



Public Employee Collective Bargaining Bill Analysis – Bill Draft 11.10.2021

Overview

The bill sets forth a process that public employees can use to form an employee organization and be represented by an exclusive representative during collective bargaining. This organizing power is discretionary in nature and it is the public employees' decision whether or not to organize. The bill also provides certain requirements and protections for employees, employers, and employee organizations. The bill applies to counties, municipalities, special districts, school/library districts, fire authorities, public colleges/universities, and the office of a state public defender.

Under the bill, collective bargaining agreements may include compensation and terms/conditions of employment but are required to contain a just cause termination provision. The bill also prescribes interest arbitration for impasse/dispute resolution (for disputes occurring during the negotiation of the collective bargaining agreement) and arbitration for other disagreements (such as grievances related to unfair labor practices), if the parties have not agreed on an alternative dispute resolution process.

Analysis

Rights granted to public employees, including supervisors & managers (29-32-103)

- To organize, form, join, assist, or refrain from participating with an employee organization;
- Negotiate collectively or address grievances through an exclusive representative;
- Engage in other activities related to collective bargaining;
- Communicate with employee organizations over public employee e-mail, if not disruptive;
- Participate in the employee organization's political process while off duty;
- Be represented by an exclusive representative, without discrimination or retaliation;
- Have an exclusive representative present (subject to some limitations) at:
 - Discussions of a grievance, personnel policy/practice, or employment condition *and*
 - Examination of an employee with reasonable belief it may result in disciplinary action; and
- Have access to the public employer's facilities and bulletin boards.

Recognition & decertification of the exclusive representative (29-32-104)

Employers shall recognize an exclusive representative of a bargaining unit upon:

1. Request filed by the employee organization; *AND*
2. a. Receipt of a majority of bargaining unit employees authorizing representation; *OR*
b. Secret ballot election (procedures of which are prescribed in the bill).

An exclusive representative may be decertified at the request of an employee or employee organization. To do so, there must be an allegation that the exclusive representative:

1. Does not represent a majority of the bargaining unit *and*
2. Employees either do not want representation or want to certify a different exclusive representative.

Duties of Public Employer to the Employee Organization & Exclusive Representative (29-32-105)

- Each month, provide to the exclusive representative, the following for each employee:
 1. Name, department, title, work phone number & e-mail, salary, date of hire
 2. Home address, personal phone number & e-mail (unless otherwise directed by employee),
- Provide access to employee orientation, including materials and information,
- Allow for communication with employees regarding employee organization issues,
- Employer shall make payroll deductions for membership dues & other payments.

Obligation to negotiate in good faith (29-32-106)

Employer & exclusive representative have the duty to bargain collectively in good faith; including

- Make best efforts to reach a collective bargaining agreement;
- Negotiate and make tentative agreements; and
- NOT unilaterally alter the terms and conditions of employment or the collective bargaining agreement.

Employers must also provide, at the request of the exclusive representative, information relevant to the terms and conditions of employment and the interpretation of the terms of any collective bargaining agreement.

Collective Bargaining Agreement (29-32-107)

Collective Bargaining Agreement: agreement negotiated between an exclusive representative and employer concerning compensation and terms and conditions of employment.

- Term > twelve months or < sixty months (five years)
- Existing agreements remain until a successor agreement is agreed to and ratified
- Must include provisions that:
 - Prohibits disciplinary action against an employee unless there is just cause *AND*
 - Specifies employers have the burden of proof to establish just cause.

Impasse resolution & interest arbitration (29-32-108)

Impasse / Dispute Resolution: process occurring to resolve a dispute or when failure to reach a consensus occurs, during the negotiation of the collective bargaining agreement.

Interest Arbitration: resolution process of mediation followed by arbitration.

Example: during the collective bargaining agreement negotiations, a dispute arises between a 7:00am start time and a 9:00am start time. Interest arbitration ensues, the arbitrator **must** select either 7:00am or 9:00am; the arbitrator does not have the authority to compromise and select 8:00am.

- The arbitrators' decision is limited to accepting a final offer made by either party.
- Exclusive representative decides (before hearings), if the decision is final and binding or advisory.
 - Unless firefighters and police officers are included, then automatically final and binding.
- In deciding, the arbitrator must consider equally: interests and welfare of the public and the financial ability of the employer to bear costs; whether the demands are within the lawful authority of the employer; the stipulations of the parties; comparison to members of the same or a similar occupational group; cost of living; and failure to bargain in good faith.
- Parties may continue to bargain in good faith. If an agreement is reached, interest arbitration concludes.

- Objections to the interest arbitrators' decision, may be filed in district court and may be vacated if: obtained through corrupt/fraudulent means or decision was arbitrary and capricious.
- Costs should be negotiated between the parties; if parties fail, the arbitrator will decide.

Arbitration (29-32-109)

Arbitration: process to solve disputes outside of the recognition process or collective bargaining agreement negotiation.

During this type of arbitration, the arbitrator has all procedural and substantive decision-making authority (including authority to issue remedies using public funds). The process is like a hearing, with evidence and testimony. Unlike interest arbitration, the decision is final and binding. Costs must be mutually agreed upon.

Example: an employee is suspended by their manager for communicating with their employee organization during work hours. The employee and employee organization may file a grievance, which is immediately referred to an arbitrator. This arbitrator conducts a hearing to determine if this qualifies as an unfair labor practice (outlined in section 111) and may issue remedies it deems necessary.

Unfair labor practices (29-32-111), subject to arbitration (section 109), within six months of violation

- Employers and exclusive representatives shall negotiate in good faith.
- Employers (including its representatives, agents etc.) shall **not**:
 - Discriminate against/threaten employees for their views on representation, workplace issues/rights, filing a petition/complaint, or giving testimony;
 - Deter/discourage employees or applicants from participating;
 - Use public funds or resources to support or oppose employee organizations;
 - Dominate/interfere in the administration of an employee organization;
 - Refuse to negotiate collectively;
 - Deny the rights accompanying certification as the exclusive representative or bargain with anyone other than the exclusive representative;
 - Refuse to commit a collective bargaining agreement in writing and sign the agreement; or
 - Disclose personally identifiable information about employees within the bargaining unit.
- Employee organization or exclusive representative shall **not**:
 - Interfere with an employee regarding rights granted or selecting an exclusive representative;
 - Refuse to bargain collectively; or
 - Willfully or deliberately fail to fairly represent an employee who is in the bargaining unit.

Miscellaneous

- Existing bargaining relationships (29-32-110)
 - Remain in place until expiration.
 - Existing representatives and bargaining relationships as of January 1, 2022 remain in place unless modified by agreement or decertification (as prescribed in bill).
- Right to sue (29-32-112)
 - Either party may enforce any provision by filing a suit in district court.