

## **Collective Bargaining and the Influence of Public-sector Unions in Washington State**

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### **Introduction**

In 2002 the legislature enacted a bill, HB 1268, that fundamentally altered the balance of power within state government. The bill's purpose was to revamp Washington's civil service and create a collective bargaining system for government employee unions. The result was a radical shift of power from the legislature to the governor's office that has deprived Olympia lawmakers of control over the state's operating expenses.

The yearly cost of wages, health coverage, pensions, step increases, cost-of-living raises and other state employee benefits is no longer decided through public hearings in the normal legislative process. These operating costs are now decided in a series of secret collective bargaining meetings between union representatives and executive branch officials. The state deducts mandatory union dues from employee paychecks each month and transfers the money to union bank accounts. Union officials spend part of these funds as campaign contributions to influence who negotiates on behalf of the public, with the goal that the person across the table is someone who benefited from union political activity.

### **Background**

The nature of collective bargaining is at odds with the basic separation of powers structure of our state government. Detailed and binding labor agreements must be negotiated between unions and management, yet in our democratic system there is no single "management" entity to do the negotiating.

Instead government power is divided among three branches. The executive and the legislature share responsibility for the state's governance through their joint law-making ability, most significantly over budget and taxes. They are answerable for their actions to the people at election time. The third branch, the judiciary, resolves disputes that arise over interpretation of the law.

The problem of applying the mandatory collective bargaining process to public employees was recognized years ago by President Franklin Roosevelt.

"The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussion with government employee organizations. The employer is the whole people who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed

and guided, and in many cases restricted, by laws which establish policies and procedures or rules in personnel matters.”<sup>1</sup>

The real “employers” of public workers are the people of Washington state. Unions represent the interests of their members, while the people’s interests are represented by their elected representatives: the governor and the legislature working together. Unions are deeply involved in political campaigns, spending unions’ funds for or against select candidates, to influence the election of the governor and the legislature.

So fundamental is the legislature’s role that the state cannot pay salaries or benefits without action by the legislature. The state constitution provides that, “No moneys shall ever be paid out of the treasury of this state ... except in pursuance of an appropriation made by law.”<sup>2</sup>

The collective bargaining law reduces the role of the legislature to the absolute minimum necessary to comply with the constitution. Lawmakers may only vote up or down on a collective bargaining agreement negotiated in secret by the governor — no amendments or other changes are allowed.

The amounts involved in a new collective bargaining system would be significant. The state spent over \$2 billion on wages and salaries, and an additional \$608 million on employee benefits, in fiscal 2010.<sup>3</sup>

## **New Executive Powers: The Closed-door Collective Bargaining System**

Under mandatory collective bargaining the governor’s representatives negotiate bargaining agreements with union executives in a series of closed-door sessions. The agreements determine wages, step-increases, cost-of-living raises, health coverage, work hours, promotions and the number of applicants that managers can consider for a job opening.

These negotiations are secret. Lawmakers and the general public are not allowed to know the starting and ending positions of each side, what was discussed, the amount of public funds requested or what concessions each side made to reach agreement. No hearings or public comment are permitted. The process is not covered by TVW, as legislative hearings are, and it is not subject to the state’s Freedom of Information Act.

Lawmakers are not allowed to attend negotiating sessions; they are only permitted to read and vote on the final binding agreement. The law states, “The legislature shall approve or reject the submission of the [governor’s] request for funds as a whole.”<sup>4</sup> Following is a summary of the power transferred from the legislature to the governor by the 2002 collective bargaining law.

## **Powers Shifted to the Governor by the Collective Bargaining Process**

1. Consolidates under the governor authority to determine wages and conditions of employment for unionized state workers.
2. Empowers the governor to negotiate a single master wage and benefits agreement with employee unions that would cover workers at all state agencies.

<sup>1</sup> Rosenman, “The Public Papers and Addresses of Franklin D. Roosevelt, 1937, Vo. 1, page 325 (1941).

<sup>2</sup> Constitution of the State of Washington, Article VIII, Section 4.

<sup>3</sup> “Salaries, Benefits and FTEs, FY 1988 to FY 2010, General Fund – State Only,” Office of Financial Management, January 5, 2010.

<sup>4</sup> Text of HB 1268, Section 302, (3)(b).

3. Reduces the role of the legislature to voting up or down on funding for a final collective bargaining agreement with no amendments.
4. Establishes the governor as sole state official to receive new labor policy proposals from employees. Public employees may not petition the legislature for improvements in their wages and working conditions.

The terms of collective bargaining agreements have greater force than any other official policy except state law. The process provides that labor agreements take precedence over any conflicting “executive order, administrative rule, or agency policy relating to wages, hours and terms and conditions of employment.”<sup>5</sup>

### **Lawmakers Presented with Limited Choices**

Once a collective bargaining agreement is reached between the governor’s representatives and the unions, the legislature faces two stark choices: 1) approve and fund the agreement in its entirety or; 2) stand aside while a pre-set negotiation process takes over. In either case, the legislature would exercise little control, or even oversight, over the details of the outcome.

### **How Collective Bargaining Contributes to Rising State Costs**

By taking much of the state’s operating expenses out of the normal budgeting process, mandatory collective bargaining contributes significantly to increasing state costs, especially in the area of the rising cost of health benefits.

A clear example of how collective bargaining restricts lawmakers’ control over the budget occurred last November when the governor asked union executives to return to the negotiating table to discuss employee health costs. The governor asked unions to agree that state employees contribute 25 percent of the cost of their monthly health care coverage, a level that is typical in the private sector.

Union executives refused the governor’s request. After a series of closed-door meetings, union executives agreed to a small increase to just 15 percent of the cost of health coverage, up from the current level of 12 percent. The financial obligation of taxpayers was reduced slightly from 88 percent to 85 percent of employee health care costs. The union’s rejection of the governor’s request contributed significantly to the deficit projected for the 2011-13 state budget.

The legislature played no role in the discussions, held no public hearings or heard any comments from the public. Under the collective bargaining process, lawmakers had no influence over how changes in benefits could help balance the budget, or over how much taxpayers must pay for state worker health coverage.

### **Political Influence in the Collective Bargaining Process**

In addition to negotiating collective bargaining agreements, executives at public-sector unions are heavily involved in the political process. In 2010 public-sector unions spent \$2.7 million to help elect or defeat candidates for state legislative office.<sup>6</sup> Major campaign contributors included

<sup>5</sup> Text of HB 1268, Section 303(6).

<sup>6</sup> “A Mind-Bogglingly Complex Scheme Funnel \$2.7 Million for Labor and its Allies in Washington-State Races – Berkeley Case is Just the Beginning,” by Erik Smith, Washington State Wire, October 27, 2010, at [www.washingtonstatewire.com/home/5859-a\\_mind\\_bogglingly\\_complex\\_scheme\\_funnel\\_27\\_million\\_for\\_labor\\_and\\_its\\_allies\\_in\\_legislative\\_races\\_%E2%80%93\\_berkeley\\_case\\_is\\_just\\_the\\_beginning.htm](http://www.washingtonstatewire.com/home/5859-a_mind_bogglingly_complex_scheme_funnel_27_million_for_labor_and_its_allies_in_legislative_races_%E2%80%93_berkeley_case_is_just_the_beginning.htm).

Service Employees International Union (SEIU) and the American Federation of State, County and Municipal Employees (AFSCME), labor organizations that also represent state workers in collective bargaining negotiations.

In the 2010 elections one political consulting firm, Moxie Media, used union funds to create up to 40 political action committees to obscure the source of contributions it made to state legislative candidates. The firm's executives were accused of using contributions from public-sector unions and other sources to create a fake Republican campaign against a Democratic incumbent. The political strategy led to campaign finance investigations by the state Public Disclosure Commission and the Attorney General.<sup>7</sup>

Union representatives are involved in a conflict of interest because they are heavily involved in choosing who will sit across from them during the collective bargaining process. Through their campaign contributions and other political work they seek to elect friendly officials or try to defeat perceived opponents.

Unions represent the interests of their members, but the outcome of elections determines who represents the public interest at the negotiating table. By supporting or opposing candidates for public office, unions influence who sits on both sides of the table. This conflict of interest was best summarized by an AFSCME district president: "We have the ability, in a sense, to elect our own boss."<sup>8</sup>

## Policy Recommendations

Several bills have been proposed in the state Senate to repeal mandatory collective bargaining. One is SB 5349, "Eliminating collective bargaining for state employees and certain other groups." The bill states in part:

"The legislature finds that its authority over a significant portion of the state budget has eroded since state employees began collectively bargaining with the executive branch over wages and benefits. The legislature recognizes that it is the responsibility of a union to advocate for the best interest of its membership, while it is the responsibility of the legislature to determine the best interest of the state. State employees no longer have to make their case to the legislature for additional funding for compensation packages and compete for the limited funding with other priorities.

"The flexibility of the legislature has been limited, as the legislature has no authority to make changes to negotiated agreements between state employees and the executive branch. In tight budget times it is clear that the legislature needs more flexibility to truly prioritize spending, and must take back its authority over state employee compensation choices. Therefore, the legislature intends to repeal the ability of state employees and other nontraditional groups to collectively bargain with the executive branch over compensation."<sup>9</sup>

<sup>7</sup> "Legislator targets secret campaign money," by Howard Buck, The Columbian, December 27, 2010, at [http://seattletimes.nwsources.com/html/localnews/2013781926\\_bill28.html](http://seattletimes.nwsources.com/html/localnews/2013781926_bill28.html).

<sup>8</sup> "Who's to Blame for the Fix We're In," by Ken Auletta, quoting Victor Gotbaum, president, AFSCME District 37, New York, New York Magazine, October 27, 1975, page 31, at [http://books.google.com/books?id=ZugCAAAMBAJ&pg=PA31&lpg=PA31&dq=victor+gotbaum+we+have+the+ability+to+elect+our+own+boss+1975&source=bl&ots=au3Lxjhi kC&sig=xSyTsmxxBS93j0IbYZmTXt3l3A&hl=en&ei=O0dcTZGIA5C-sQORjuiJAg&sa=X&oi=book\\_result&ct=result&resnum=10&ved=0CEwQ6AEwCQ#v=onepage&q=boss&f=false](http://books.google.com/books?id=ZugCAAAMBAJ&pg=PA31&lpg=PA31&dq=victor+gotbaum+we+have+the+ability+to+elect+our+own+boss+1975&source=bl&ots=au3Lxjhi kC&sig=xSyTsmxxBS93j0IbYZmTXt3l3A&hl=en&ei=O0dcTZGIA5C-sQORjuiJAg&sa=X&oi=book_result&ct=result&resnum=10&ved=0CEwQ6AEwCQ#v=onepage&q=boss&f=false).

<sup>9</sup> SB 5349, "Repealing collective bargaining for state employees and certain other groups," Washington State Legislature, 2011 Regular Session, at [www.apps.leg.wa.gov/billinfo/summary.aspx?bill=5349&year=2011](http://www.apps.leg.wa.gov/billinfo/summary.aspx?bill=5349&year=2011).

Passage of SB 5349 or similar legislation would return control over state operating expenses to the normal appropriations process:

- Operating costs would be considered in the context over overall spending
- Negotiations over state employee wages and benefits would again be subject to hearings and public comment, and
- Lawmakers would be able to weigh employee compensation costs against other spending priorities, such as public safety, health programs and education.

## **Conclusion**

Passage of HB 1268 in 2002 disrupted the state's constitutional balance by moving a large area of policy out of the legislature's regular oversight and appropriations process and assigning it to the governor alone. The legislature's role in workforce policy was reduced to no more than a rubber stamp; voting on funding for a single labor package once it has been negotiated.

Collective bargaining severely hampers the legislature's ability to carry out its normal constitutional functions. In addition, experience indicates that collective bargaining contributes to higher labor costs to the state, without necessarily improving the quality of services delivered to the public.

Ending Washington's ten-year experiment with mandatory collective bargaining would serve the public interest because it would return control of state operating costs to the legislature, restore constitutional balance with the executive, and reduce the political influence of union campaign spending on public policy.

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