The Public Employees' Collective Bargaining Act (PECBA) provides for collective bargaining by counties, cities, and other political subdivisions and their employees. The scope of mandatory bargaining is personnel matters, including wages, hours, and working conditions, which may be peculiar to a bargaining unit of the public employer. The courts have described the scope as limited to matters of direct concern to employees. Managerial decisions that only remotely affect personnel matters, and decisions that are predominantly managerial prerogatives, are nonmandatory subjects. Employee workload and safety, including staffing levels with a direct relationship to workload and safety, are mandatory subjects.

For uniformed personnel, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving uniformed personnel, the PECBA requires binding interest arbitration.

Uniformed personnel include correctional employees who are employed in jails by counties with a population of 70,000 or more, and who are trained for and charged with responsibility for custody of inmates in the jail. The employees listed as uniformed personnel also include, among others, firefighters in all cities and counties, law enforcement officers in larger cities and counties, general authority peace officers and firefighters employed by certain port districts, security forces at a nuclear power plant, and publicly employed advanced life

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support technicians. Other public employees covered by interest arbitration include state patrol officers.

The Personnel System Reform Act (PSRA) provides for collective bargaining with classified employees of state agencies, including the Department of Corrections, and institutions of higher education. The scope of mandatory bargaining includes wages, hours, and other terms and conditions of employment. Bargaining over matters pertaining to management rights is prohibited. Management rights include, but are not limited to, the employer's budget, the size of the agency workforce (including determining the financial basis for layoffs), and the right to direct and supervise employees. The PSRA does not provide for binding interest arbitration.

Summary of Bill: The collective bargaining provisions of the PECBA, instead of the PSRA, are applied to the state of Washington with respect to employees working for the Department of Corrections (Department). The mediation and binding interest arbitration provisions of the PECBA are also extended to Department employees, but only for terms and conditions of employment relevant to employee safety.

Certain bargaining units are grandfathered and considered appropriate units under the PECBA. These bargaining units include:

- nonsupervisory classified employees working in correctional institutions, the correctional industries program, the sex offender treatment program, and the regional business service center;
- supervisory classified employees working in correctional institutions, the correctional industries program, the sex offender treatment program, and the regional business service center;
- psychiatric social workers;
- psychology associates;
- chaplains;
- psychiatrists;
- psychologist 3 and 4 nonsupervisory;
- psychologist 3 and 4 supervisory;
- nonsupervisory community corrections;
- supervisors community corrections;
- nonsupervisors – warrants/records unit;
- nonsupervisory marine department;
- nonsupervisory officers at McNeil Island; and
- ferry operators (deckhands) at McNeil Island.

Bargaining representatives recognized under the PSRA are also grandfathered and recognized as representing bargaining units under the PECBA.

The scope of bargaining includes terms and conditions of employment relevant to employee safety, such as staffing levels with a direct relationship to employee workload, and safety. The scope excludes matters pertaining to management rights, such as the employer's budget, the size of the agency's workforce, and the right to direct and supervise employees. The scope is otherwise the same as described in the PSRA, and includes wages, hours, and other terms and conditions of employment.

Other collective bargaining provisions are comparable to the PSRA; for example, the state is represented by the Governor. Bargaining representatives must negotiate one master agreement with the Governor if they represent multiple units. They also must be part of the coalition that negotiates certain subjects, including the dollar amount expended on behalf of each employee for health care benefits.

The Governor must submit requests to the Legislature for any funds and legislation necessary to implement a collective bargaining agreement. A request must not be submitted unless it has been certified by the Director of the Office of Financial Management as being feasible financially or it reflects the binding decision of an arbitration panel. The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, a collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement. The duration of an agreement must not exceed one biennium.

Department employees are subject to mediation and binding interest arbitration if an impasse occurs in negotiations. The mediator and the arbitration panel may consider only terms and conditions of employment relevant to employee safety, and not other matters that are mandatory subjects of bargaining.

In making its determination, the interest arbitration panel must consider:

- the Department's financial ability to pay for the collective bargaining agreement's provisions;
- the employer's authority;
- the parties' stipulations;
- comparisons of terms and conditions of employment relevant to employee safety of like personnel of like employers of similar size on the west coast of the United States;
- changes in any listed factors during the proceedings; and
- other factors normally or traditionally considered in the determination of terms and conditions of employment relevant to employee safety.

The interest arbitration panel's decision is not binding on the Legislature, and if the Legislature does not approve the funding, it is not binding on the state.

The negotiations under the PECBA must begin no later than July 1, 2012, and an agreement must not be effective prior to July 1, 2013. An agreement under the PSRA entered into before July 1, 2012, remains in full force, but may not be renewed or extended beyond July 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.