House
Legislative
Analysis
Section

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BINDING ARBITRATION FOR NON-INSTRUCTIONAL SCHOOL STAFF

House Bill 4775 with committee amendments
First Analysis (6-4-97)

Sponsor: Rep. Gerald Law
Committee: Labor and Occupational Safety

THE APPARENT PROBLEM:

The Public Employment Relations Act (PERA), among other things, sets the rules for collective bargaining between public schools and their employees, including provisions for voluntary, nonbinding mediation between public school employers and public school employees' bargaining units. The act, which was significantly amended by Public Act 112 of 1994, has always prohibited public employees from striking, but the courts historically had found that teachers could strike if a school district was guilty of unfair labor practices. Public Act 112 of 1994, among other things, rewrote the act's prohibition against public employee strikes, and added provisions allowing the Michigan Employment Relations Commission (MERC) to fine striking teachers and their union locals for each strike day and allowing a public school employer to unilaterally implement its last offer if voluntary mediation reaches an impasse. Finally, Public Act 112 of 1994 also removed several subjects from collective bargaining, including whether or not schools could, in effect, privatize noninstructional services -- such as food, bus, and janitorial services -- by contracting out these services with private sector businesses.

Reportedly, the changes wrought by Public Act 112 of 1994 have had a devastating effect on many noninstructional school employees, and legislation has been introduced to address that issue.

THE CONTENT OF THE BILL:

The bill would amend the Public Employment Relations Act to provide for binding arbitration for public school employees other than administrators or teachers, and to allow bargaining over decisions on whether or not to contract out noninstructional support services.

Noninstructional support services. The bill would remove language in the act, added by Public Act 112 of 1994, barring decisions regarding contracting with third parties for noninstructional support services, or the impact of contracts on individual employees or the bargaining unit, from consideration in collective bargaining between a public school employer and a bargaining representative of its employees.

Binding arbitration. The bill would allow a collective bargaining dispute between a public school employer and nonteaching and nonadministrative public school employees involving issues other than the interpretation or application of an existing collective bargaining agreement to be subjected to binding arbitration. After such a dispute had been the subject of mediation for 30 days or any longer period that had been agreed upon by the parties, either side could initiate arbitration proceedings by submitting a written request to the other party and filing a copy of that request with the Michigan Employment Relations Commission. The provisions of the bill would be liberally construed to promote the resolution of the disputes through the arbitration provided for in the bill.

Arbitration panel. The arbitration panel would consist of three members. Each side, the employer and the bargaining unit, would chose one member. The third member would be the chairperson of the panel and would be appointed by the commission. Within seven days after receiving a request to submit a dispute to arbitration, the commission would create a list of three nominees from its Michigan Employment Relations Commission panel of arbitrators (established under section 5 of Public Act 312 of 1969 [MCL 423.235]) and submit those names to both of the parties. Within five days of their receipt of the list, each party could, if it chose, eliminate one of the nominees from the list. Within seven days after the end of that time period, the commission would be required to appoint one of the remaining nominees as the third arbitrator.

Hearings. Within 15 days from his or her appointment to the panel, the chairperson would be required to hold and preside over the arbitration hearing of the dispute. Reasonable notice of the time and place of the hearing would have to be given to both parties. The chair would

be responsible for making certain that a verbatim record of the proceedings was kept. Transcripts of the proceedings could be ordered at the expense of the ordering party; however, a transcript would not be required for the panel to make its decision.

Unless otherwise agreed by the parties, the hearing would have to be concluded within 30 days. If the chairperson believed it would be useful, he or she could remand the dispute to the parties for further collective bargaining for a period not to exceed three weeks. If the chairperson remanded a dispute in this fashion, he or she would have to notify the commission and the time provisions for the arbitration would be extended for a period equal to the time that the dispute had been remanded.

The proceedings would be informal. The technical rules of evidence would not apply and evidence would not be considered less competent as a result of any violation of those technical rules. The panel could hear testimony and receive any oral or documentary evidence or other data that it deemed relevant. Individuals, governmental units, or labor organizations with a substantial interest in the proceedings could apply for and be granted (upon a showing of good cause) leave to intervene in the proceedings with under such terms and conditions as the panel considered just.

The panel would also have the authority to issue subpoenas, administer oaths, and require the attendance of witnesses and the production of documents that the panel considered material to a just determination of the issues before the panel. The panel could deal with refusals to obey a subpoena, be sworn or testify, and/or contempt of the proceedings by either asking the circuit court for the county where the proceedings were taking place to issue to the appropriate order or by requesting the attorney general to ask the circuit court. If requested, the attorney general would be required to petition the circuit court for the panel. In either case, the court would be required to issue the order or orders needed, and failure to obey the order would punishable by the court as contempt.

While proceedings before the arbitration panel were pending, changes to the existing wages, hours, and other conditions of employment could only be made by the agreement of both parties. However, the bill would state that consent to any such changes would not prejudice the consenting party's rights or position in the arbitration proceedings.

Decisions. The decisions and actions of a majority of the members of the panel would be considered the actions and rulings of the panel. A majority decision of the panel would be final and binding upon the parties. The panel would be required to make findings of fact and issue a written opinion and order on the issues before it within 30 days after the conclusion of the hearing, unless the parties agreed to allow additional time. True copies of the panel's findings of fact, opinion, and order would have to be mailed or otherwise delivered to the parties and their representatives, and to the commission.

At or before the conclusion of the hearing, the panel would be required to identify the disputed economic issues and set a time period for each party to submit its last offer of settlement on each economic issue. Each party would be required to provide its last offer of settlement to both the panel and the other party. The panel's determination as to the issues in dispute and as to which issues are economic issues would be conclusive. In making its decision as to the economic issues, the panel would be required to adopt the last offer of settlement that more nearly complied with the listed applicable factors.

The arbitration panel would be required to base its findings, opinion, and order on the following factors:

* the lawful authority of the public school employer;

* the stipulations of the parties;

* the interests and welfare of the public and the financial ability of the public school employer to meet those costs;

* the wages, hours, and conditions of employment of the employees involved in the dispute compared to those of other employees performing similar services for public school employers in comparable communities;

* the cost of living;

* overall compensation, including wages, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

* any changes in any of the preceding factors during the proceedings (Note: This provision appears to directly contradict the language of the bill stating that consenting to changes in existing wages, hours, and other conditions during the proceedings would not prejudice the consenting party.); and

* any other factors that are normally taken into consideration when determining wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between public school employers and similar employees.

The decision of the arbitration panel could be enforced by the panel or by either party in the circuit court for the county where the dispute arose or where the majority of the affected employees resided. Review of the panel's orders by the circuit court would be limited to determining whether the panel's decision was within its jurisdiction, whether the order was supported by competent, material, and substantial evidence on the whole record, or whether the order had been procured through fraud, collusion, or other similar and unlawful means. During the pendency of a review proceeding the order of the panel would not automatically be stayed. However, the parties could amend or modify a decision at any time by stipulation.

Costs. The Michigan Employment Relations Commission board would, in advance, set the expense of the proceedings and the fee to be paid to the chairperson. The expense would be paid equally by both parties and the state. Any public officer or employee who was appointed to the arbitration panel would continue on the payroll at his or her usual rate of pay.

Penalty. If either side willfully disobeyed a lawful order of enforcement by a circuit court or willfully encouraged or offered resistance to the order, that side would be required to pay a fine set by the court not to exceed $250 per day for every day the contempt persisted.

MCL 423.207a, 423.207b, and 423.215

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill could have a minimal fiscal impact on state and/or local costs. The bill would require the Michigan Employment Relations Commission to establish, in advance, the mediation expenses that would be borne equally by each of the parties to the dispute and the state. Fiscal implications to the state would depend on whether it currently was paying a larger or smaller (if any) portion of fees in current mediation situations compared to what it might pay under the bill. (5-29-97)

ARGUMENTS:

For:

The bill -- which reportedly is modeled on existing statutory language (Public Act 312 of 1969) that requires binding arbitration for police and fire department labor disputes -- would help restore some of the collective bargaining rights that were taken away from public school employees by Public Act 112 of 1994. Proponents of Public Act 112 argued that it was necessary to "rein in" the power of teachers' unions, but what many people didn't understand is that the act affected not only teachers but also non-teaching school employees as well, including school janitors, school bus drivers, food service workers, and even lunch room monitors. For, the act not only didn't require binding arbitration in cases of impasses in labor negotiations involving all school employees -- which includes non-instructional staffs as well as teachers -- it also placed severe limitations on subjects that could be collectively bargained, including a ban on negotiations over contracting out for non-instructional services. According to testimony before the House Committee on Labor and Occupational Safety, these provisions have had a devastating impact on many non-instructional school employees, many of whom reportedly have lost their basic health care and retirement benefits -- if not their very jobs, in some cases -- when their public school employers, taking advantage of Public Act 112 of 1994, subcontracted out noninstructional services to private subcontractors, some of whom reportedly are based out of state.

When the legislation that became Public Act 112 of 1994 was being discussed in the legislature, some people proposed that binding arbitration be added to address cases where school districts and their employees reached an impasse in collective bargaining negotiations, arguing that because mediation under PERA is voluntary and because Public Act 112 of 1994 lets public school employers unilaterally implement their last offer made before an impasse occurs, public school employees' ability to effectively bargain with their employers was crippled. Reportedly, language similar to that in the current bill was added as an amendment to controversial legislation last year that further amended PERA (Public Act 543 of 1996, enrolled Senate Bill 1015), but failed by one vote on the Senate floor. Clearly, many people believe that Public Act 112 went too far in restricting the collective bargaining rights of public school employees, and it is time to restore some fairness to the public school collective bargaining process. The bill would do this, for noninstructional public school employees at least, helping to level a playing field that was unfairly tilted in favor of public school employers by Public Act 112 of 1994.

Against:

Though a step in the right direction, the bill doesn't go far enough to protect public school employees in contract negotiations. Teachers, as well as noninstructional staff, also should be given the protection of binding arbitration when the voluntary mediation process reaches an impasse. As many people argued at the time of the passage of Public Act 112 of 1994, proponents of Public Act 112 wanted not only a strike law with "teeth," they also rejected a binding arbitration process that would have kept teachers and school districts on an equal footing in the collective bargaining process. Without binding arbitration, not

only are noninstructional employees' rights to meaningful collective bargaining jeopardized, teachers also effectively lost their ability to effectively bargain collectively. Teachers, too, should be extended the protection of binding arbitration in their negotiations with their employers.

Against:

School boards argue that the bill is not needed, and that the cost containment measures provided by Public Act 112 of 1994 are necessary in light of the elimination of school operating property taxes (by Public Act 145 of 1993) and by the passage of Proposal A of 1994 that raised the state sales tax and designated the increase for school funding. Given an era of smaller school budgets, it is important for school boards to retain as much flexibility as possible in deciding matters that clearly belong within school board control, including the decision whether or not to contract out noninstructional school services. Many people believe that Public Act 112 of 1994 restored some much-needed local control of local school issues, and rolling back provisions implemented by that act could once again jeopardize the ability of school boards to respond quickly and as the circumstances demand to issues arising in their school districts without being unduly hampered by unnecessary state restrictions on their ability to act in the best interests of their districts.

POSITIONS:

The American Federation of State, County, and Municipal Employees (AFSCME) Michigan Council 25 supports the bill. (6-4-97)

The Michigan Education Association supports the bill. (6-4-97)

The International Union of Operating Engineers, Local 547 supports the bill. (6-4-97)

The Michigan AFL-CIO supports the bill. (6-4-97)

The Michigan Association of School Nurses supports the bill. (6-4-97)

A representative from the Service Employees International Union (SEIU) testified in support of the bill. (6-3-97)

A representative form the Michigan Federation of Teachers and School Related Personnel indicated support for the bill. (6-3-97)

The Michigan Association of School Boards opposes the bill. (6-4-97)

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.