

Personnel Reform Act of 2002

Overview

In 2002, the Legislature passed Substitute House Bill 1268, known as the Personnel Reform Act. The act is often referred to as the three-legged stool representing the three basic components of this legislation: (1) competitive contracting; (2) collective bargaining; and (3) civil service reform. SHB 1268 represents the biggest change in Washington's personnel system and procedures in more than 40 years.

Competitive Contracting

While the competitive contracting leg of the three-legged stool was an essential part of the original agreement, its potential has since been greatly diminished as a government efficiency tool. The act was intended to allow the state to contract for services traditionally performed by civil service employees. The reason it was needed was that previous state law, codifying a superior court decision, had prohibited the state from contracting for work "traditionally performed by public employees," a provision that was unique to Washington. Unfortunately, the Personnel Reform Act required competitive contracts to be negotiated as part of the collective bargaining process. This provision greatly limited the potential of competitive contracting and the unions have effectively limited such contracts through the bargaining process. As a result, opportunities for cost savings, efficiency and better service have been stymied. A 2007 report by the Joint Legislative Audit and Review Committee found:

Few agencies have competitively contracted for services since receiving authorization to do so. Agency managers reported two main reasons for not competitively contracting. First, managers perceive the process itself to be complicated and confusing, providing a disincentive to pursue competitive contracting. Second, competitive contracting is a subject of collective bargaining, which creates additional challenges by requiring labor negotiations. Managers must bargain, at a minimum, the impacts of competitive contracting. Additionally, some agency collective bargaining agreements include provisions which prohibit agencies from competitively contracting. For the full report go to:

<http://www.leg.wa.gov/JLARC/Audit+and+Study+Reports/2007/07-1.htm>

On May 23, 2008, another setback for competitive contracting occurred when Thurston County Superior Court Judge Chris Wickham invalidated three rules the Department of General Administration (GA) adopted to implement the competitive contracting provisions of the 2002 Civil Service Reform. The Washington Federation of State Employees (WFSE) sued to have the rules thrown out. The rules were established to ensure that bids were submitted and evaluated in a fair and objective manner and that there existed a competitive market for the service. Judge Wickham struck down the rules stating that GA exceeded its rule-making authority. As a result, the potential government savings, and improved quality and service, from competitive contracting will continue to be mired in confusion and union obstruction.

Collective Bargaining

Employees of the state of Washington have long had the right to join unions and to negotiate certain working conditions. The Personnel Reform Act expanded employee rights to collectively bargain over wages and other terms and conditions of employment. Specific rights are covered in RCW 41.80, which is the state's collective bargaining law. Many of the provisions in RCW 41.80 took effect on July 1, 2004.

Subjects of Collective Bargaining Agreements

Mandatory subjects for bargaining include wages, hours, other conditions of employment and the dollar amount expended for health insurance benefits. The scope of competitive contracting is also a topic subject to collective bargaining. The State will also negotiate provisions addressing the number of names to be certified for vacancies and promotional preferences.

Topics restricted from collective bargaining include certain management prerogatives, such as the state's right to determine its functions, programs, organizational structure, use of technology, budget, size of workforce, financial basis for layoffs, retirement plans and benefits and the right to direct and supervise employees, as well as to take any actions necessary to carry out its mission during emergencies. The state is not required to negotiate over civil service rules, the employee classification system, and any health insurance or other employee insurance benefits.

Who is Covered under the Act

Collective bargaining applies to all employees whose positions are in bargaining units. Employees excluded from collective bargaining include Washington Management Service, exempt and confidential employees, internal auditors, employees of the Department of Personnel, employees of the Office of Financial Management, employees of the Public Employment Relations Commission and certain employees of the state Attorney General's Office.

The Process

The Act established and charged the Labor Relations Office (LRO) of the Office of Financial Management to manage the collective bargaining process with union-represented state employees on behalf of the Governor. Each union and the LRO assemble negotiating teams that prepare written proposals for upcoming negotiations. When the parties meet for the first time, they negotiate ground rules. These rules usually address such matters as frequency of meetings, whether involvement in the negotiations is work time, when and how proposals will be submitted, and how information about negotiations is to be communicated to others.

The Governor, via a representative and necessary staff, must negotiate collective bargaining agreements, called "master" agreements, with each union that represents more than 500 state employees. In total, there were 22 master agreements for 2007-2009: Seven master agreements for general government employees at 38 state agencies, two for higher education at 23 Washington State colleges and The Evergreen State College, two for the uniformed officers of the Washington State Patrol, nine for the Washington State Ferries and two for Washington state home and child care workers. Each master agreement applies to any agency with employees in bargaining units represented by a particular union. Some agencies have more than one master agreement. One of the master agreements is with unions that represent less than 500 bargaining unit employees. This group of unions bargains collectively with the state as a coalition. Higher education institutions negotiate their own master agreements, or they may ask the Governor's Office to negotiate on their behalf.

When an agreement is approved or “ratified” by the bargaining unit employees it covers, the director of OFM must certify that the economic portions of the agreement are financially feasible. This first round of master agreements must be submitted to OFM by October 1st of each year. Once certified by OFM, the Governor then submits in his or her biennial budget document a request for the Legislature to approve the funding needed to implement the economic provisions of the master agreements. If the Legislature does not approve the funding request or fails to act on the request altogether, the agreements may be renegotiated, in whole or in part. If subsequently approved, the terms of the negotiated master agreements will take effect on July 1st on the year following negotiations. A new contract is negotiated each biennium.

Can State Employees Strike?

No. The law states that employees are not permitted to strike or refuse to perform their official duties

Civil Service Reform

The Personnel Reform Act included a directive to create a new and improved human resources system, supported by a new computer system which has still not been completed and is way over budget. This included new rules and processes for hiring, job classification and compensation, performance management, training, corrective and disciplinary action, reduction-in-force and more. For example, the number of job categories were substantially reduced, from 2,400 to several hundred. Personnel rules for higher education institutions and general government agencies were converted to one set of rules.

The system applies in total for those employees who are not covered by collective bargaining agreements and in part for those who are covered by collective bargaining. Non-classified (exempt) employees in the higher education system and exempt employees in general government were not affected.