

SENATE BILL REPORT

SHB 1268

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, February 25, 2002
Ways & Means, March 4, 2002

Title: An act relating to personnel.

Brief Description: Enacting the personnel system reform act of 2002.

Sponsors: House Committee on State Government (originally sponsored by Representatives Romero, Campbell, Conway, Kenney, Kessler, Hurst, Keiser, Simpson, Ogden, Lovick, McIntire, Ruderman, O'Brien, Schual-Berke, Poulsen, Kagi, Cody, Edmonds, Wood and Haigh; by request of Governor Locke).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 2/21/02, 2/25/02 [DP-WM, DNP].

Ways & Means: 2/27/02, 3/4/02 [DP, DNP].

Brief Summary of Bill

- The state's civil service system is reformed with new classification rules to be adopted by March 15, 2004.
- State agencies and institutions of higher education may contract out for services provided by classified employees.
- The scope of collective bargaining for state employees is expanded to include wages, hours, and terms and conditions of employment but bargaining over management rights is prohibited and the right to strike is not granted.

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Prentice, Chair; Keiser, Vice Chair; Fairley, Franklin, Gardner, Rasmussen, Regala and Winsley.

Minority Report: Do not pass.

Signed by Senators Benton and Deccio.

Staff: Jack Brummel (786-7428)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Brown, Chair; Regala, Vice Chair; Fairley, Vice Chair; Fraser, Kline, Kohl-Welles, Poulsen, Rasmussen, B. Sheldon, Snyder, Spanel, Thibaudeau and Winsley.

Minority Report: Do not pass.

Signed by Senators Hewitt, Honeyford, Rossi and Zarelli.

Staff: Steve Jones (786-7440)

Background: CIVIL SERVICE

The Washington Personnel Resources Board (WPRB) 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.

The WPRB adopts civil service rules, including rules regarding the classification system. The director of DOP is authorized to adopt rules for managers which are separate from the board's rules governing other civil service employees and which govern all aspects of the employment of managers.

CONTRACTING OUT

Under current law, agencies and institutions of higher education may not purchase services from private firms and individuals by contract if the services were customarily and historically performed by civil service employees, unless the services were regularly purchased prior to 1979. A contract 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 non-supervisors may be in the same unit under certain criteria. The WPRB administers representation elections.

Civil service law neither permits nor grants the right to strike. Mediation of disputes is provided by DOP and the WPRB conducts impasse arbitration.

In order to have union security provisions, a majority of employees in the bargaining unit must vote for union security. Unfair labor practices complaints are adjudicated by the WPRB.

Summary of Bill: CIVIL SERVICE

Civil Service Rules. Beginning July 1, 2004, civil service rules are adopted by the director of DOP, instead of the WPRB. The director, rather than the board, also determines exemptions from civil service, salary, and fringe benefits for exempt positions. The current law requiring the submission of seven names for each vacancy is eliminated. The requirement that seniority be the basis for layoffs and hiring after layoffs is eliminated. Rules adopted by the director which may be superseded by collective bargaining agreements include those covering discipline, probation, training, transfers, promotion, leave, hours of work, layoffs, the number of names to be certified for vacancies, salary schedules and increases, and veterans' preferences. Rules adopted by the director may be administered locally by institutions of higher education.

Job Classification System. The Washington Personnel Resources Board must complete a review of all rules relating to classification, allocation, and reallocation within the classified service by July 1, 2003. By March 15, 2004, the board must adopt new classification rules which allow for joint requests for a classification study for collective bargaining purposes. The director of DOP must begin to implement a new classification system by January 1, 2005. Employees may appeal the director's classification decisions to the board and board decisions on such appeals are final.

Civil Service Appeals. On July 1, 2006, the Personnel Appeals Board is terminated (PAB). The WPRB assumes the appellate functions of the PAB for those employees not covered by a collective bargaining agreement. The board may use hearing officers to conduct appeals.

CONTRACTING OUT

Beginning July 1, 2005, state agencies and higher education institutions may contract out for services, including those historically provided by classified employees, if: (a) the bid request contains measurable performance standards and the agency uses these standards in monitoring and cancelling contracts; (b) displaced employees are allowed to offer alternative proposals and compete for the contract, and the contract requires new contractors to consider hiring displaced employees; and (c) the agency demonstrates that the contract results in savings or efficiency improvements. These requirements do not apply to those types of contracts that were authorized under prior law, such as contracts between state agencies and other public entities.

Competitive Contracting. Classified employees may compete for an agency's service contracts. Employees affected by an agency's decision to contract out must be given a 90-day advance notice of the bid request so they can present alternatives to contracting for services and the agency must consider the alternatives before requesting bids. Employees deciding to submit bid requests must form business units to do so and the Director of Personnel must provide them training in the bidding process. The Director of General Administration must adopt rules to ensure a fair and objective bidding process. Employee bids must include the

fully allocated costs, including salaries, space, equipment and materials, of any service provided.

The Joint Legislative Audit and Review Committee must conduct a performance audit of the contracting out provisions of this bill and report to the Legislature by January 1, 2007, on the results.

COLLECTIVE BARGAINING

The collective bargaining powers, duties, and functions of the Department of Personnel are transferred to the Public Employment Relations Commission (PERC). PERC is to determine representation issues, adopt rules relating to the election of exclusive bargaining representatives, and process and adjudicate disputes that arise from such elections.

Covered Employees. The collective bargaining system is to cover all civil service employees, except: (1) confidential employees; (2) members of the Washington Management Service; (3) internal agency auditors; and (4) employees of the Office of Financial Management, DOP, and PERC.

Negotiation Process. For negotiating collective bargaining agreements, state agencies are represented by the Governor or a designee. Institutions of higher education may choose to be represented by their respective governing boards, in consultation with the Office of Financial Management, or may choose to be represented by the Governor or a designee.

Exclusive bargaining representatives must negotiate one master collective bargaining agreement that covers all the bargaining units represented by that exclusive bargaining representative. Except for higher education employees, exclusive bargaining representatives who represent fewer than 500 employees must bargain in a coalition of such exclusive bargaining representatives.

The Governor must submit, and the Legislature must approve or reject as a whole, a request for funds to implement a collective bargaining agreement. If the Legislature rejects or fails to act on the submission, the parties may reopen negotiations or the exclusive bargaining representative may seek to implement the impasse resolution procedures provided for under the act.

A Joint Legislative Committee on Employment Relations is created and the Governor is to consult with and advise it.

Renegotiation of agreements approved by the Legislature are mandatory if a significant revenue shortfall occurs. 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. Employers may bargain, but are not required to bargain, over the retirement system and retirement benefits, 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 over health care dollar amounts must be conducted with one statewide coalition. Except for institutions of higher education, this is also true for the number of names to be certified for vacancies and promotional preferences.

Bargaining over management rights is prohibited. Collective bargaining agreements may not contain provisions that conflict with statute. The agreements 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.

Rights of Employees and Management. Management has the right to direct and supervise employees; take necessary emergency action; determine the employer's functions and programs, use of technology, and organizational structure; and determine the employer's budget, size of workforce, and financial basis for layoffs.

Employees have the right to organize and bargain collectively free of interference, restraint, and coercion. They also have the right to be free from such activities, but may be required to pay a fee to an exclusive bargaining representative.

Nothing contained in the provisions permits or grants to any employee the right to strike or refuse to perform his or her official duties.

Bargaining Units/Representation. Existing bargaining units are considered appropriate units unless they contain both supervisors and non-supervisors or include more than one institution of higher education. PERC determines appropriate units and unit modifications. Two or more units with the same exclusive bargaining representatives may be consolidated.

Union Security. Collective bargaining agreements may contain a union security provision requiring the payment of agency shop fees by bargaining unit employees. Employees who assert the right of non-association 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.

Unfair Labor Practices. Unfair labor practices are enumerated. PERC is directed to prevent unfair labor practices and adjudicate unfair labor practice complaints. PERC may seek enforcement of its orders through superior court.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Testimony For: It is time to give state employees the same bargaining rights as local government and private employees. This will allow negotiations over pay, benefits, and other

economic issues and allow the state to address workforce problems and improve morale. The Legislature will be appraised all the way through the process via an employment relations committee. Twenty-six other states have full-scope collective bargaining.

Testimony Against: There is not the accountability in the public sector that there is in the private sector. Contracting out should be a management right, not subject to bargaining. This will have a negative impact on the budget. The bill gives more power to the Governor, at the expense of the Legislature. Under this bill, the power to contract for services is illusory; the process is burdensome and time-consuming.

Testified: PRO: Representative Romero, prime sponsor; Fred Hellberg, Governor's Office; Gene Matt, DOP; Gary Moore, L&I; Greg Devereaux, Amy Murphy, WFSE; Ellie Menzies, SEIU; Eugene St. John, WPEA; CON: Clif Finch, AWB; Gary Smith, Mark Johnson, NFIB, IBA.