Primer: Collective Bargaining

**Collective bargaining**

Collective bargaining is the performance of the mutual obligation of the representative of the employer and the exclusive bargaining representative of the employee to meet at reasonable times and to bargain in good faith in an effort to reach agreement. The obligation does not compel either party to agree to a proposal or to make a concession.

Washington state laws give most state and local government employees a right to band together to negotiate their wages, hours and working conditions with their employers. These laws also set up procedures to resolve collective bargaining disputes between those employees and employers. All public employers, public employees, and organizations representing public employees must comply with the law. The remedy for unlawful conduct is to put the injured party back in the situation that existed before the unlawful conduct, and can include reinstatement and back pay for employees who lose their job. Attorney fees and other extraordinary remedies can be ordered in some circumstances.

The Labor Relations Division (Division) of the Office of Financial Management manages the collective bargaining process on behalf of the Governor with union-represented state employees. The Division is funded through the state General Fund. Labor negotiations occur every two years, corresponding with bienniums. They begin in the spring of every even year and must be completed by October 1 of every even year. They are effective for the entire biennium July 1 through June 30 (two fiscal years) and require legislative approval.

The Personnel System Reform Act (PSRA), Chapter 41.80 RCW, provides for collective bargaining with classified employees of state agencies, the Department of Corrections, and institutions of higher education. The scope of mandatory bargaining includes wages, hours, and other terms and conditions of employment. Bargaining over matters pertaining to management rights is prohibited. Management rights include, but are not limited to, the employer's budget, the
size of the agency workforce (including determining the financial basis for layoffs), and the right to direct and supervise employees. The PSRA does not provide for binding interest arbitration.

Under the PSRA, the Division, not individual agencies, negotiates master agreements with employee labor unions. A master agreement is the collective bargaining agreements agreed to between the Division and each exclusive bargaining representative that represents 500 or more employees. A master agreement applies to all agencies with employees who are in bargaining units represented by the same union. Some agencies will have more than one master agreement. One of the master agreements is with unions that represent less than 500 bargaining unit employees. This group of unions bargains collectively with the state as a coalition.

The governing board of each higher education institution may negotiate its own contract, or may choose to have the Division conduct negotiations on its behalf. Most community colleges, Western Washington University, Central Washington University and The Evergreen State College all elect to have the Division negotiate on their behalf.

The Public Employees' Collective Bargaining Act (PECBA), Chapter 41.56 RCW, provides for collective bargaining by counties, cities, and other political subdivisions and their employees. The scope of mandatory bargaining is personnel matters, including wages, hours and working conditions, which may be peculiar to a bargaining unit of the public employer. The courts have described the scope as limited to matters of direct concern to employees. Managerial decisions that only remotely affect personnel matters, and decisions that are predominantly managerial prerogatives, are nonmandatory subjects. Employee workload and safety, including staffing levels with a direct relationship to workload and safety, are mandatory subjects. To resolve impasses over contract negotiations, the PECBA requires binding interest arbitration.

The following are the general groups of public employees:
STATE GOVERNMENT:
State civil service employees - Chapter 41.80 RCW
State higher education classified (civil service) employees - Chapter 41.80 RCW
State higher education and community college exempt employees - Chapter 41.56 RCW
State institutions of higher education faculty - Chapter 41.76 RCW
Community and technical college faculty - Chapter 28B.52 RCW
Home Care independent providers - Chapter 41.56 RCW and Chapter 74.39A RCW
Technical college classified employees - Chapter 41.56 RCW
Language access providers - Chapter 41.56 RCW

LOCAL GOVERNMENT:
Local government employees (cities, counties, etc.) - Chapter 41.56 RCW
Port districts - Chapter 41.56 RCW and Chapter 53.18 RCW
Public utility districts - Chapter 41.56 RCW and RCW 54.04.170 -.180
School district certificated employees - Chapter 41.59 RCW
School district classified employees - Chapter 41.56 RCW

Adult family home providers, child care providers, home care individual providers and language access providers are not state employees. The Legislature granted these groups the right to collectively bargain. Individuals covered under the non-state employee agreements are business owners, independent contractors, or employees of the consumer of services. The scope of labor negotiations is defined in RCW 41.56 and RCW 74.39A.270.

Arbitration
When a grievance or formal complaint filed by a union on behalf of an employee or group of employees is not resolved at lower levels of the grievance procedure it may go to arbitration. Arbitration is a method of settling a labor-management dispute by having an impartial third party hold a formal hearing, take testimony and render a final and binding decision. An arbitration decision is rendered after an arbitrator, an impartial third party, holds a formal hearing to learn the facts of a case from both the employer and union. A decision, or opinion and award, is then issued after the arbitrator examines the case and reflects on the hearing. Arbitration fees are paid by the parties as negotiated under collective bargaining agreements. Typically the costs are split equally between the employer and union.
Interest arbitration or grievance arbitration

Interest arbitration is a process whereby the issues not resolved in bargaining between the employer and the union may be presented to an impartial arbitrator for final resolution. This differs from grievance arbitration, wherein the arbitrator interprets a term in an existing contract. Interest arbitration, when the law allows for it, is a mechanism that can resolve a bargaining dispute. When the employer and union negotiate to impasse on a mandatory subject of bargaining, the parties hire an impartial third party arbitrator. This arbitrator conducts a formal hearing in which the parties present their positions. The arbitrator then reviews the testimony and supporting evidence and decides on what the contract language should be by issuing an arbitration award.

Washington State Ferries employees, home care individual providers, child care workers, adult family home providers and commissioned officers of the Washington State Patrol are examples of bargaining units with access to interest arbitration. Interest arbitration typically affects the outcome of a successor collective bargaining agreement. Interest arbitration is not permitted for classified employees of state agencies and institutions of higher education under RCW 41.80.

Selection of Arbitrator

Upon receiving a list of arbitrators from an organization like the American Arbitration Association (AAA) or Federal Mediation and Conciliation Services (FMCS), the employer and the union go through a selection process to determine an arbitrator. AAA is a private, non-profit organization that promotes arbitration as a method for settling disputes outside of the courtroom. Many of the collective bargaining agreements reference AAA as the agreed-upon service to supply an arbitrator. FMCS is an independent, federal agency that provides mediation, conflict resolution, training, and arbitration services to the private sector and governmental agencies.

The Right to Strike

Washington state laws do not expressly grant any public employees the right to strike, and some state laws expressly prohibit strikes by public employees. No such right existed at common law,
and none has been granted by statute. State statutes presently do not impose penalties on public employees for engaging in a strike. This is different from the right of private sector employees who have a right to strike under federal law.

As previously mentioned, RCW 41.56 provides collective bargaining rights to many employees of local government and certain state employees. RCW 41.56.020-.025, .100. However, RCW 41.56.120 expressly provides: “Nothing contained in this chapter shall permit or grant any public employee the right to strike or refuse to perform his official duties.” Virtually identical language disclaiming the grant of any right to strike is part of the law providing for collective bargaining rights for state employees. See RCW 41.80.060. The Legislature enacted a similar provision with respect to port districts. See RCW 53.18.020.

A separate chapter, RCW 41.59, grants certificated employees of school districts (who include teachers) the right to engage in collective bargaining. RCW 41.59.020(4), .060. However, no provision of RCW 41.59 grants the right to strike. It might be argued that because RCW 41.59 does not expressly disavow the right to strike, such a right is implied. However, as discussed above, at common law, public employees do not possess the right to strike.

Additional state statutes also address the right to strike: RCW 47.64.140 it is unlawful for ferry system employees to strike against the ferry system; RCW 28B.52.078 prohibits strikes by community college faculty; and RCW 41.76.065 provides faculty of four-year higher education institutions are prohibited from striking.

**Bargaining groups and the role of the Public Employees Relations Commission**

The Public Employment Relations Commission (PERC) is an independent Washington State agency responsible for resolving disputes involving most public employers and employees, and the unions that represent those employees. When public employers and unions are unable to agree on a written contract establishing the wages, hours, and working conditions of bargaining unit employees, PERC provides mediation to help the parties reach an agreement.
PERC's jurisdiction is determined by state law and includes the following groups: state civil service employees; state higher education classified (civil service) employees; community and technical college faculty; public utility district employees; home health care providers; adult family home providers; and certain higher education teaching and research assistants.

State employees as a group choose which union will represent them. In the event that a covered employer and a bargaining representative disagree as to the selection of a bargaining representative, PERC must be invited to intervene. State law and Commission rules designate procedures for the Commission's intervention. PERC conducts secret-ballot elections in which all members of the group have a choice of voting for or against a union. Other unions can be on the ballot if they have signed individual cards showing support of 10% of the employees in the group. If there are three or more choices on the ballot, and none of them gets a majority, PERC will conduct a runoff election between the two choices that received the highest numbers of votes. A majority of the votes cast wins the election. PERC can certify on the basis of the authorization cards under some laws, if the union has over 70% support in the group.

Public employees (other than elected and senior officials) have the right to change or decertify union representation by the same process used to select representation. If employees elect union representation, an employee-directed organization deals with their employer about their wages, hours, and working conditions. If employees are dissatisfied with their current representation, they can select a different employee-directed organization to represent them. If employees decertify their union representation, their wages, hours, and working conditions will be set by their employer (subject to civil service rules or other policies) and they will deal directly with their employer about any issues. At least one year must pass before another petition can be filed. Employees exercise these rights by groups (bargaining units), not as individuals. An employee must have the support of co-workers in the group to make changes.

National Labor Relations Board
The National Labor Relations Board (NLRB) is an independent federal agency that administers the National Labor Relations Act, the primary law governing relations between unions and employers in the private sector. The NLRB has two principal functions: to determine, through secret-ballot elections, whether employees wish to be represented by a union in dealing with their employers, and if so, by which union; and to prevent and remedy unfair labor practices by either employers or unions. The NLRB's jurisdiction is limited to enterprises that involve a substantial effect on interstate commerce. This is based on the yearly amount of business done by the enterprise, stated in terms of total dollar volume of business, and is different for different kinds of enterprises. For example, symphony orchestras are covered if they receive at least $1 million in gross annual revenues. Retail enterprises are covered if their annual volume of business is at least $500,000. Employers who provide social services are covered if they receive at least $250,000 in gross annual revenues.