

STORAGE NAME: h0347.go
DATE: January 3, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL OPERATIONS
ANALYSIS**

BILL #: HB 347
RELATING TO: Collective Bargaining
SPONSOR(S): Representative Hill
TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL OPERATIONS
 - (2) COMMUNITY AFFAIRS
 - (3) GENERAL APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides for significant changes in the procedures used when impasse occurs between a public employer and an employee collective bargaining agent. It would establish "final offer arbitration", where the arbitrator must choose between the last best offers of the parties and cannot compromise. When parties submit to binding arbitration, the arbitrator's decision is final and would obligate the legislative authority to fund the collective bargaining agreement.

Upon receipt of a formal declaration of impasse, both parties must immediately submit to the Public Employees Relations Commission (PERC), in writing, their last, best offers made during collective bargaining with regard to each unresolved issue. Within 30 days after receipt of both parties' last and best offers, PERC appoints a Special Master. The use of a Special Master cannot be waived by the parties, as is currently the law. The Special Master must conduct a hearing and select the last and best offer of the employer or the certified bargaining agent on each unresolved issue ("final offer arbitration"). If the agreement is not ratified by all parties, issues resolved by the special master and issues agreed to during collective bargaining are imposed (effective the date of the Special Master's decision) for the remainder of the fiscal year which is the subject of the negotiations. During such time, the parties must continue to bargain until an agreement is reached and ratified.

However, if the Special Master selects the bargaining agent's last, best offer and the chief executive officer certifies that funding that selection would create a financial emergency such that ad valorem taxes or fees would have to be raised, then the legislative body must conduct a public hearing and resolve the issue pursuant to that hearing. If that decision is not ratified, it is imposed for the remainder of the first fiscal year which was the subject of negotiations.

The fiscal impact of this bill on state and local governments is indeterminate since the additional cost to the state and local governments of each dispute resolved by a Special Master is determined by the last, best offers of each party. The mandates provision is applicable because the bill requires cities and counties to spend money that they would not spend if public employee bargaining disputes were resolved by the legislative body rather than by a Special Master, when such Special Master selects the employee bargaining agent's last, best offer.

This bill raises constitutional concerns regarding the separation of powers between the legislative authority and the executive. A Special Master who, through binding arbitration,

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imposes a collective bargaining provision which obligates a legislative authority to appropriate funds infringes upon the power of the legislative authority to appropriate money.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|-----------------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Public Employee Collective Bargaining Law.

The right of employees to bargain collectively is guaranteed by Art. I, sec. 6 of the Florida Constitution, except that public employees do not have the right to strike. Chapter 447, F.S., provides authority for public employers and their employees to collectively bargain on wages, hours, and terms and conditions of employment. It contains procedures through which employees may organize and present collectively to their employer issues which each may find impractical to present individually. Chapter 447, F.S., sets forth a series of standards to which employers and employees must adhere and contains several occupational groupings that are precluded from collectively organizing.

A separate entity, the Public Employees Relations Commission (PERC) in the Department of Labor and Employment Security, acts as the administrative entity which oversees collective bargaining for all units of government in the state. PERC validates organizing attempts by employee groups, mediates disputes, and may administer elections in the certification and decertification of bargaining agents. Under its organizational auspices a Special Master may be appointed to help resolve disputes between an employer and employee.

Generally, the chief executive officer of a governmental entity, as the public employer, negotiates with bargaining units in establishing collective bargaining agreements. However, the ultimate decision regarding funding rests with the appropriate legislative body of that governmental entity. Section 447.203 (10), F.S., defines "legislative body", in pertinent part, to mean "the State Legislature, the board of county commissioners, the district school board, the governing body of a municipality, or the governing body of an instrumentality or unit of government having authority to appropriate funds and establish policy governing the terms and conditions of employment and which, as the case may be, is the appropriate legislative body for the bargaining unit."

On the state level the Governor and the Board of Regents are the public employers assigned to negotiate with employees of state agencies and the State University System, respectively. Sec. 447.203, F.S. The legislature is the policymaking legislative body and funds the collective bargaining agreement. This separation of powers is provided in Art.

VII, sec. 1(c), Fla. Const., "No money shall be drawn from the treasury except in pursuance of appropriation made by law."

With respect to a unit of local government without a separately elected chief executive officer, however, the public employer and the legislative body may be one and the same, with no clear separation of powers. The board of county commissioners, the school board, or other governing entity generally negotiates with bargaining agents as the chief executive officer. The same governing body is then responsible for funding the collective bargaining agreement in the capacity as the local legislative body.

Chapter 447, F.S., also provides that when an impasse is reached at the collective bargaining table, either the public employer or the bargaining agent, or both acting jointly, may appoint or secure the services of a mediator. If no mediator is appointed, or upon the request of either party, PERC will appoint and submit all unresolved issues to a Special Master acceptable to both parties. If the parties are unable to agree upon a Special Master, PERC will appoint a Special Master.

The Special Master then conducts hearings relative to the unresolved issues and renders recommendations. If either party does not accept, in whole or in part, the recommendations of the Special Master, the chief executive officer of the public employer then submits all of the unresolved issues to the legislative body of the public employer for final determination. The law further provides, however, that if both parties agree in writing to waive the Special Master step, the parties may proceed directly to resolution of the impasse by the legislative body.

Following the resolution of the disputed items by the legislative body, the parties must write an agreement which includes the agreed upon items as well as the issues resolved by the legislative body. Such agreement must then be submitted to the public employer and public employees in the bargaining unit for ratification. Section 447.403(4)(e), F.S., then provides that the agreement must be signed by the chief executive officer and the bargaining agent and must be submitted for ratification to the public employer and the public employees who are members of the bargaining unit. If the agreement is not ratified by all parties, the legislative body's action previously taken takes effect as of the date of such action for the remainder of the first fiscal year which was the subject of negotiations. The legislative body's action does not take effect with respect to those disputed impasse issues which establish the language of contractual provisions which could have no effect in the absence of a ratified agreement, including, but not limited to, preambles, recognition clauses, and duration clauses.

Separation of Powers and Binding Arbitration.

Regarding the separation of powers, the legislature has the exclusive authority to provide funds for the expenses of the state. Art. VII, sec. 1(c), Fla. Const., "No money shall be drawn from the treasury except in pursuance of appropriation made by law." Collective bargaining agreements are subject to the legislative appropriation process. In addition, section 447.309(2)(b), F.S., provides:

If the state is a party to a collective bargaining agreement in which less than the requested amount is appropriated by the Legislature, the collective bargaining agreement shall be administered on the basis of the amounts appropriated by the Legislature. The failure of the Legislature to appropriate funds sufficient to fund the collective bargaining agreement cannot constitute or be evidence of an unfair labor practice. All collective bargaining agreements entered into by the state are subject to

the appropriations powers of the Legislature, and the provisions of this section shall not conflict with the exclusive authority of the Legislature to appropriate funds.

In *State v. Florida Police Benevolent Ass'n*, 613 So.2d 415 (Fla. 1992), the supreme court considered the question of whether the executive branch can bind the legislature to spend public money by entering into a collective bargaining agreement:

[T]he public employer, deemed by statute to be the governor, cannot so bind the guardian of its funds, the legislature. *** Any other rule would permit the executive branch of government, by entering into collective bargaining agreements calling for additional appropriations, to invade the legislative branch's exclusive right to appropriate funds. Indeed, to accept such a rule would require this Court to abrogate years of strict adherence to the separation of powers doctrine."

Black's Law Dictionary defines "arbitration" as: "A process of dispute resolution in which a neutral third party (arbitrator) renders a decision after a hearing at which both parties have an opportunity to be heard." In final offer arbitration, the arbitrator must choose between the last best offers of the parties and cannot compromise. When parties submit to binding arbitration, either voluntarily or compulsory, the arbitrator's decision is final. In public employee collective bargaining, the final decision in binding arbitration would obligate the legislative authority to fund the collective bargaining agreement.

There is no provision for binding arbitration for public employees in the Florida Statutes.

C. EFFECT OF PROPOSED CHANGES:

The bill significantly changes the procedures used when impasse occurs between a public employer and an employee bargaining agent. Upon receipt of a formal declaration of impasse, both parties must immediately submit to PERC, in writing, their last, best offers made during collective bargaining with regard to each unresolved issue. PERC then transmits such offers to the respective opposing parties. Within 30 days after receipt of both parties' last and best offers, PERC appoints a Special Master acceptable to both parties. If there is no agreement on the appointment of a Special Master, PERC simply appoints a qualified Special Master. PERC submits the last and best offers to the Special Master. The use of a Special Master cannot be waived by the parties, as is currently law.

The Special Master must "set the hearings within 30 days after receiving the last and best offers." (It is unclear from the context whether the hearing must be *conducted* within the 30 days, or merely *set* for hearing within that timeframe.) The hearing is to determine the facts relating to each unresolved issue. The Special Master then must render a decision on each unresolved issue by selecting the last and best offer of the employer or the certified bargaining agent on each issue. Within 15 days after the close of the final hearing, the Special Master must transmit his or her "recommended decision" to PERC and to the representatives of both parties by registered mail, return receipt requested. The 15 day requirement is existing law. The bill eliminates the opportunity that currently exists for either party to reject the Special Master's "recommendation". Accordingly, the Special Master's decision is binding.

Within 15 days after transmittal of the Special Master's decision to the parties, issues resolved by the Special Master, together with issues agreed to during collective bargaining, must be stated in writing and signed by the chief executive officer and the representative for the certified bargaining agent and submitted to the public employer and to the public employees who are members of the bargaining unit for ratification. If the agreement is not

ratified by all parties, issues resolved by the Special Master and issues agreed to during collective bargaining shall be imposed, effective the date of the Special Master's decision, for the remainder of the fiscal year which was the subject of negotiations. However, no effect is given to any impasse issues which establish the language of contractual provisions which could have no effect in the absence of a ratified agreement, including, but not limited to, preambles, recognition clauses, and duration clauses. During such time, the parties must continue to bargain until an agreement is reached and ratified. The bill does not address what happens, if, at the end of the fiscal year, an agreement is not reached by the parties.

The bill also provides that if the Special Master selects the bargaining agent's last and best offer regarding an issue, and the chief executive officer certifies, in writing, within 15 days after transmittal of the Special Master's decision, that funding of that selection would create a financial emergency such that the public employer would have to raise ad valorem taxes or fees, then the legislative body must, within 30 days after the date of the financial emergency certification, conduct a public hearing. The parties are to explain, at that hearing, their respective positions regarding the financial emergency certification and the issue triggering such certification. The legislative body will then decide the issue. That decision must be put in writing and signed by the chief executive officer and the representative for the certified bargaining agent and submitted to the public employer and the public employees for ratification. If the agreement is not ratified by all the parties, the legislative body's action will take effect as of the date of such action for the remainder of the first fiscal year which was the subject of negotiations.

Section 2 of the bill provides an effective date of October 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

N/A

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The fiscal impact is indeterminate since the additional cost to the state of each dispute resolved by a Special Master is determined by the last, best offers of each party.

At any time an impasse between the Governor or the Board of Regents and an employee bargaining agent occurs which results in the use of a Special Master, and the Special Master selects the last, best offer of the employees, the agency would be required to implement the Special Master's selection. The Governor or the Board of Regents could decide to absorb these costs in their recommended budgets or, if unable to absorb the costs without raising fees, they could certify a "financial emergency."

If a financial emergency is declared the legislature must convene a hearing within 30 days after certification of the financial emergency. While the Senate President and the Speaker of the House could convene an appropriate committee to conduct the hearing

within the 30-day time constraint, a special session may be needed for the legislature to resolve the issue. There is substantial expense associated with convening a special session.

If the Governor does not declare a financial emergency, and absorbs funding of the Special Master's selection within his budget request, then the Legislature, as now, can choose to fund or not to fund. However, agencies cannot spend what they do not receive and they must spend the dollars received as appropriated. While there is some budget flexibility built in the appropriations bill, it may not be sufficient to implement a Special Master's selection. A question then arises as to whether the binding arbitration agreement could force the Legislature to enact budget amendments or whether the separation of powers argument would relieve the Legislature of any further responsibility regarding the matter. As stated earlier, current law would still provide that if the state is a party to a collective bargaining agreement in which less than the requested amount is appropriated by the Legislature, the collective bargaining agreement shall be administered on the basis of the amounts appropriated by the Legislature. Sec. 447.309, F.S.

Resolving the legal issues surrounding these matters will of course cost an indeterminate amount of money. Furthermore, the amount of additional appropriations that would result from compliance with the binding arbitration agreement imposed by the arbitrator is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

The fiscal impact of this bill on local governments is indeterminate since the additional cost to local governments of each dispute resolved by a Special Master is determined by the last, best offers of each party.

At any time impasse between a local government public employer and an employee bargaining agent occurs which results in the use of a Special Master, and the Special Master selects the last, best offer of the employee bargaining agent, the local government would be required to fund that selection. If the chief executive officer certifies that the Special Master's selection would create a financial emergency such that ad valorem taxes or fees would have to be raised, then the local legislative body would have to conduct a hearing regarding that certification and the underlying issue. There would be expenses associated with conducting such a hearing. Additionally, if the final decision by the legislative body is challenged in court (i.e., budget reflects that it would not have created a financial emergency), then there would be expenses associated with that defense.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision is applicable because the bill requires cities and counties to spend money that they would not spend if public employee bargaining disputes were resolved by the appropriate legislative body rather than by a Special Master, when such Special Master selects the employee bargaining agent's last, best offer.

No exemption applies.

An exception may exist. Such exception exists if similarly situated persons are all required to comply with the bill's provisions. The bill amends chapter 447, F.S., which is applicable to both state and local public employers and employees. The Legislature would also have to determine that the bill met an important state interest.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

The bill raises constitutional concerns regarding the separation of powers, as discussed in Present Situation section above. The same concerns were expressed in the Senate Staff Analysis and Economic Impact Statement on a similar binding arbitration bill, SB 1224 (dated Feb. 7, 1992):

While binding arbitration is a well established procedure in the private sector collective bargaining process, there is a serious constitutional impediment to its implementation in the public sector. Article 2, Section 3, Florida Constitution, which provides for the separation of powers among the various branches of government, has been interpreted by the courts ... as prohibiting the unlawful delegation of authority from one branch of government to another.

Under the binding arbitration procedure ... the arbitrator(s) would, in fact, become an arm of the executive branch and would be exercising a legislative function, i.e., establishing and amending benefit programs, salary levels, working conditions, leave and attendance, etc. ***

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[E]mployers are agreeing to the decision (or award) of the arbitrator, notwithstanding the fact that the arbitrator's award may cause a severe financial strain on the government involved. In extreme cases, the arbitrator's award may necessitate raising taxes to cover the cost of the collective bargaining agreement.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL OPERATIONS:

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