F I S C A L I M P A C T R E P O R T

SPONSOR: Lujan, B. DATE TYPED: 03/05/03 HB 508/aHGUCA/aHFl#1/aSPAC/aSFl#1

SHORT TITLE: Public Employee Bargaining Act SB

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
			$0.1 See Narrative	Recurring	General Fund
			$0.1 See Narrative	Recurring	Local Government Funds

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to: SB 46/SPACS/aSFC

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General's Office (AGO)
State Highway and Transportation Department (SHTD)
New Mexico Department of Labor (NMDOL)

SUMMARY

Synopsis of the SFl#1 Amendment

The Senate Floor amendment #1 to House Bill 508 makes a non-substantive grammatical correction to page 33, line 13 pertaining to payroll dues deductions.

Synopsis of the SPAC Amendment

The Senate Public Affairs Committee amendment to House Bill 508 strikes language that allows the board or local boards to include supervisory employees in appropriate collective bargaining units, thus effectively prohibiting unionization of supervisory employees.

Synopsis of the HFL Amendment

The House Floor amendment to House Bill 508/aHGUAC strikes the $327.0 appropriation in-

cluded in Section 29 of the bill.

In fiscal year 1999, $219.0 was budgeted for the Public Employee Labor Relations Board. Since HB 508/aHGUAC/aHFl#1 removes the $327.0 appropriation in this bill, funding for the State Labor Relations Board, budget for office space and equipment, hiring of staff and contractors, and paying board per diem and mileage expenses must come from other sources. Costs related to various administrative hearings must also be funded (e.g., verbatim transcriptions, recordings, process servers, professional legal support, and etc.).

Synopsis of HGUCA Amendment

The House Government and Urban Affairs Committee amendment to House Bill 508 corrects several non-substantive grammatical errors in the original bill. One such change however, item number 14 on the HGUCA report, is incorrect. It should state, "On page 33, line 13, strike "deduction" and insert in lieu thereof "deductions".

Substantive changes arising from the HGUCA amendment to HB 508 are outlined below:

- Changing the word *levels* to *steps* significantly changes the meaning of Section 18(D), page 26, line 23. This change implies that only formal pay plan step or pay grade increases could be frozen in the event of expired contracts. Contractual provisions mandating cost of living adjustments, lump-sum payments and many other types of pay increases would be open to debate.

  In the event that an impasse continues after the expiration of a contract, the existing contract will continue in full force and effect until it is replaced by a subsequent written agreement. ***However, this shall not require the public employer to increase any ~~levels~~ steps or grades of compensation contained in the existing contract.***

- The HGUAC amendment to Section 18(A)(5), page 25, line 2, clarifies that an arbitrator's final and binding decision must also comply with the provisions of Subsection E of Section 17, as outlined below:

  An impasse resolution or an agreement provision by the state and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the legislature and the availability of funds. An impasse resolution or an agreement provision by a public employer other than the state or the public schools and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the appropriate governing body and the availability of funds. An agreement provision by a local school board and an exclusive representative that requires the expenditure of funds shall be contingent upon ratification by the appropriate governing body. An arbitration decision shall not require the reappropriation of funds.

- HGUAC report items 8 and 11 appear to address a concern raised by the Attorney General's Office:

Section 18. Impasse Resolution
(Resolved by HGUAC amendment items 8 and 11)
Paragraph (A)(5), page 25, lines 10-12 and Paragraph (B)(2). These paragraphs contain impasse procedures that provide for judicial review of an arbitrator's decision under the standard set forth in the Uniform Arbitration Act. That standard has been judicially modified in situations where arbitration is required by statute. According to the New Mexico Supreme Court, the proper standard for judicial review of an arbitrator's decision in those situations is "whether the arbitrator's award is arbitrary, unlawful, unreasonable, capricious or not based on substantial evidence on the whole record" and allows for de novo review of conclusions of law. Board of Educ. of Carlsbad v. Harrell, 118 N.M. 470, 486 (1994).

Synopsis of Original Bill

House Bill 508 guarantees public employees the statutory right to bargain collectively with their employers for wages, work hours, and all other terms and conditions of employment. It creates a board to administer the Act. The board may permit local governments to create their own boards.

This bill delineates board authority, defines the rights of public employers and employees, prohibits strikes and lock-outs, defines appropriate bargaining units, outlines procedures for union representation elections, establishes the scope of bargaining, mandates impasse resolution procedures, defines prohibited practices, and grants judicial enforcement authority.

Significant Issues

In the event of conflict between the provisions of any other statute of this state and an agreement entered into by the public employer and the exclusive representative in collective bargaining, the statutes of this state shall prevail.

The issue of fair share shall be left a permissive subject of bargaining by the public employer and the exclusive representative of each bargaining unit.

To be valid, this bill would require at least 40% of employees in a bargaining unit to vote in the election of a labor organization or in an election to decertify a labor organization. Therefore, as few as 21% of the employees in a bargaining unit could decide the outcome of a union election and subsequently negotiate a "fair share" provision requiring 100% of employees in the unit to submit monthly payments to a union.

Section 13A specifies that supervisory employees represent a valid occupational group and may be approved as appropriate collective bargaining units, thus allowing union representation of supervisors.

Probationary employees may be included in public schools appropriate bargaining units.

Impasse procedures, including mediation and final and binding arbitration are outlined in Section 18. Arbitration decisions are final and binding pursuant to the Uniform Arbitration Act, and are limited to a selection of one of the two parties' complete, last, best offer. Such decisions are subject to judicial review pursuant to the standard set forth in the Uniform Arbitration Act.

FISCAL IMPLICATIONS

The appropriation of $327.0 contained in this bill is a recurring expense to the general fund. Any unexpended or unencumbered balance remaining at the end of fiscal year 2004 shall revert to the general fund.

Since HB 508 requires implementation of a State Labor Relations Board, budget for office space and equipment, hiring of staff and contractors, and paying board per diem and mileage expenses will be necessary. Costs related to administrative hearings must also be funded (e.g., verbatim transcriptions, recordings, process servers, professional legal support, and etc.) In FY99, $219.0 was budgeted for the Public Employee Labor Relations Board.

Section 17 ensures that impasse resolutions and negotiated agreement provisions, which require the expenditure of funds, shall be contingent upon the specific appropriation and availability of such funds by the legislature or appropriate governing body. Also, arbitration decisions shall not require the reappropriation of funds.

Recurring expenses to county and local government funds may result if such entities decide to implement local public employee labor relations boards.

HB 508 mandates all collective bargaining agreements to include impasse resolution processes culminating in final and binding arbitration, with costs shared by the parties.

Section 18D specifies that expired collective bargaining contracts shall remain in full force and effect until such agreements are replaced by subsequent agreements. However, in the absence of a new agreement, the Act does not require the public employer to increase any ~~levels~~ steps or grades of compensation contained in the expired contract.

The State and local governments may incur substantial costs associated with hiring labor relations professionals, administrative support staff, and staff or contract negotiators. There will also be costs associated with obtaining legal consultation and representation. Expenses relating to supervisory training, printing costs, and staff time away from work for various labor-management negotiations and grievance meetings must also be considered.

ADMINISTRATIVE IMPLICATIONS

Agency and local government staff may be required to devote substantial time to employer-employee relations and related training responsibilities.

CONFLICT

The Attorney General's Office (AGO) makes the following recommendation:

Section 23. Judicial Enforcement—Standard of Review
Paragraph (B) on page 30, lines 3-15. This section governs judicial review of state and local board decisions. To make it consistent with other laws and court rules governing review of final agency decisions, this provision might be revised so that it refers to NMSA 1978, Section 39-3-1.1.

TECHNICAL ISSUES

The AGO recommends the following changes to HB 508:

Section 7. Appropriate Governing Body – Public Employer
Page 7, lines 20-23. This section created confusion in the previous Public Employee Bargaining Act that was repealed in 1999. It describes who is the "appropriate governing body" for certain public employers. In particular, it states that "In the case of the state, the appropriate governing body is the governor or his designee or, in the case of a constitutionally created body, the constitutionally designated head of that body." The confusing aspects of this provision include the following:

1. Does the term "constitutionally created body" include constitutional offices such as the Attorney General's Office, the Land Office, the State Treasurer, the State Auditor and the Secretary of State?
2. Does the term "constitutionally created body" include the Boards of Regents of state educational institutions designated in Article XII, Section 1 of the state constitution?
3. If constitutionally created bodies do not include the boards of regents, are those boards considered "public employers other than the state" for purposes of Section 26 of the bill, which addresses ordinances providing for public employee bargaining in effect before October 1, 1999?

Section 12. Hearing Procedures
Paragraph (D) on page 14, lines 19-21. This paragraph refers to "the county of residence of the local public employer." Since the local public employer is apt to be a county, municipality or other political subdivision, and not a person, it might be preferable to refer to the "county where the local public employer is located."

Section 13. Appropriate Bargaining Units
Page 15, lines 14-18. Section 13 governs the designation of appropriate bargaining units by the state or local boards. It includes a possible change in meaning from the predecessor Public Employee Bargaining Act that was repealed in 1999. Specifically, it allows bargaining units to be established on the basis of "occupational groups **or** clear and identifiable communities of interest in employment terms and conditions and related personnel matters among the public employees involved." (Emphasis added.) This arguably broadens the scope of permissible bargaining units from the predecessor provision, which might have been interpreted to require the establishment of bargaining units based on three criteria, i.e., "occupational groups, a clear and identifiable community of interest in employment terms and conditions and related personnel matters among the public employees involved." See 1992 N.M. Laws, ch. 9, § 13 (formerly codified at NMSA 1978, § 10-7D-13(A)). See also SB 46, § 13 (same). If the different language in Section 13 is intended to describe alternative bases for bargaining units, it would be clearer if the word "and" between the words "conditions" and "related" was changed to "or".

Section 17. Scope of Bargaining
Paragraph (D) on page 22, lines 8-12. This provision addresses mandatory subjects of bargaining involving representatives of public schools "as well as educational employees in state

agencies…." The term "educational employees" should be more precisely defined to include those who perform educational services akin those provided in the public schools; otherwise, it could be interpreted to apply to any employee in a state agency that educates members of the public or others in any manner whatsoever, such as those that teach defensive driving courses, etc.

Page 31, lines 17-19. The last sentence of this section provides that nothing in the Public Employee Bargaining Act shall be construed to annul or modify the status of existing exclusive representatives. This provision is redundant; under Section 24(A) labor organizations that were recognized as exclusive representatives as of June 30, 1999 are recognized as the exclusive representatives as of the effective date of the Act.

OTHER SUBSTANTIVE ISSUES

Sections 19H and 20D are not traditional prohibited practices. Refusal or failure of the parties to comply with provisions of a collective bargaining agreement represents a grievance and should be handled pursuant to Section 17F. This bill would allow labor organizations to pursue their complaints through the grievance process (culminating in binding arbitration) and/or through an unfair labor practice complaint brought to the Board. Thus, the same issue could be adjudicated in two separate forums.

Provisions in Section 14B, which relate to labor organizations being allowed to intervene in representation elections, specify that such labor organizations must present signatures from 30% of bargaining unit employees within ten days after the Labor Relations Board posts written notice that a petition for election has been filed. Because of the short ten-day notice, such organizations are generally required to only produce signatures of 10% of bargaining unit members.

AMENDMENTS

Section 12D at page 14, line 19 could be amended by substituting the following sentence, "Except as prohibited by Section 17G of this Act, all meetings of the board shall be held pursuant to the Open Meetings Act in Santa Fe."

Section 23B, at page 30, line 6, could be amended by deleting all of the current language beginning with the sentence on line 6 through the end of the section, then substituting the following sentence, "All such appeals shall be subject to judicial review by an action in the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

(Corrected in HB 508/aHGUAC amendment) Section 18, page 24, line 9 and page 26, line 12 contain typographical errors. The words "hearing" should be changed to 'bearing".

RLG/prr:njw