



BILL SUMMARY

Collective Bargaining HF 291

Status of Bill: House Calendar
Committee: Labor (11-6)
Lead Democrats: Rep. Bruce Hunter
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Background

This legislation is Wisconsin plus, gutting public sector employee collective bargaining rights and returning working Iowans to a system where the political party in power has the right to decide the fate of all public employees. Iowa is already a right to work state. Individuals who don't wish to be in the union do not have to be. This is about punishing political enemies, not what's best for working Iowans.

Summary

This bill makes substantial changes to public sector collective bargaining impacting all public employees. The legislation makes large scale changes to Iowa's collective bargaining law. Public employee re-certification processes, what public employees have the right to bargain for, the arbitration process are particularly, but not solely affected.

Division I

Public Safety employees are largely exempted from the implications of this legislation providing that they are in a bargaining unit made up of a majority of public safety employees.

A public safety employee is defined as a sheriff or sheriff deputy; a marshal or police officer; a member of the state patrol, narcotics enforcement, state fire marshal, or criminal investigation, including but not limited to a gaming enforcement officer; a conservation officer or park rangers; a permanent or full time fire fighter. Corrections officers and Department of Transportation officers are NOT considered public safety officers.

While public safety officers are exempted from the majority of the legislation, they do lose the right to deduct dues and PAC checkoffs from paychecks and fall under the stringent re-certification procedures of all other public employees.

Scope of Bargaining

Public employees are now expressly prohibited from negotiating insurance, leaves of absence, leaves of absence for political activity, supplemental pay, transfer procedures, evaluation procedures, staff reduction, grievance procedures, release time, and benefits of seniority.

Holidays, hours, vacations, shift differentials, overtime compensation, health and safety were previously mandatory subjects of bargaining but are now simply permissive; if both the employer and bargaining unit agree to negotiate these areas it is allowed. Otherwise, base wages are the only mandatory area of bargaining under the

changes in this legislation. If the contract goes to arbitration the public employee bargaining unit can receive a max of a 3% raise or CPI, whichever is less.

Dues deductions and PAC checkoffs are no longer allowed for any public employee, including public safety employees.

Expansion of Employer Rights

With HF 291, employers now have the right to evaluate and fire bargaining unit employees without proper cause. Management now controls all evaluation metrics.

These changes combined with other restrictions of bargaining units working lowans right to have a say in their workplace. Law enforcement officers, firefighters, teachers, nurses, and other Iowa workers deserve fairness and a voice in their own workplace.

Their only recourse now are whistleblower and civil rights protections. Their only recourse now is the courts.

Certification

HF 291 makes extensive changes to the union certification process. It follows the model Wisconsin Republicans used when they broke their public employee unions.

Under current law, if an employee organization can show the Public Employee Relations Board (PERB) proof that ten percent of employees in a unit support being supported by the organization, a union certification election is held. Under HF 291, that threshold is raised to thirty percent.

More ominous is the change to the actual voting in the certification election. Currently, if an organization meets the employee support threshold, the election is decided by those who participate in the election. This legislation changes the threshold to a majority of all public employees in a bargaining unit. Non-participation in the election effectively becomes a no vote.

Additionally, prior to the end of every bargaining contract a public employee union will have to re-certify under the new certification thresholds in the bill. Every year or two, the public employee union must organize entire bargaining units to vote even in a mandated election not requested by any public employees in the union.

There is currently a de-certification process in place that works the same as the certification process. If ten percent of employees in the bargaining unit wish to de-certify an election will be held, and if a majority of those voting in the election vote against the public employee organization the bargaining unit is decertified. This is a low threshold to meet; the fact that some bargaining units have been in place for years is a testament to employee satisfaction with the units.

The de-certification process under HF 291 is changed to match the certification process. While this is a tougher standard to meet on de-certification, it is essentially meaningless as unions will now have to elections every year or two.

These changes will drastically increase the number of certification elections occurring in Iowa. Under the bill, PERB can contract with a vendor to conduct elections. Public employees will bear the cost for the re-certification process, having to pay in advance for re-certification elections.

These changes, combined with the scope of bargaining changes above, led to dramatic decreases in union membership in Wisconsin. From 2010 to 2015, union membership in Wisconsin dropped by 132,000 (37% of 2010 membership) and some unions lost up to 60% of their members.

Arbitration

HF 291 removes the ability of an arbitrator to consider the power of the public employer to levy taxes and appropriate funds for the conduct of its operations. The arbitrator can no longer take into account the employer's ability to pay for the agreement.

The legislation also asks the arbitrator to make an apples to oranges comparison between pay and benefits of public and private employees. This comparison does not factor in the experience or education of the comparable employees, which is often a considerable factor in public vs private comparisons.

The arbitrator is now also asked to consider the financial ability of the employer to meet the cost of an offer in light of the current economic conditions of the public employer. So, if a public employer has given away a large amount of taxpayer dollars in tax credits, the arbitrator can consider that they now have no money.

While Republicans say that the system isn't working, facts are stubborn things. In 2015-2016, only 10 of the 1203 bargaining units in the state went into binding arbitration.

Other Provisions of Division I

- If this legislation becomes law, any negotiation currently ongoing becomes null and void and the negotiations must start over.
- Following a Gubernatorial election, the Governor has the right to VETO a statewide contract.
- The division is effective upon enactment.
- Increases penalty for a public employee organization being held in contempt of court for a strike from one year to two years for recertification.
- Removes the ability of the Public Employee Relations Board to interpret, apply, and administer PERB rules. PERB can now simply administer the chapter.

Division II – Educator Employment Matters

Contracts with Teachers (Sec. 28): Under current law a teacher contract can automatically continued, modified, or terminated with mutual agreement between the teacher and the school board. The bill allows the contract to also be modified without mutual agreement.

The bill also allows a temporary contract to be issued for a period up to six months. A temporary contract can also be issued to fill a vacancy due to military leave. The temporary contracts are not subject to the provisions for the termination of a teacher contract.

Evaluation Criteria and Procedures (Sec. 30): The bill has the school board set the evaluation criteria and evaluation procedures. Currently if there is a collective bargaining unit, the board must negotiate in good faith with respect to evaluation procedures.

Notice of termination – Request for hearing (Sec. 31): The bill changes the dates of events that occur when a superintendent recommends a teacher contract will be terminated and the teacher wishes to request a hearing on the termination. The hearing can be held no sooner than 20 days and no later than 40 days after receiving the notice; currently it is 10 days and 20 days. The bill requires the time of the hearing notice to be provided 10 days before; current law requires five days. The bill requires the teacher to provide any documentation 7 days before the hearing day, current law requires 3 days.

Private Hearing Participants (Sec. 32-33): The bill allows for witnesses for the parties to be present in the private hearing and the teacher's representative may participate in the hearing as well. The board must keep a record of the private hearing, but they are no longer required to employ a shorthand reporter.

The bill takes away the ability of the school board to issue subpoenas for witnesses and the production of books and papers.

If a teacher fails to file a timely request for a private hearing on their termination, the board may proceed with the termination and they would no longer have to wait until May 31. Current law allows the board to consider termination of the contract, or suspend the teacher with or without pay for a period specified by the board. The bill adds a provision that allows the board to issue the teacher a one-year nonrenewable contract.

If the teacher schedules a hearing and fails to appear, the board can act on the termination, instead of waiting five days after the hearing date.

The school board is required to make a final decision on the termination. The decisions are to be based solely on the evidence in the record and on matters officially noticed in the record.

Appeal to Teacher to Court (Sec. 34): If the teacher rejects the board's decision, they shall appeal the decision to district court within 30 days.

Probationary Period (Sec. 35): Under current law, the first three years of employment as a teacher in the same school district are a probationary period. After you completed a probationary period, if you teach at a new district the teacher may have up to one year of probation. The bill changes this to up to two years of probation when teaching at a new district, after completing a probationary period at another district.

Under current law, a teacher terminated after a probationary period is entitled to request a hearing on their termination with an opportunity to appeal the termination. The bill denies the access of this hearing process for teacher terminated while on probation. The teacher may request a private conference with the school board to discuss the reasons for termination. The bill also eliminates the rights of beginning teachers for the hearing process, as well as appeals to an adjudicator and appeal to court.

The school board's decision is final and binding unless the termination was based on an alleged violation of a constitutional guarantee right of the teacher. Current law also protected teacher from termination if there is an alleged violation of the employee's rights under Chapter 20 prohibited practices; this is removed in the bill.

Extracurricular Contracts (Sec 36): The bill maintains the use of separate extracurricular contracts to coach interscholastic athletic sports, however the wages for the coaches are no longer required to be paid pursuant to established supplemental pay schedules. The bill eliminates provisions in current law that allows the extracurricular contract to be continued automatically in force and effect for equivalent periods, except as modified or terminated by mutual agreement of the board and the employee, or terminated with appeal hearing rights under 279.

Contracts for Administrators (Sec 37-38): The bill also allows a temporary contract to be issued for a period up to nine months. A temporary contract can also be issued to fill a vacancy due to military leave. The temporary contracts are not subject to the provisions for the termination of an administrator contract.

Continuation of Administrator Contracts or Termination (Sec 39-40): Expands the initial probationary period for administrators from 2 years to 3 years of consecutive years with a school district. The bill eliminates a provision that allows a school board to waive the probationary period in another school district.

If the superintendent recommends not continuing an administrator's contract they can request a private hearing. The bill extends the time for the hearing to no sooner than 20 days and no later than forty days; current law is 10 days and 30 days.

Any witnesses for the parties at the private hearing are to be sequestered. The school board's decision is to be in writing, however the bill eliminates the requirement to include findings of fact and conclusions of law.

Discharge of Teacher (Sec 41): Defines “just cause” as including but is not limited to a violation of the code of professional conduct and ethics of the board of education examiners if the board has taken disciplinary action against a teacher, during the six months following issuance by the board of a final written decision and finding of fact after a disciplinary proceeding.

Teacher Performance, Compensation and Career Development (Sec 42-46): Makes conforming changes to the Teacher Performance, Compensation and Career Development provision in Chapter 284. Teachers participation in an intensive assistance program are not eligible to participate in another program.

Appeal by the Teacher to Adjudicator (Sec 47): The bill repeals the ability of the teacher to appeal their termination to an adjudicator.

Effective Upon Enactment and Applicability (Sec 48-49): This division of the bill is effective upon enactment. This division applies to employment contracts entered into after the effective date of the act.

Division III – Personnel Records and Settlement Agreements

- Requires that any resignation in lieu of termination or demotion of a public employee to become public record.
- Eliminates any non-disclosure or confidentiality agreements for personal settlement agreements and mandates that decisions for executive bonus pay be made public record.
- The bill states that no provision of collective bargaining is to supersede the provision of the legislation.
- All personnel settlements are made public
- A government body must notify the employee that the information placed in the employees personnel file may become public record.

Division IV – City Civil Service Requirements

Division IV of the legislation provides that the only civil service employees that have seniority rights are firefighters and police officers. All other civil service employees lose seniority rights in HF 291.

The division also eliminates the ability to appeal to district court after a decision of the civil service commission. Much like division I and II, these employees only recourse is now whistleblower and civil rights protections in court.

The division also expands the criteria to no longer be a member in good standing from removal to discharge, demotion or suspension. This could lead to an employees pension being lost due to a demotion or suspension.

Division V – Health Insurance Matters

Division V of the bill states that all public employees must be offered health insurance. However, because they can no longer bargain for this right, the quality and cost of the insurance is now solely the choice of the employer.

The legislation also permits a 30 day enrollment and change period for health insurance coverage if a new insurance plan administered by the state is developed and 30 days notice is given.

No statewide insurance plan is contained in the legislation.