House
Legislative
Analysis
Section

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**BINDING ARBITRATION FOR COUNTY JAIL EMPLOYEES**

**House Bill 5176**
**Sponsor: Rep. Michael Switalski**
**Committee: Employment Relations, Training and Safety**

**Complete to 9-15-00**

## A SUMMARY OF HOUSE BILL 5176 AS INTRODUCED 12-8-99

The bill would create a new act to provide for compulsory arbitration of labor disputes between county corrections officers and their employers.

Statement of state public policy. The bill would state that it was "the public policy of this state that it is requisite to the high morale of county corrections officers and the efficient operation of county corrections facilities to afford an alternative, expeditious, effective, and binding procedure for the resolution of disputes, and to that end, the provisions of this [proposed] act, [would] be liberally construed."

Disputes in mediation. More specifically, if, in the course of mediation of a county corrections officer's labor dispute (other than a dispute concerning the interpretation or application of an existing collective bargaining agreement), the dispute had not been resolved to the agreement of both parties within 30 days of submitting the dispute to mediators (or within additional periods to which the parties had agreed), either the employees or the employer could initiate binding arbitration proceedings. Such a request for binding arbitration would have to be made "promptly" and in writing to the other party, with a copy of the request to the Employment Relations Commission.

Selection of the arbitration panel. Within 10 days after a written request for binding arbitration for a dispute between county corrections employees and employers were made, the employees' representative ("the employees' designated or selected exclusive collective bargaining representative, or if none, their previously designated representative in the mediation and fact-finding procedures") and the employer each would have to choose a delegate to an arbitration panel, and immediately notify each other and the mediation board of their selection.

Within seven days after a request from one or both parties, the Employment Relations Commission also would be required to select from its panel of arbitrators (established under Public Act 312 of 1969) three nominees for impartial arbitrator or chairperson of the arbitration panel. Five days after the commission's selection of its nominees, either party to the dispute would be allowed to preemptively strike the name of one of the commission's nominees, and within seven days after this five-day period, the commission would have to designate one of the remaining nominees as the impartial arbitrator or chairperson of the arbitration panel.

Hearings. When the arbitrator were appointed, he or she would proceed to act as the chairperson of the arbitration panel, call a hearing to begin within 15 days after his or her

appointment, and give reasonable notice of the time and place of the hearing. The chairperson would preside over the hearing and take testimony. Any oral or documentary evidence and other data that the arbitration panel determined relevant could be received into evidence. The proceedings would be informal, and technical rules of evidence would not apply, nor would the competency of the evidence be impaired because of technical violations of rules of evidence. A verbatim record of the proceedings would have to be made, with the arbitrator arranging for the necessary recording service, and transcripts could be ordered at the expense of the party doing the ordering. However, transcripts would not be necessary for a decision by the arbitration panel. The expense of the proceedings, including a fee to the chairperson, would be established in advance by the Labor Mediation Board, and would be borne equally by each of the parties to the dispute and by the county. If a delegate were a public officer or employee, he or she would continue on the public employer's payroll at the employee's usual rate of pay. The hearing could be adjourned from time to time, but unless otherwise agreed to by the parties to the dispute the hearing would have to be concluded within 30 days after it began. The majority actions and ruling of the arbitration panel would constitute the actions and rulings of the panel.

Wages, hours, and conditions of employment during arbitration. During the pendency of proceedings before the arbitration panel under the bill, existing wages, hours, and other conditions of employment could not be changed by action of either party without the other party's consent. A party could consent to such a change without prejudicing its rights or position under the bill.

Leave to intervene. Upon application, and for good cause shown and upon terms and conditions that were just, a person, labor organization, or governmental unit having a substantial interest in the hearing could be granted leave to intervene in the arbitration panel.

Panel powers. The arbitration panel could administer oaths, issue subpoenas, and require the attendance of witnesses and the production of documents that the panel determined were material to a just determination of the issue in dispute.

Court orders. The arbitration panel could – or the attorney general, if requested by the panel, would be required to – ask the circuit court to issue an appropriate order if a person refused to obey a subpoena, refused to be sworn or to testify, or if a witness, party, or attorney were guilty of contempt while attending a hearing. The circuit court would be required to issue an appropriate order, and failure to obey the order could be punished by the court as contempt.

Remand for further collective bargaining. At any time before an award were rendered, the arbitration panel chairperson could remand the dispute to the parties for further collective bargaining for a period of up to three weeks, if the chairperson were of the opinion that it would be useful or beneficial to do so. If the dispute were remanded for further collective bargaining, the arbitration panel chairperson would be required to notify the Employment Relations Commission of the remand, and the time provisions in the bill would be extended for a time period equal to that of the remand.

Identification of economic issues in dispute. At or before the hearing concluded, the arbitration panel would be required to identify the economic issues in dispute and direct each of the parties to submit, within a time limit prescribed by the panel and to both the panel and to each other, the party's last offer of settlement on each economic issue. The arbitration panel's determination of

the economic issues in dispute, and as to which of these issues were economic, would be conclusive.

Arbitration panel decisions. Within 30 days after the end of a hearing – or within additional periods agreed to by the parties to the dispute in question – the arbitration panel would have to (1) make written findings of fact and (2) issue a written opinion and order regarding the issues presented to, and upon the record made before, the panel. The panel also would have to mail or otherwise deliver ("true") copies of the findings, opinion, and order to the parties involved, their representatives, and the Employment Relations Commission.

Applicable factors. The arbitration panel would have to base its findings, opinion, and order on the applicable factors prescribed in the bill. With regard to economic issues, the panel would have to adopt the last offer of settlement made that, in the panel's opinion, more nearly complied with these applicable factors, while the panel's findings, opinion, and order regarding other (i.e. noneconomic) issues would have to be based completely on these factors.

Where there were no agreement between the parties, or where there were an agreement but the parties had begun negotiations or discussion toward a new agreement (or an amendment to the existing agreement), and if wage rates or other conditions of employment were under dispute, the arbitration panel would have to use the following factors, as applicable, as the basis of is findings, opinion, and order:

(1) The lawful authority of the employer;

(2) Stipulation of the parties to the dispute;

(3) The public's interests and welfare and the unit of government's financial ability to meet those costs;

(4) Comparison of the employees' wages, hours, and conditions of employment with those of other employees performing similar services and with other employees generally in public and private employment in comparable communities;

(5) The average consumer prices for goods and services, commonly known as the cost of living;

(6) The overall compensation that the employees received currently, including not only direct wage compensation, but also vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received;

(7) Changes in any of the circumstances described above during the pendency of the arbitration proceedings; and

(8) Any other factor that were normally or traditionally taken into consideration in determining wages, hours, and conditions of employment through voluntary collective bargaining,

mediation, fact-finding, arbitration, or otherwise between the parties in the public service or in private employment.

Arbitration panel decisions, enforcement. A majority decision of the arbitration panel would be final and binding on the parties in question, if supported by competent, material, and substantial evidence. Such decisions could be enforced ("at the instance of either party or of the arbitration panel") in the circuit court in which the majority of the affected employees resided or in the county in which the dispute arose.

Awards. Increases in rates of compensation or other benefits could be awarded retroactively to the beginning of any period or periods in dispute, and by stipulation the parties could amend or modify an arbitration award at any time.

Penalties. Where an employee bargaining representative or a public employer willfully disobeyed a lawful court order of enforcement or willfully encouraged or offered resistance to the court order, he or she would be in contempt and subject to a fine of up to $250 a day for each day that the contempt persisted. The bill would further specify that a person would not be sentenced to a term of imprisonment for any violation of its provisions or of an arbitration panel's order.

Circuit court review of arbitration orders. Arbitration panel orders would be reviewable by the circuit court in the county in which the dispute arose or in which the majority of the affected employees lived, but only if it were alleged that the arbitration panel was without or exceeded its jurisdiction; or the order was not supported by competent, material, and substantial evidence on the whole record or was procured by fraud, collusion, or other similar unlawful means. The pendency of a proceeding for a circuit court review would not automatically stay an arbitration panel's order.

Public Employment Relations Act. The bill would be supplementary to Public Act 336 of 1947 (the Public Employment Relations Act), and would not amend or repeal any of its provisions. However, any provisions of Public Act 336 that required fact-finding procedures would be inapplicable to disputes subject to arbitration under the bill.



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