The Florida Senate

Interim Project Report 2006-150 *February 2006*

Committee on Ways and Means Senator Lisa Carlton, Chair

A REVIEW OF THE COLLECTIVE BARGAINING PROCESS FOR STATE EMPLOYEES

SUMMARY

Collective bargaining is a constitutional right afforded public employees in Florida. The procedures enacted by the Legislature to implement these rights for state employees has been criticized in recent years. This report reviews other states' procedures and surveys the labor and management representatives for improvements to the process.

Recommendations in this report include statutory changes to shift negotiation responsibilities directly to the Executive Office of the Governor; to establish statutory time frames for the negotiation process; to permit the use of mediators; to establish statutory procedures relating to the legislature's role in issue resolution; and to clarify the effects of a union's decision not to ratify a contract.

BACKGROUND

Collective bargaining is a constitutional right afforded public employees in Florida.[1] To implement this constitutional provision, the Legislature has enacted chapter 447, Florida Statutes, to establish a structure for public sector collective bargaining.

Typically, three primary entities are involved in the collective bargaining process – the public employer, the bargaining agent, and the legislative body. The Governor is deemed to be the "public employer" for each statewide bargaining unit composed of Career Service System employees or Selected Exempt Service employees.[2] For state employees, the fourteen bargaining units are represented by seven bargaining agents and covered by eleven contracts. Table 1 shows the bargaining units, the bargaining agents, the number of employees within each unit and the number of positions within each unit.

Table 1 Statewide Bargaining Units

Unit Name	Agent	Employees	Positions
Administrative and Clerical	AFSCME	17,844	19,573
Operational Services	AFSCME	4,095	4,518
Human Services	AFSCME	8,112	9,133
Professional	AFSCME	24,824	28,083
Professional Health Care	FNA	4,389	5,084
Law Enforcement	IUPA	2,905	3,180
Security Services	PBA	19,743	20,336
Special Agents	PBA	301	326
Fire Service	FSFA	561	614
Physicians	FPD	349	428
Nonprofessional Supervisory	FPD	1,799	1,919
Lottery Law Enforcement	PBA	7	7
Lottery Administrative and Support	FPE	175	199
State Employee Attorneys Guild	FPD	N/A	N/A

While the Governor is the public employer for Career Service and Selected Exempt Service employees, the chief labor negotiator within the Department of Management Services has been delegated the responsibility to represent the Governor in collective bargaining negotiations.[3] The Department of the Lottery, whose employees are exempt from the Career Service System, and are not included within the Selected Exempt Service,[4] is the public employer for its employees included within a collective bargaining unit.[5] The Department of the Lottery conducts its own negotiations with the certified representatives of its employees.

[1] Art. I, s. 6, State Constitution.
[2] Section 447.403(2), F.S.
[3] Section 20.22(4), F.S.
[4] Section 24.105(19)(d), F.S.
[5] Section 447.203(2), F.S.

Typically, the collective bargaining negotiations begin in the fall of each year. The issues negotiated can range from every provision of a new contract (or contract renewal) to specific issues of an existing contract "reopened" by either party (i.e., uniform allowances, leaves of absence, scheduling) or to fiscal issues that must be addressed on an annual basis (i.e., wages and health insurance premiums). In practice, however, the Governor generally has deferred negotiation of economic issues until after the release of the Governor's recommended budget.

When issues require funding or cannot be resolved timely, the Florida Legislature has the duty and responsibility to resolve the issues.[6]

"Statutory impasse" is declared at the time the Governor issues the recommended budget to the legislature.[7] Within five days, each of the parties (the unions and the state) must notify the presiding officers of the legislature as to the unresolved issues.[8] The presiding officers will appoint a joint select committee to hear testimony and to make recommendations regarding the resolution of the issues. These recommendations are due at least 10 days prior to the beginning of the legislative session.[9] In practice, the joint select committee has convened a public hearing to take testimony. After the meeting, the committee has notified the presiding officers that it has taken the issues under advisement and is deferring the resolution – allowing the parties to continue negotiations and allowing the full legislature to address any issues at impasse.

During session, the Legislature has the responsibility to resolve all mandatory issues remaining at impasse. After the Legislature has resolved these issues, the parties are required to reduce to writing an agreement including those issues to which the parties have agreed and those issues resolved by the Legislature. This agreement is supposed to be submitted to the union members for ratification. If the members ratify the contract (or issues) the contract is binding for the duration of the contract (up to three years normally). If the members fail to ratify the contract, the legislatively resolved issues are effective only for the remainder of the first fiscal year.

In recent years, at least one bargaining unit has failed to submit the agreement to its members for ratification. This has left the terms and conditions of employment for those employees in that bargaining unit open to interpretation. These issues including whether those employees are entitled to any pay increases authorized by the legislature. On the other hand, the Department of Management Services has failed to seek the enforcement of the collective bargaining laws relating to ratification of the agreements. If these conditions continue, the legislative prerogative may be frustrated by the lack of action by the union representatives and the Department of Management Services.

CURRENT CONTRACT NEGOTIATION CYCLE
(using 2005-2006 Calendar)

Budgeting Process	Time Period	Collective Bargaining Process
	September through January	Negotiations may take place
7th – Governor's Recommended Budget Due	February	7th – Statutory Impasse Declared
		12th – Parties to submit issues to presiding officers
		27th – Joint Select Committee to submit recommendations to presiding officers
7th – Legislature Convenes	March	
	April	
7th – Legislature Sine Die	May	
	June	
Fiscal Year Begins	July	Contract Year Begins

METHODOLOGY

This report surveys other states' collective bargaining laws, focusing on the bargaining processes used for state employees. This report also surveys the two state labor relations' agencies – the Department of the Lottery and the Department of Management Services – and several of the representatives of the collective

[6] Section 447.403(4)(d), F.S.
[7] Section 216.163, F.S.
[8] Section 447.403(5)(a), F.S.
[9] id.

bargaining units of state employees. Each of the parties was queried as to the timing of the current process, the openness of the decision-making process, and recommendations for modifications.

FINDINGS

Processes Used In Other States

Generally

Roughly one-half of the states have granted collective bargaining rights to state employees. In most instances, mediation, fact-finding and/or arbitration are used to resolve issues at impasse. Typically, the legislatures are not involved until a tentative agreement is reached. When a tentative agreement is reached, the governor is required to submit the funding request to the legislature along with any needed substantive changes. In many instances, the legislature is allowed to approve or disapprove the agreement only as a whole. If the agreement is not fully funded by the legislature then the entire agreement goes back for renegotiation. A minority of the states allow the legislature to ratify and fund portions of the tentative agreement.

New Hampshire

Like other states, New Hampshire relies on the parties to resolve as many issues as possible through negotiations. Mediation and third party fact-finding are the normal processes used to resolve issues at impasse. However, New Hampshire has created a permanent 16-member joint legislative committee to hold hearings on all collective bargaining agreements with state employees and on all fact-finders' reports.[10] The committee is empowered to submit recommendations on such agreements and reports to the full legislature. Although the full legislature typically adheres to committee recommendations, the full body has the power to approve or reject the agreements in whole or in part.

Washington

Recently, the State of Washington created an eight member joint legislative committee on employee relations. The Governor is tasked with periodically consulting with the committee regarding appropriations necessary to implement the compensation and fringe benefit provisions of the collective bargaining agreements. After an agreement is reached, the Governor must advise the committee on the elements of the agreements and on any legislation necessary to implement the agreements.[11]

The legislature is empowered to approve or reject the submission of the request for funding as a whole. Moreover, the legislature cannot consider a request for funds to implement a collective bargaining agreement unless the request is submitted as part of the governor's budget document. If the legislature rejects or fails to act on the request, either party may reopen all or part of the agreement.[12]

The intent was to create greater legislative interest and involvement in collective bargaining for state employees. However, the short-term goals may not have been achieved. Since the negotiations and offers are required to be confidential until an agreement is reached, the consultation process was limited. Moreover, with the "all or nothing" approval process and the requirement that only funding included within the governor's budget recommendations could be approved, the legislature's ability to set policy is limited.

Wisconsin

Wisconsin has created statutorily an 8-member joint legislative committee on employee relations. During the negotiation process, the parties keep the committee apprised of the progress. The director of the Office of Employment Relations (the state's negotiator) is required to notify and consult with the joint committee regarding substantial changes to wages, employee benefits, personnel management and program policy contract provisions to be offered by the state or to be agreed upon by the state before such proposal is actually offered or accepted.[13]

After an agreement is reached and ratified by the union and state, the agreement is submitted to the joint committee for approval or disapproval. If the committee approves the tentative agreement, the joint committee will introduce a bill containing that portion of the agreement that requires legislative action (salary and wage adjustments, changes in benefits, and any modifications to substantive law). If the joint committee does not approve the tentative agreement, or the legislature does not approve the joint committee's

[10] Section 273-A:9, New Hampshire Statutes.

[11] Section 41.80.010(5), R.C.W.
[12] Section 41.80.010(3), R.C.W.
[13] Section 111.915, Wisconsin Statutes.

proposed bills, the tentative agreement is returned to the parties for renegotiation.[14]

Processes Used in Florida

Issues Raised By Labor in Florida

Through discussions with the surveyed parties, several issues were raised. The key issues raised included the statutory time frames, the Legislature's authority to resolve permissive issues, the need for a neutral fact finder, and the openness of the legislative process and the parties role in that process. From the legislative institution's perspective, an additional issue regarding the requirement to submit the contract to the employees for ratification is important to ensure that the legislature's role as the state's policymaker is maintained.

Lack Of Mediation

While most states rely on mediation as a key resolution mechanism, since 2002 Florida law has prohibited the use of mediation when the Governor is the public employer.[15] Typically, the mediation process allows an impartial third party to find potential grounds for settlement of the issues between the parties. The union representatives argue that, to the extent mediation is successful, the scope of issues placed before the Legislature will be narrowed.

Prior to 2002, Florida law permitted the parties to use mediators on a voluntary basis. However, the agreement on the selection of a mediator could take a significant amount of time. Moreover, the law did not limit the amount of time the mediation process could take. In other states, the mediation process is limited typically to a ten- to twenty-day period.

Lack Of A Neutral Evaluation Of Parties' Positions

Like mediation, fact-finding by a special master or magistrate is used in many other states. However, since 2002 Florida law has prohibited the use of a special master or magistrate when the Governor is the public employer.[16]

Union representatives argue that the Legislature has no objective basis upon which to evaluate the reasonableness of the parties' positions. Historically, each party has been invited to submit written documents in support of its position and has been permitted five to ten minutes to testify formally before the joint committee on collective bargaining.

A review of the special master process from 1977 through 2001 indicates that special master reports were issued only eight times during that 24-year period. Of the eight special master proceedings, five involved economic issues in reopened articles, three involved issues in full contract negotiations and one involved the modification of a contract under the Service First law.[17]

Insufficient Incentives For Agreement

The union representatives argue that the current impasse procedures encourage the state negotiators to reach impasse on the issues. The unions suggest that without mediation, fact-finding, or arbitration, the Legislature is likely to resolve the issues at impasse consistent with the status quo or the state's last offer. With some third party intervention and a more public scrutiny of the parties' positions, the parties are less likely to maintain unreasonable positions in negotiations. Thus, resolution of the issues, short of legislative involvement, is more likely.

The union representatives also suggest that negotiations should continue if the unit members reject the ratification of the legislatively imposed resolution. The union representatives believe that the state would be forced to bargain more seriously and compromise in good faith if the negotiation process continued until an agreement was acceptable to employees.

Lack Of A Timetable For Negotiations

The union representatives point out that no timetable exists regarding state negotiations. While negotiations may begin in the fall, serious negotiations arguably do not occur until after the Governor has submitted the recommended budget. The budget submission triggers the statutory impasse process – resulting in very few issues being resolved through negotiation between the parties and forcing the legislature to resolve most issues.

A balance must be struck among the deference granted to the Governor in formulating the recommended budget, the state's duty to bargain in good faith, and the Legislature's role in the collective bargaining process. Since the duty to bargain in good faith

[14] Section 111.92, Wisconsin Statutes.
[15] Section 447.403(1), F.S.
[16] Section 447.403(2)(b), F.S.
[17] DMS records

presumably includes a reasonable period of time for negotiations, a statutory framework for the timing of negotiations may be necessary to ensure a fair process.

Union representatives have suggested that the declaration of impasse could be delayed. Good faith negotiations on economic issues could begin after the submission of the recommended budget or the parties could be required to reach an agreement before the submission of the budget. Like many other states, the Governor could be required to submit the agreement and the implementing legislation at the time the recommended budget is submitted.

Issues Raised By Management in Florida

Insufficient Time For Parties To Address The Legislative Committee

The Department of Management Services has suggested that additional time should be given to the state to articulate its positions on each of the contracts at impasse. While each union representative typically has been granted five to ten minutes to address the issues before the joint select committee, the state negotiator has been granted five to fifteen minutes to discuss all the issues in the contracts at impasse (up to nine contracts).

The parties, state and union alike, have been allowed to submit any written documents regarding the parties' positions. In most instances, the documents are provided to the joint select committee prior to the public hearing. Additional information on particular issues has been provided to the joint committee or the fiscal committees as the session progresses.

Insufficient Time For Committee To Formulate Recommendations

The Department of Management Services has suggested elimination of the statutory requirement that the joint select committee submit its recommendations at least 10 days prior to the commencement of the legislative session. With a delayed recommendation, the joint select committee would have time to review more fully the issues at impasse and to reach a more informed resolution of the issues.

Presumably, the committee recommendations are intended to give the parties, state and union alike, a general indication of the way the full legislature may resolve the issues. Based on this information, the parties could continue to provide the legislature information in support of their positions or return to the bargaining table to negotiate a resolution.

Other Issues

The following issues have been identified by legislative staff in its review of the current process.

Lack Of Coordination Of, And Involvement In, Negotiations By The Office Of Policy And Budget

Under current law, the responsibilities of the negotiation process are delegated to the Department of Management Services. As it relates to implementing a collective bargaining agreement, the department is the most appropriate state agency to take the lead since the department is charged with the overall implementation and administration of the personnel system. However, since the negotiations are typically driven by the economic issues, a more appropriate lead agency in the negotiation process may be the Office of Policy and Budget (OPB) in the Executive Office of the Governor.

OPB is the entity directly responsible for the development of the Governor's Recommended Budget. The state's offers on wages and other economic issues presumably are developed by OPB and the unions' offers on those issues are presumably analyzed by OPB. Negotiations may be more productive if the entity truly responsible for the development of the state's offer (OPB) is a direct participant in the negotiation process.

If direct responsibility over negotiations is shifted to OPB, the state's ability to make timely offers on economic issues may be enhanced. This may result in more productive negotiations and less issues at impasse.

No Definitive Time Set To Cease Negotiations

Under current practice, the parties are directed by the joint committee to continue to negotiate the issues at impasse. This is an appropriate policy to resolve as many issues as possible through agreement of the parties rather than through legislatively imposed results. However, at some point, the parties must cease negotiations because the Legislature is enacting a law that resolves the issues at impasse. Current law directs the parties to reduce the agreement to writing by including those items agreed to as well as those items resolved by the Legislature. It arguably creates an ambiguity if the Legislature resolves an issue and the parties subsequently agree to a different resolution.

For example, a bargaining unit and the state may identify an issue to the presiding officers of the Legislature as an issue at impasse in early February. While the Legislature is addressing the issue throughout the session, the parties continue to negotiate. At some point prior to legislative resolution, the parties reach a tentative agreement but fail to notify the Legislature. Subsequently, to meet its responsibilities, the Legislature enacts legislation that resolves the issue and is intended to be binding law upon both the state and the bargaining unit. However, the parties sign a Memorandum of Understanding which addresses the same issue but is inconsistent with the legislative direction. This example illustrates the need to establish a definitive date for the cessation of negotiations on issues before the Legislature as well as the need to reduce agreements to writing.

Need For Clarification Regarding Economic Issues Absent A Ratified Contract

As noted before, the parties are required to submit the legislatively imposed resolution to the unit members for ratification. If the agreement is ratified, the terms continue for the duration of the contract. If, on the other hand, the contract fails ratification, the legislatively imposed issues are effective for the remainder of the fiscal year only.

In this regard, the law does not differentiate between economic and non-economic issues. Thus, by the terms of the law, legislatively-authorized pay increases should be applicable for only the first fiscal year if the agreement is not ratified by the unit members. The employees would enjoy an increase in pay the first year, but would have to rely on a second act of the Legislature to continue to receive that salary increase in subsequent years.

However, the law is less clear when the legislatively imposed resolution is not submitted for ratification. In this circumstance, the unit members have not been afforded the opportunity to vote on the issues. On one hand, it may be unfair to the employees to be penalized for the actions (or inaction) of the certified bargaining representatives. On the other hand, it may be unfair to allow the union to reap the benefit of an annualized pay increase while ignoring the legal requirement to submit the legislatively imposed resolution for ratification.

RECOMMENDATIONS

Based on the issues addressed in this report, the Legislature may wish to consider legislation to:

1. Shift the negotiation responsibilities from the Department of Management Services to the Office of Policy and Budget in the Executive Office of the Governor.

2. Establish a statutory timeline for negotiations which may include separate timeframes for economic and non-economic issues. In addition, the declaration of statutory impasse may be delayed to 14 days prior to Regular Session.

3. Allow the use of mediation prior to the commencement of the Regular Session. The mediator could be selected from a blind draw by Public Employee Relations Commission or agreed to by the parties by January 1 of each year.

4. At the discretion of the presiding officers of the Legislature, allow special magistrates to be used as fact-finders acting on behalf of the Legislature, similar to the process used for claims bills.

5. Require the joint select committee to make recommendations on issues at impasse regarding mandatory subjects of bargaining by the 45th day of Regular Session.

6. Prohibit negotiations on issues at impasse regarding mandatory subjects of bargaining five days after the joint select committee issues its recommendations.

7. Require all agreements, tentative or final, to be reduced to writing before being accepted by the state.

8. Clarify that pay increases for unit members are nonrecurring unless the unit members are employed pursuant to a ratified contract.