

State of
Minnesota
DEPARTMENT
OF EMPLOYEE
RELATIONS

900297

REPORT TO LEGISLATURE
ON FUNDING
STATE COLLECTIVE
BARGAINING AGREEMENTS



Submitted by:

Department of Employee Relations

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Pursuant to 1989 Laws, ch 335,
Article 1, Section 18, sd 4

EXECUTIVE SUMMARY

A. BACKGROUND

The 1989 State Department's Appropriations Bill contained the following directive to the Department of Employee Relations:

The Commissioner shall prepare a report evaluating the impacts on state agencies resulting from the current schedule for negotiating collective bargaining agreements. The report shall include, but not be limited to, the effects on agencies leaving positions vacant, laying employees off, and scaling back or eliminating programs in order to fully fund contract settlements. The report shall also evaluate alternative collective bargaining arrangements and discuss the advantages and disadvantages of each.

The Commissioner shall consult with the chairs of the appropriations committee, the state departments division, and the government operations committee and with exclusive representatives of state employee units in developing the report. The report shall be submitted to these committees and the legislative commission on employee relations by April 1, 1990. (Chapter 335, Article 1, Section 18, Subd. 4)

B. REPORT CONTENTS

This report summarizes information obtained through meetings with the representatives of state agencies; surveys of the processes used to appropriate monies for collective bargaining settlements by other state governments; and consultations with the chairs of the appropriations committee, the state departments division, the government operations committee, and the exclusive representatives of state employee bargaining units. The information is reported in four general categories, as follows:

1. a discussion of the current method of determining and appropriating employee compensation;
2. an evaluation of the impacts on state agencies resulting from the current schedule for negotiating collective bargaining agreements;
3. a summary of the processes used by other state governments to appropriate monies for employee compensation as well as their impact on collective bargaining and state agencies;
4. an assessment of alternatives to the State of Minnesota's current collective bargaining arrangements.

C. : REPORT SUMMARY

1. Minnesota's Current System for Collective Bargaining

The State of Minnesota's collective bargaining agreements run for two year terms concurrent with the state biennial budget cycle. The current collective bargaining system emerged in 1980 when state employees were granted an expanded right to strike under the Public Employment Labor Relations Act (PELRA). Prior to 1980, a statutory deadline existed requiring contract settlements to occur before the end of the legislative session in odd numbered years. This deadline was removed in 1980 in order to give effect to the right to strike. Since 1980, no state employee contracts have been settled until after the Legislature appropriated funds for salary increases to state agencies.

2. Impacts of Budget Underfunding of State Agencies

In the five rounds of negotiations since 1980 the monies appropriated by the Legislature were insufficient to fund the salary increases required by collective bargaining agreements, resulting in agencies receiving only a pro rata share of the salary appropriation (referred to as the salary supplement). For the purposes of this report, state agencies were contacted in order to obtain examples of the methods used to deal with the underfunding. Through the information gathered it became evident that it is virtually impossible to isolate the effects of the underfunding of salary increases since agencies must also deal with other budget deficits, such as the underfunding of the salary base, unbudgeted insurance costs, unfunded sales tax obligations, underestimated inflation, and unfunded Attorney General costs. The report lists several methods typically used by state agencies to deal with budget underfunding. Additional illustrative detail was obtained from the Departments of Natural Resources and Public Safety.

3. Other States's Methods of Collective Bargaining

This report also incorporates the results of a survey of selected states with comprehensive collective bargaining laws for state employees. The survey primarily demonstrated that bargaining environments vary greatly, with no two states surveyed having comparable situations. We found no directly transferable procedures governing appropriations for collective bargaining which would represent improvements over Minnesota's present system.

4. Alternatives to the Current System

The report includes several possible alternatives to Minnesota's present collective bargaining system. One option would be to create mandatory deadlines for the negotiation of settlements. However, this would require the modification of the state employees' right to strike under PELRA. The option of changing contract effective dates was discussed as well; however, a change in effective dates would not guarantee settlement by a certain date.

A second option would be to eliminate the mechanism for interim approval of contracts by the Legislature. Several disadvantages with this option are set forth.

A third option involves combining settlement deadlines with penalties for delays similar to the system which has been enacted for teacher bargaining. However, the same considerations do not apply to state bargaining and would not force state settlements prior to the salary supplement appropriation.

Finally, options involving a change in the funding system were explored. However, the disadvantages of funding the salary supplement through an open appropriation or out of the budget reserve; using a salary supplement with a deficiency appropriation during the next session; or prohibiting settlements in excess of the salary supplement outweigh any potential remedial effect.

5. Conclusion

In conclusion, none of the alternatives analyzed for this report offer any real advantages over the current system of appropriating the salary supplement. Alternatives considered would appear to either unbalance the current collective bargaining system or to cause potentially more problematic budget concerns than exist with the current system. The report concludes that the current system, when viewed in its overall context, operates well to balance the roles of the Legislature, the executive branch, and the unions in the collective bargaining process.

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I. THE CURRENT SYSTEM

In July, 1988, Mr. Mark Shepard, Legislative Analyst presented to the Legislature a paper entitled *Appropriating Funds for State Employee Compensation*. The following excerpt is Mr. Shepard's description and evaluation of the State of Minnesota's current method of appropriating funds for state employee compensation, which provides an excellent introduction to this report.

A. *How Is State Employee Compensation Determined?*

Approximately 90 percent of executive branch employees are represented by a union. Compensation for these employees is determined by collective bargaining. Compensation for non-unionized executive branch employees is governed by compensation plans, generally prepared by the Commissioner of Employee Relations. Compensation includes not only salary, but also fringe benefits (other than pensions established in statute and not subject to bargaining or compensation plans). The collective bargaining agreements and compensation plans also govern terms and conditions of employment apart from compensation.

There are three basic steps to collective bargaining agreements and compensation plans.

- 1. Collective bargaining agreements are negotiated and compensation plans are developed.*
- 2. The agreements or plans are submitted to the Legislative Commission on Employee Relations for approval.*
- 3. The agreements or plans are submitted to the full Legislature for approval.*

1. Negotiation of Agreements and Development of Plans

State law establishes 16 bargaining units for executive branch employees. The employees in each unit, as a group, decide if they want to be represented by a union. Bargaining units are established by statewide occupational groups, not by agency. For example, all clerical employees in the state are in the same bargaining unit, no matter which state agency they work for.

Negotiation of collective bargaining agreements with unions and the development of compensation plans for non-unionized executive branch employees are primarily executive branch functions. The Commissioner of Employee Relations employs the state labor negotiator to represent the state in negotiations with unions. The Commissioner has primary responsibility for development of the compensation plans for non-unionized employees.

While the executive branch negotiates the contracts, the Legislature provides parameters for the total cost. This is done first through informal communication between legislative leaders and the state labor negotiator and later through appropriations for employee compensation. In addition to affecting economic terms of the contracts, the Legislature can also pass laws that affect contract language.

Collective bargaining agreements and compensation plans typically are for a two-year term. They begin on July 1 of each odd-numbered year. This coincides with the start of the new state biennial budget cycle. Negotiations for new contracts generally begin in fall of even-numbered years and end in spring or summer of odd-numbered years.

Before 1980, state law practically forced unions to agree on contracts by April 15 of each odd-numbered year. The law provided that if the state and a union did not reach tentative agreement by that date, employees represented by the union would not receive any compensation increase. Under this law, the Legislature almost always appropriated money for state employee compensation after contracts with unions were settled. Thus, it was very unlikely that the Legislature would appropriate too much or too little money for state employee compensation. In 1980, state employees were granted an expanded right to strike. The Legislature recognized that this right would not be meaningful if the law required that the strike be over and contracts agreed on by April 15, so the April 15 deadline was repealed. Without the deadline, unions can wait to see how much money the Legislature appropriates before agreeing to a contract.

Since 1980, no agreements between the state labor negotiator and state employee unions have been reached during the legislative session in the odd-numbered year when budget decisions are made. In all cases, the Legislature made its budget decisions, (including funding for state employee compensation) and adjourned before there were any contract settlements with state employees.

2. Review by Legislative Commission on Employee Relations

The Legislative Commission on Employee Relations (LCER) was created in 1980 to oversee collective bargaining negotiations with state employees. The 12-member commission can approve or reject all collective bargaining agreements and most compensation plans covering state employees.

If the LCER approves an agreement or plan while the Legislature is in session, the approval only has the effect of a recommendation. It does not put the contract or plan into effect. After the Legislature adjourns in an odd-numbered year, LCER approval puts the contract or plan into effect immediately.

Since its creation in 1980, the LCER has approved all collective bargaining agreements reached between the state labor negotiator and state unions.

3. Review by the Full Legislature

All collective bargaining agreements and compensation plans approved by the LCER must be submitted to the full Legislature for final approval. This legislative action typically occurs during the session in the even-numbered year, after the contracts or plans have been in effect for several months. The Legislature has authority to reject any collective bargaining agreement or compensation plan. If the Legislature rejects an agreement or plan, compensation increases cease immediately, but employees do not have to return increases they have already received.

B. How are Funds for State Employee Compensation Appropriated?

Individual state agencies submit budget requests to the Legislature each odd-numbered year. These requests generally contain funds sufficient to pay the same level of compensation that agency employees are receiving. The amount of additional costs agencies will incur as a result of new collective bargaining agreements and compensation plans is not known at the time the agencies make their budget requests, and is not included in these requests.

The Legislature does not appropriate money to each agency for employee compensation increases. Instead it appropriates a pool of money, known as the salary supplement, from which all compensation increases for state employees are paid (Compensation for employees of the higher education systems is the only exception. Compensation increases for these employees are funded by appropriations to the systems, not from the salary supplement.) Because most state employees are paid from the state's general fund, about 70 percent of the money for the salary supplement comes from the general fund. The remainder comes from other funds, such as the game and fish fund and the trunk highway fund.

There have been four rounds of contract negotiations since the 1980 repeal of the April 15 deadline for completing negotiations. In all four cases the Legislature appropriated money for the salary supplement before contracts were settled, and thus before the costs of the contracts were known. In all four cases, the amount the Legislature appropriated was insufficient to fund the compensation increases required by the collective bargaining agreements and the compensation plans.

When the salary supplement is insufficient to fund required compensation increases, each agency receives only a pro rata share of the salary supplement. Because agencies are contractually obligated to pay the compensation contained in collective bargaining agreements, any deficiencies must be made up from other parts of the agency budget, unless the Legislature makes a supplemental appropriation in its next session. However, the Department of Finance has attempted to fully fund the salary supplement for agencies with fewer than 50 employees, since these agencies often cannot absorb unexpected compensation costs in other parts of their relatively small budgets.

The effects of a deficient salary supplement are mitigated somewhat by recent changes in executive branch budget procedures. As part of the biennial budget proposal that each agency submits to the Legislature, the agency presents a dollar figure for the upcoming biennium that represents the "same" level of spending that the agency did during the current biennium. This "same" level is adjusted to account for a number of things, such as changes that have been made in the agency's responsibilities. For the budget submitted to the 1987 Legislature, this "same" level was also adjusted upward to account for deficiencies in the salary supplement. A similar "same" level adjustment will be made for the budget submitted to the 1989 Legislature. However, the 1988 Legislature required the executive branch to identify this adjustment more clearly.

(For example, an agency may have needed \$1 million to fund additional compensation mandated by new collective bargaining agreements, but may have received only \$900,000 from the salary supplement because the salary supplement was not big enough to pay for all compensation increases. Before 1987, the agency's "same" level for the next biennium would include only the additional \$900,000 actually spent on additional employee compensation. Under the system used in the current budget process, the "same" level includes the full \$1 million that was needed to pay additional employee compensation.)

If the Legislature funds all agencies at the "same" level, it in effect makes up the deficiency in the previous biennium's salary supplement.

C. Evaluation of How Funds for State Employee Compensation are Appropriated

Under the current system, the Legislature appropriates specified amounts from the general fund and other funds for the salary supplement. Since 1980, no collective bargaining agreements have been settled by the time the Legislature made these appropriations for state employee compensation increases. Thus the actual cost of state employee compensation was unknown when the Legislature made the appropriations.

1. Effect on Budget Process and Overall Spending

From the legislative perspective, a strength of the current system is that the Legislature knows exactly how much money will be spent for the salary supplement, and can use this information to help assure that overall state spending does not exceed projected revenues. Even if the executive branch negotiates contracts that cost more than the amount appropriated in the salary supplement, the Legislature can reject the contracts. It can also approve them, knowing that agencies will have to take money from other parts of their budgets and that no additional money can be spent without another legislative appropriation. The current system gives the Legislature more control over total state spending than a system of open appropriations for the salary supplement.

A weakness of the current system is that the legislative appropriation for the salary supplement may, in effect, become the minimum amount of settlements rather than the maximum. Because union leaders and members know that a certain amount of money has been set aside for compensation increases, unions may feel compelled to negotiate for this full amount plus an additional amount. If the legislative appropriation of salary supplement dollars serves as a floor for settlements, the state may be settling contracts for a higher cost than if the Legislature did not provide this floor.

2. Effect on Agency Operations

Because the executive branch has primary responsibility for negotiating contracts, it can refuse to enter into contracts that would unduly harm agency operations.

A salary supplement appropriation that is less than the amount needed to pay for contract settlements forces agencies to reduce services or to use non-compensation portions of their budgets to pay compensation. Some feel that this is desirable, because it makes agency budgets tight and thus promotes greater operating efficiency. On the other hand, this practice may harm agency programs by forcing cuts in services provided to the public or causing positions to remain vacant.

3. Effect on Collective Bargaining Process

The current system allows the collective bargaining process to operate without severe external restraints, such as time deadlines or absolute dollar limits. One problem is that because the unions know that the Legislature will appropriate a specific amount of money for salary supplements, bargaining on economic issues is almost always delayed until the Legislature has made this appropriation. Further, the system permits state employee unions to lobby the Legislature concerning the size of the salary supplement, thus diverting the focus somewhat from collective bargaining. The current system may make it easier for the state labor negotiator to convince a union to accept a contract offer than a system with open appropriations. Under the current system, the labor negotiator can refer to the legislative appropriation and assure a union that only a certain amount of money is available. It may be harder for unions to justify a strike under these circumstances than it would be if there were an open appropriation (especially if the negotiator is offering more than the salary supplement appropriation).

II. IMPACTS ON STATE AGENCIES

A. Introduction

This section of the report includes the impact of the salary supplement underfunding on state agencies. This information was gathered through discussions with the Department of Finance, surveys sent to state agencies, and follow-up discussions with state agencies.

B. Fiscal Year 88-89 Salary Supplement Underfunding of State Settlements

State agency budgets are underfunded for a variety of reasons, one of which is that the costs of contract settlements exceed the amount of the salary supplement. State settlements exceeded the salary supplement by \$6.7 million in fiscal year 1988 and \$18.7 million in fiscal year 1989. The following is a breakdown of the underfunding by direct appropriated fund:

| <u>Fund</u> | <u>Amount of Underfunding</u> | | |
|-----------------------|-------------------------------|--------------|--------------|
| | FY 1988 | FY 1989 | Biennium |
| General | \$4,418,000 | \$11,807,000 | \$16,225,000 |
| Trunk Highway | 1,927,000 | 5,823,000 | 7,750,000 |
| Game and Fish | 250,000 | 683,000 | 933,000 |
| Workers' Comp Special | 91,000 | 244,000 | 335,000 |
| Highway User Tax | 56,000 | 156,000 | 212,000 |
| Total | \$6,742,000 | \$18,713,000 | \$25,455,000 |

C. How the Salary Supplement is Distributed to the Agencies

The distribution of the available salary supplement to the agencies is begun by estimating each agency's salary and related costs for the fiscal year. If the total of those costs exceeds the salary supplement, the following steps are taken to fairly allocate the amount available:

1. In the general fund, one hundred percent funding is provided to the legislative and judicial branches and the constitutional officers (per laws of 1987, chapter 404, section 43).
2. Agencies with fifty or fewer positions in the general fund are funded at one hundred percent of need for those positions.

3. After the above deductions from the salary supplement in the general fund, the remaining amount is distributed to agencies on a pro rata basis. The pro rata allocation percentage is the estimated cost of the settlements for each agency as a percent of the total estimated cost. The Department of Finance then transfers each agency's pro rata share to the agency for allotment on the beginning spending plan for the fiscal year.
4. In the special revenue funds where open appropriations exist and a fund balance is available, one hundred percent funding is provided.

By following the procedure described above, the Department of Finance is able to fully fund salaries in the smaller agencies. The larger agencies absorb the underfunding on a pro rata basis, which results in widely different amount of underfunding when expressed in dollars, but uniform underfunding in percentage terms. For instance, in FY '88 in the general fund, the Department of Human Services was underfunded by \$1,964,000 and the Department of Labor and Industry was underfunded by \$23,900. These agencies were equally underfunded in percentage terms.

D. How Agencies Manage Budget Deficits

At the agency level, it is difficult to determine what specific actions were taken to absorb salary supplement underfunding because of underfunding resulting from other budgeting policies and practices. Once the salary supplement is distributed, the agency is left to manage a budget deficit resulting from not only the cost of contract settlements, but also the underfunding of the salary base, unbudgeted insurance costs, unfunded sales tax obligations, underestimated inflation, unfunded Attorney General's fees, and other items. The results of all of the types of underfunding accumulate into a total amount to be dealt with at the agency level. In the Department of Natural Resources for example, the amount of salary supplement underfunding for fiscal year 1989 was \$1,752,000. Budget deficiencies due to other types of underfunding amounted to \$4,696,000, for a total deficiency of \$6,448,000.

Agencies manage this larger budget problem in a variety of ways. Illustrative strategies for dealing with underfunding include:

1. holding positions vacant;
2. hiring more part-time workers and fewer full-time workers;
3. reducing expenditures for travel, printing, and communications;
4. reducing overtime assignments;
5. reducing training hours;
6. delaying equipment purchases,
7. reducing the use of seasonal workers;
8. reducing the use of consultant services; and
9. supplemental budget requests or change level requests to cover specific unplanned expenditures.

Agencies are able to use some or all of the strategies listed above, depending on specific circumstances. For instance, if overtime is a relatively large expense item, reductions in the amount of authorized overtime is an alternative to holding positions vacant. On the other hand, if overtime is not a large part of the agency's budget, other measures will need to be taken. Since the major part of an agency's budget is personnel costs, budget balancing measures are usually related to holding positions vacant, reducing overtime costs and other salary related strategies. The use of these strategies has a direct impact on the ability of the agency to deliver mandated services at the level expected by the agency's customers.

E. The Impact of Budget Underfunding on Specific Agencies

In order to provide an additional illustrative level of detail regarding the impact on the delivery of services, we reviewed the budgetary actions of two state agencies. The Departments of Public Safety and Natural Resources were chosen because they are non-staff agencies providing services directly to the general public, and because they have operations large enough to be substantially affected by salary underfunding. It is important to remember that the measures taken by these agencies addressed the larger underfunding issue.

1. The Department of Public Safety

In the Department of Public Safety, management took an approach similar to that used by the Department of Finance for distributing the salary supplement. That is, smaller programs and programs funded from open appropriations were fully funded. The budgets of larger programs were adjusted to spread the underfunding. Agency management then employed several of the strategies listed above to deal with the underfunding in those larger programs.

Specifically, the Bureau of Criminal Apprehension (BCA) held three crime agent positions vacant. Two of the positions were in the northern region and the other was in the southern region. In the last eighteen to twenty four months, the BCA has been exceptionally busy with major cases, demanding that personnel be assigned to cases for prolonged periods of time and increasing overtime costs. The BCA could have hired additional agents had it not been for the underfunding situation.

The St. Cloud office of the Emergency Management Division was without a Regional Coordinator from May 29, 1987 through January 4, 1989. General fund dollars were not available to fill this position. The office was open only on a half day basis on certain days of the week. An employee in the St. Paul office traveled to St. Cloud twice a week to perform the duties of the Regional Coordinator. In January of 1989, another position was eliminated to provide funding for the Regional Coordinator position.

Funding shortages in non-salary categories were also a problem for the Department of Public Safety last biennium. For example, a twenty four percent increase in Telpac and other communication circuit charges meant that communication costs for the Criminal Justice Data Network (CJDN) exceeded the original budget by \$155,000 in F.Y. 1989. General fund money was transferred from the data processing line item to cover these costs.

Public Safety also experienced a budget problem in the data processing expenditure category for the payment of InterTech bills. In F.Y. 1989, \$79,000 in bills from prior years obligations for services provided to the BCA were paid from current year general funds with the approval of the Department of Finance.

2. The Department of Natural Resources

The Department of Natural Resources used a wide variety of cost reduction strategies last biennium to address the overall \$6.4 million budget deficit. Holding vacancies was the most frequently used strategy. Other strategies included overtime reduction, reduction in work force through attrition, and reductions in travel costs.

Program managers identified the following impacts of the budget reductions by program:

- a) The Minerals Division reduced geological drilling that encourages exploration in the state. This reduced the lease sale income and industry investment in exploration.

The new and expanding industrial minerals programs were the most affected of minerals programs. The budget barely covered salaries, leaving inadequate funding for field work, travel, supplies and map production.

The program manages over 12 million acres of state-owned school trust and tax-forfeited mineral rights; 3 million state and county-owned acres of peatlands; and surface rights for industrial and construction materials on 3 million acres of state-owned land. These resources are managed to provide equitable rental and royalty income for the Permanent School Fund and local taxing districts. A reduction in this management function ultimately reduced the income returned to these recipients.

- b) In the Waters Division, because of underfunding and the increased expenses due to drought activity, customer response was focused on drought activities or other emergency activities. In addition, the timelines for accomplishing other Waters programs were extended.
- c) The Forestry Division's reforestation efforts were reduced approximately 10 percent, cooperative forestry efforts were reduced by 25 percent, and prescribed fire costs were transferred to RIM funding.
- d) The Trails and Waterways Division's marketing, interpretation, surveys and promotion activities were curtailed, impacting all Trails and Waterways programs, especially non-motorized trail activities such as bicycling, hiking and horseback riding.
- e) The Parks and Recreation Division's interpretive programs (central office) were cut 10 percent; marketing (central office) was cut 10 percent; ski trail grooming was curtailed; water shut-offs in park and recreation areas occurred earlier; and campgrounds closed during non-peak seasons.
- f) The Fish and Wildlife Division's Fisheries Section did not install ten fishing piers; and fisheries management projects totaling \$100,000 were cancelled. (\$350,000 in matching federal funds were not earned.)

The Wildlife Section's weed spraying efforts in agricultural areas were reduced 10 percent and special project funding intended for habitat work was used to pay rent, telephone, and salaries.

The Ecological Services Section purchased no laboratory equipment and held vacancies in lake sounding, surveys, etc.

- g) The Enforcement Division had eight positions held vacant in FY 1989; overtime hours authorized reduced; training activities reduced; and travel and gasoline expenditures per officer were reduced. Additionally, they deleted several public service announcements designed to promote enforcement programs, such as firearm safety training and snowmobile training, and reduced patrolling activities. The Division is behind in program schedules.
- h) The Engineering Division now has a greater backlog in surveys, a reduced ability to inspect bridges, and a reduced ability to design and build DNR construction projects.

F. Conclusion

In conclusion, state agency budgets are underfunded for a variety of reasons, making it impossible to isolate the effects of salary supplement underfunding. State agencies use a range of different budget balancing measures, many of them related to personnel costs. It is not possible to connect specific program impacts to underfunding of settlements.

III. SURVEY OF OTHER STATES

A. Introduction

The Labor Relations Bureau surveyed eleven states with comprehensive collective bargaining laws for state employees. These states were chosen on the basis of their geographic proximity to Minnesota or because their laws were similar enough to Minnesota's to warrant investigation into their legislative salary appropriation and their salary negotiation processes. The states surveyed were: Hawaii, Illinois, Iowa, Michigan, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, and Wisconsin. Surveys were returned from all states except Pennsylvania, New Jersey, and Oregon.

It is difficult to compare the operations of bargaining statutes since the political climates, bargaining laws, and bargaining practices differ from state to state. However, from our review, a comparison can be made based on four key elements. These elements are: right to strike; deadline for the end of bargaining; contract approval process; and appropriations process.

B. Summary of Survey Results

1. Hawaii

- Right to Strike: State employees have the right to strike. Essential employees may not strike.
- Deadline for Completion of Negotiations: There is no deadline imposed for completion of bargaining. The Legislature meets from January through mid-April of each year and there is no interim approval mechanism for settlements.
- Contract Approval Process: The Legislature, based on a simple majority, can either accept or reject labor contracts.
- Appropriation Process: The costs of contract settlements are submitted to the Legislature through appropriation bills. The Legislature then acts on these bills and they fund them in full, part or not at all.
- Miscellaneous Factors: A unique factor in Hawaii's bargaining process is that the state and local jurisdictions all bargain together. The Governor and Mayors of County Government together are responsible for reaching settlements.

2. Illinois

- **Right to Strike:** State employees have a limited right to strike. The right matures after contracts have expired, the employer refuses to submit the dispute to binding arbitration, and a five day notice is submitted. Police, firefighters and security personnel are considered essential and cannot strike, but do have the right to binding arbitration.
- **Deadline for Completion of Negotiations:** There is no deadline for the completion of negotiations.
- **Contract Approval Process:** The Legislature has no authority to reject, accept or modify labor contracts.
- **Appropriation Process:** Appropriations in Illinois are by agency rather than by fund. After contracts are executed, agency budget requests are adjusted to reflect salary increases and the Legislature then reviews and passes on agency budgets. The Legislature meets every spring and autumn.

3. Iowa

- **Right to Strike:** State employees do not have the right to strike. Essential employees have the right to binding arbitration.
- **Deadline for Completion of Negotiations:** There is a deadline for completion of negotiations. It is based on a Supreme Court decision that negotiations must be completed by March 15th prior to a contract effective date of July 1st. Thus, contracts must be completed prior to legislative adjournment.
- **Contract Approval Process:** The Legislature has no authority to reject, accept or modify contracts.
- **Appropriation Process:** The Legislature passes a salary adjustment bill after agreements are reached or arbitration awards are issued. The Legislature may fund all, a part of, or none of the salary adjustments.

4. Michigan

- **Right to Strike:** By constitutional provision, state employees do not have a right to strike. Only state police troopers have a right to interest arbitration. Other employee groups may use an impasse resolution panel of the Civil Service Commission.

- Deadline for Completion of Negotiations: The State of Michigan has a deadline set by its Constitution. Contracts or arbitration awards must be completed and transmitted by the Civil Service Commission to the Governor no later than February for a budget message to the Legislature. Contracts then take effect the following October 1st.
- Contract Approval Process: The Legislature may reduce or reject a pay increase by a 2/3 vote of both Houses.
- Appropriation Process: The Governor may or may not include pay increases in the proposed budget and the Legislature may or may not approve appropriate monies to fund increases as negotiated.
- Miscellaneous: The State of Michigan has a unique system for bargaining. The Civil Service Commission, as established by the state Constitution, has broad authority over state classified employees. Neither the Governor nor the Legislature has a big role in determining wages for state employees. In fact, one article in Michigan's Constitution expressly prohibits the Legislature from enacting statutes to regulate disputes involving state classified employees.

5. **Nebraska**

- Right to Strike: State employees do not have the right to strike. Essential employees have the right to submit contracts to binding arbitration.
- Deadline for Completion of Negotiations: By statute, there is a deadline for completion of negotiations. Parties must reach voluntary agreement by December 31st or be at impasse on that date with an arbitration by March 15th for the July 1st contract effective date. Both the deadline for voluntary agreements and arbitration awards are prior to legislative adjournment.
- Contract Approval Process: Contracts negotiated are not subject to legislative review. Nebraska's chief negotiator reports the results of bargaining and the fiscal requirements of contracts to the Legislature by March 16th.
- Appropriation Process: After the Legislature receives a report of the fiscal requirements of the contract, it appropriates money to fund the contracts. It may fund all, a part of, or none of the wage requirements.

6. New York

- **Right to Strike:** State employees do not have the right to strike or submit contract disputes to binding arbitration. If an impasse is reached in negotiations, the parties may pursue mediation and fact-finding. If the fact-finder's report is unacceptable to either party, the Legislature has authority to make a determination based on facts presented by the parties. (New York reports that this final procedure has never been used.)
- **Deadline for Completion of Negotiations:** There is no deadline for completion of negotiations.
- **Contract Approval Process:** Any provision of a contract which requires legislative action to permit its implementation by amendment of law or by providing additional funds is handled through implementing legislation. Through this process, the Legislature can accept, reject, or modify contract provisions.
- **Appropriation Process:** The New York Legislature operates with an annual rather than a biennial budget. The Legislature passes a budget bill which includes a "miscellaneous appropriation" including dollars for salary increases, as well as other items. This bill is generally passed before contract negotiations are completed. When contracts are settled, an appropriation bill is passed to allot dollars from the miscellaneous appropriation line of the budget to cover salary increases for that fiscal year. The appropriated amount is not always sufficient to cover all wage and fringe benefit costs. If there is a shortfall, agencies absorb the shortfall. Negotiated salary increases to be paid in subsequent fiscal years are included in department budgets and submitted to the Legislature each fiscal year. If contract negotiations are not completed prior to the end of the legislative term, there is no mechanism for interim approval. However, an appropriation during the next term would fund the contract retroactively.

7. Ohio

- **Right to Strike:** Strikes for non-essential employees are allowed after an impasse procedure. Either party can force a contract dispute to a neutral fact-finder. The fact-finding report must be rejected by a 2/3 vote of either the union membership or the Legislature for the right to strike to mature.
- **Deadline for Completion of Negotiations:** There is no deadline for the completion of negotiations.

- **Contract Approval Process:** The Legislature may disapprove by a 2/3 vote a tentative agreement within 30 days or a fact-finding report within 7 days.
- **Appropriation Process:** Salary appropriations are made during the legislative session in odd numbered years. Contracts have generally not been settled until after the appropriation has been made, but settlements to date have not exceeded the appropriated amount.

8. Wisconsin

- **Right to Strike:** State employees do not have the right to strike or submit contract disputes to binding interest arbitration.
- **Deadline for Completion of Negotiations:** There is no deadline for the completion of negotiations.
- **Contract Approval Process:** The Joint Commission on Employee Relations (JCOER) acts on a contract that has been ratified by the union. If the JCOER approves the contract, it is submitted to the full Legislature which may accept or reject the agreement.
- **Appropriation Process:** The Legislature does not appropriate a specific amount for salary increases; rather, it makes a sum sufficient appropriation which includes an estimated salary increase cost. Contracts are generally negotiated after the appropriations process. If shortfalls occur, agencies often fund them through turnover or delays in filling positions. In some instances, agencies may request supplemental appropriations that are funded from a general reserve in the budget.

C. Survey Analysis

Three states, Michigan, Nebraska and Iowa, have some form of deadline to ensure that salary increases are negotiated prior to the appropriations process. However, none of these states has a right to strike for state employees. These systems do not offer an alternative for Minnesota, unless the Legislature were willing to alter the collective bargaining structure. It is also noteworthy that all three states reported that the Legislature is not obligated to fully fund negotiated agreements.

The other five states have no deadline. In some of those states, settlements have tended to occur prior to the appropriations process. This has historically been the case in Illinois, New York and Hawaii. In all three states, this appears to be due to the bargaining climate, rather than the structure of the process. In Illinois and New York, where there is no right or a limited right to strike, it may well be due to the fact that the union's greatest leverage exists during the legislative session.

In Hawaii, which does have a right to strike, the fact that settlements tend to occur during the legislative session may be due to the fact that there is no mechanism for interim approval of contracts. This option, discussed in more detail in the next section of the report, has several disadvantages. It focuses more of the bargaining on the Legislature, and would tend to stall negotiations until the next legislative session if not completed by the adjournment date. In fact, the one public employee strike that has occurred in Hawaii took place over six months after the contract had expired, because the union waited to strike until the Legislature was back in session. Thus, although settlements tend to occur while the Legislature is in session, there is no guarantee that they occur during the session in which budget decisions are made.

Further, without any mechanism for immediate approval of a contract, Hawaii lacks a necessary tool for settlement of a contract or strike when the Legislature is not in session. In that instance, it is possible a special session would have to be convened to approve salary increases in order to resolve a contract dispute or strike. One additional factor which makes a comparison to Hawaii difficult, is the joint bargaining of state and local jurisdictions. This system creates different pressures on the Legislature for appropriating dollars.

In Wisconsin and Ohio, settlements have tended to occur after the salary appropriation has been made. Wisconsin's process differs from Minnesota's in that it makes a sum sufficient appropriation for salary increases which includes other items, and which is treated as only an estimate. If settlements exceed the amount, state agencies may be underfunded. However, they do have the ability to request additional funding from the budget reserve.

Ohio has had settlements within the legislative appropriation. This has occurred with a system basically similar to Minnesota's in that the appropriated amount is generally known at the time settlements are reached. It is somewhat difficult to make comparisons to Ohio in that their collective bargaining structure is largely untested. Their collective bargaining law is only six years old and only two rounds of bargaining have occurred under it. No strikes have occurred and the unions are just developing their relationships both with the employer and with the Legislature.

D. Conclusion

In conclusion, no clear pattern emerges as to how other states appropriate money for salary increases. We have not found another jurisdiction in which the Legislature has granted employees the right to strike and has imposed a mechanism to guarantee settlement prior to legislative appropriation. Some of the states with no deadlines tend to have settlements prior to the appropriation process, others do not. In states without the right to strike, settlements may occur during the legislative session because it is the time the exclusive representatives can exert the most pressure. The Hawaii system of allowing strikes but having no process for interim legislative approval of the contract may force settlements during the session, but poses other problems which outweigh any advantages.

IV. SALARY SUPPLEMENT OPTIONS

A. Introduction

This section of the report includes an analysis of various changes that could be made either to the collective bargaining system or the salary appropriation system to ensure full funding of contracts either through forcing settlements to occur prior to the appropriations process, or through a different method for appropriating dollars for settlements.

B. Options Involving a Change in the Collective Bargaining System

1. The Legislature could make a change in the collective bargaining system for state employees by requiring settlements by a specific date. For example, the Legislature could pass a law requiring that settlements must be submitted to the Legislature before April 15th of odd numbered years.

Legislation mandating settlements by any particular date would be incompatible with the existing strike rights in PELRA. You cannot give employees the right to strike and, at the same time, require that settlements be reached by a specific date. Indeed, the granting of the expanded right to strike in 1980 was the major factor leading to the repeal of the statutory deadline for contract settlements that existed prior to the 1980 amendments to PELRA.

However, if PELRA were amended to modify the right to strike, the Legislature could then mandate that settlements be reached prior to a specific date, such as prior to the Governor's budget proposals, or prior to the beginning or the end of the legislative session.

The principal advantage of a mandatory settlement deadline would be that the contract costs would be known at the time the Legislature appropriates the salary supplement, thereby permitting the Legislature to consider actual costs in the context of other funding decisions.

The disadvantages of a mandatory deadline are as follows: First, a deadline would force the parties to prepare and bargain on proposals further in advance of the effective date of the contract than now occurs. This leaves the parties with less opportunity to uncover problems with existing contract provisions and to make proposals to correct them. It creates a particular problem in bargaining on insurance. Insurance premium increases have become an important aspect of the economic portion of bargaining. Under the current system, the parties have had to estimate the second year rate increases, but have been able to use actual rate increase figures for the first year. To move the bargaining deadline forward would force the parties to bargain both years based on estimated premium increases.

Further, any deadline which would force settlements prior to the Governor's budget or the beginning of the legislative session would mean that the negotiations would be taking place prior to and during legislative and executive branch elections, and during the lame-duck period of November and December. If an election resulted in either executive or legislative branch changes, the newly elected officials would not have had input into the settlement amount.

Second, the effect of a mandatory deadline would be to remove the frame of reference that now exists with the salary supplement appropriation. It is not clear that the exclusive representatives' expectations would be lower if there were no indication from the Legislature as to the amount of the salary appropriation.

Third, any settlement deadline combined with a limited right to strike would force strikes to occur during the legislative session. This would invariably politicize the bargaining process by drawing the Legislature into the labor dispute. Political solutions to labor disputes rarely end up serving the parties well. These concerns were major factors in the changes made to PELRA in 1980 which eliminated the settlement deadline during the legislative session.

Finally, management would not support establishing a deadline for settlement if it meant returning to a collective bargaining system which included a more extensive use of the interest arbitration system than currently exists. The executive branch would prefer to reach voluntary agreements between the parties, rather than having an outside arbitrator with no real accountability make decisions regarding the internal operations of state government.

2. Change Contract Expiration Dates

The expiration dates for state contracts could be changed so that contracts would expire prior to the end of the legislative session in which budget decisions are made. For example, expiration dates could be changed to April 1 of odd-numbered years. The advantage of an April 1 expiration date would be that contracts would presumably be settled before the Legislature adjourned. (An April 1 example was chosen instead of an earlier date such as January 1 of odd-numbered years, or October 1 of even-numbered years. An earlier date, while increasing the probability of settlements prior to the end of the legislative session, would mean that negotiations would often occur prior to legislative and executive branch elections, making meaningful elected leadership input into the process infeasible.)

The disadvantages of such an approach would be that negotiations, and potentially strikes, would be more focused on the Legislature than they are if they occur when the Legislature is not in session.

Second, with no appropriation as a point of reference for unions, settlements could be higher than when the appropriation has already been established.

Third, the first three months of a newly negotiated contract would coincide with the last three months of the biennium. It would be difficult for agencies to fit the costs for salary increases into their existing budgets.

Fourth, even with this approach, there would be no guarantee that settlements would actually occur prior to the legislative appropriations process.

3. No Interim Approval of Contracts

Another option would be to eliminate the process of LCER granting interim approval of negotiated settlements. This system might act to encourage settlements prior to the end of the legislative session.

However, several disadvantages exist. One, as with several other options discussed, negotiations occurring during the legislative session would be more focused on the Legislature. In fact, the 1980 amendments to PELRA, and the establishment of the interim approval of contracts by LCER were in part intended to reduce the likelihood that negotiations and strikes would be focused on the Legislature.

Second, with no interim approval, the employer would lack a critical element needed to settle a strike. If a strike occurred after the Legislature adjourned, it would be very difficult to reach a settlement if employees were faced with receiving no pay increase for several months. The situation could force a political solution, such as convening a special session to ratify the contract.

Third, unions would have little incentive to settle a contract once the Legislature had adjourned. This would almost guarantee an extended bargaining process lasting into the next legislative session.

C. Options Involving Settlement Deadlines with Penalties for Delays

The Legislature could consider a penalty system such as was enacted for school district teacher bargaining. Under the school district system, school aids to the district are reduced if a settlement is not reached by January 15 of even-numbered years. Discussions were held with Paul Goldberg, Commissioner of the Bureau of Mediation Services, regarding this option. He indicated that the school district model does not translate well to state bargaining. In school district bargaining, the statutory deadline for contract settlements is January 15 of even-numbered years,

which is over six months after the expiration date of the contract, and at least seven to eight months after the state school aid formula has been established. Goldberg indicated that the impetus for the school district bargaining deadline was partly due to the fact that the school aid formula established during the 1987 legislative session was adjusted during the 1988 session, which led districts and exclusive representatives to delay settlements until the 1988 session was over. He also indicated that the Legislature had a concern over the amount of distraction during the school year caused by settlements not occurring in a timely fashion.

The same considerations do not apply to state bargaining, nor would a similar deadline force settlements before the salary supplement appropriation. The teacher bargaining deadline occurs several months after funding decisions have been made, and operates only to force settlement prior to funding adjustments made during the session in even-numbered years. This has never been an issue with state bargaining for which all funding decisions have been made during the session in odd-numbered years.

The concerns over long delays in settlements and any accompanying disruptions have also not been issues in state bargaining.

Two further considerations would make a school district type deadline unworkable for state bargaining even if it occurred at a different point, such as prior to the end of the legislative session in odd-numbered years. First, a deadline at that point would force strikes to occur prior to the expiration date of a contract. In virtually all bargaining settings, strikes do not occur prior to the expiration date of the contract.

Second, the school district deadline applies only to the teacher bargaining units in the districts. Exclusive representatives of support personnel are not under the same deadline. For a deadline established to force state settlements prior to funding decisions to be effective, it would have to apply to all sixteen state bargaining units. The state historically has always sequenced its settlements, settling first with the largest exclusive representative, to ensure consistency on settlement amounts and to ensure that adequate time can be focused on each contract. If there were a penalty deadline, it would be likely that the largest exclusive representative would settle at the last minute before the deadline. This would mean that the state could well not have any time to meaningfully negotiate the other contracts prior to the deadline. This could lead to the exclusive representatives charging the state with bad faith bargaining.

D. Options Involving a Change In the Funding System

1. Fund the Salary Supplement Through an Open Appropriation or Out of the Budget Reserve

The Legislature could use either an open appropriation or funding out of the budget reserve to fund contract settlements after they occurred. The advantage of either of these systems would be that there would be no salary supplement amount for exclusive representatives to target, and state agencies would presumably be more likely to be fully funded for the salary settlements.

The disadvantages of such a system were summarized in Mark Shepard's report as follows:

One disadvantage of this approach is that it would be impossible to guarantee a certain amount available as a reserve. Further, the availability of the entire reserve for the salary supplement might make it more difficult for the state to argue that it couldn't afford union demands.

This proposal has another significant disadvantage. An open appropriation could unbalance the state general fund budget if collective bargaining agreements cost more than anticipated. Absence of a specific dollar appropriation might leave the state labor negotiator without a benchmark of the Legislature's belief for what constitutes reasonable compensation costs (although this advice could still be provided informally, instead of in the appropriation bill). The Legislature would be placing more trust in the executive branch to assure that compensation costs were compatible with the rest of the budget. Although the LCER and the full Legislature could reject agreements, rejection would cause unrest.

2. Use a Salary Supplement with a Deficiency Appropriation During the Session in Even-Numbered Years

The Legislature could continue to make a salary supplement appropriation during the session in which budget decisions are made, and could then make a deficiency appropriation during the next session to make up any difference between the salary supplement and the cost of the settlements.

The advantage of this system would be that state agencies would be fully funded for salary increases.

The disadvantage of this system is that it could create an expectation on the part of the unions that there would be an ongoing system for providing additional appropriations. There would be little incentive for unions to settle for an amount even close to the salary supplement. This would also create an incentive for exclusive representatives to lobby the Legislature during the session in the even-numbered year for an additional appropriation. This could prolong negotiations and possibly increase the settlement costs.

3. Prohibit Settlements In Excess of the Salary Supplement

The Legislature could enact legislation prohibiting settlements in excess of the salary supplement total. This system would ensure that settlements would not exceed the appropriated amount.

The major disadvantage of this system is that it would shift the focus of collective bargaining from the executive to the legislative branch. All salary bargaining would essentially occur prior to the Legislature's determination of the salary supplement amount. Any strike would invariably be focused on the legislative decision on the salary supplement amount. This process would also tend to force fringe benefit issues such as holidays, vacation, and sick leave provisions, as well as language items such as seniority, filling of vacancies, and layoff into the legislative arena. These items are of great importance to both labor and management and tend to consume a large portion of the bargaining time. Under the current collective bargaining structure, labor and management can consider these items in the context of an overall settlement. If the negotiation of these, and other items did not occur in that context, management would be less able to negotiate language items in a manner that preserves essential management rights.

This alternative also represents a diminished legislative commitment to collective bargaining. It might be fiscally workable, but it would be tantamount to mandating the outcome of the bargaining process before it had begun.

E. Continue the Current System

The Legislature could continue the current system of a salary supplement appropriation with a base adjustment to agency budgets in the following biennium to fully fund salaries.

The disadvantage of this system is that state agencies are not fully funded for salaries for the biennium in which the settlement occurs. Agencies have had to make difficult budget and programmatic decisions to cope with this situation.

There are several advantages of this system. The first is that it has basically functioned well for several rounds of bargaining. It has allowed the executive branch to negotiate wage, benefit and language items in the context of an overall settlement. It has provided for legislative input both in terms of the salary supplement appropriation, and in terms of the LCER's and the Legislature's role in contract ratification. Since 1980 when the current system was enacted, neither LCER nor the Legislature have rejected any contract submitted for ratification.

Although contract settlements that do not exceed the overall salary supplement appropriation are preferred, it is realistic to assume that the appropriation will often be exceeded. In the private sector, a corporation, with the involvement of both administrators and the board of directors, can privately establish its budget and provide to its negotiator a target amount for the negotiated settlements. Whether the negotiator meets or exceeds this target amount is generally not known. Because the budget making process is a public process in the public sector, this level of confidentiality is not possible. When the target amount is public, it is far more difficult to guarantee that settlements will not exceed the set amount.

The key to the success of the current system is that it forces some efficiencies during the current biennium to deal with underfunding, but by fully funding salary items at the outset of the subsequent biennium, it does not compound the underfunding to the point where agencies are unable to deal with it.

The current system is best viewed in an overall context. While it may not operate ideally to achieve settlements at the appropriated amount, it may come as close to that objective as possible while preserving an effective right to strike for public employees, and while balancing the roles of the executive and legislative branches in the collective bargaining process.

F. Conclusion

In conclusion, we have not been able to identify any alternative bargaining or appropriations arrangements which offer achievable benefits over the current system. It is infeasible to have a deadline for contract completion along with the current right to strike for state employees. Options such as changing contract effective dates, or limiting interim approval of contracts do not guarantee settlements by a certain date and create additional problems. The penalty imposed in teacher bargaining does not force settlements prior to the appropriation process. Alternatives to the current funding system involve legislative policy decisions. However, several potential problems with such alternatives have been discussed. The current system, while not without imperfections, has worked well, is accepted and understood by the parties, and provides an appropriate balance of the roles of the executive, legislative branch, and exclusive representatives in the collective bargaining process.

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