

Weil, Ken

From: Steve Kreisberg [SKreisberg@afscme.org]
Sent: Thursday, August 23, 2007 9:34 AM
To: Weil, Ken
Cc: mschwane@afscmecolorado.org; Sean Hinga
Subject: Impasse Resolution

Ken - It was good talking with you. As we discussed, if the state and the union cannot agree to the terms of a basic collective bargaining agreement, they are at an "impasse." There are a number of ways states have approached impasse resolution:

1. No statutory language at all. In these cases, employees may have a right to strike, based on case law. New Jersey, California and Washington state (among others) have this method. In Colorado, we anticipate an express prohibition on strikes in any law, so this is not likely an option.
2. Allowing strikes, either after a non-binding resolution procedure that results in rejection by one of the parties, or simply allowing strikes. States such as Oregon, Alaska, Pennsylvania, Minnesota, Illinois, and Ohio fall in this category. (Certain essential employees do not have the right to strike and, instead, the conflict is submitted to arbitration for resolution.) Again, this is likely not an option in Colorado.
3. Non-binding impasse resolution consisting of mediation (to facilitate voluntary settlement) followed up by a "fact-finding" or "advisory arbitration" procedure. This is the case in Maryland and New York (for example). The disadvantage is that either party can reject the settlement recommended by the neutral so there may be no terminal point in the negotiations. In both NY and MD, the parties have worked for prolonged periods without a current Agreement in place.
4. Binding impasse resolution such as exists in Delaware, New Mexico, Nebraska, Iowa, Connecticut, and Hawaii (for example). In Iowa, the parties can negotiate their own impasse resolution procedure or use the procedure in law. The following is a link to the Iowa binding arbitration section of the law:
<http://www.legis.state.ia.us/IACODE/1999SUPPLEMENT/20/22.html>
Here's a link to the entire Iowa public sector labor law:
<http://www.legis.state.ia.us/IACODE/1999SUPPLEMENT/20/>

Here's a link to New Mexico's law: <http://www.pelrb.state.nm.us/statute.html>

From that link, link to Section 10-7E-18 for impasse resolution

Under Iowa case law, a binding arbitration decision is not subject to legislative review. The state must comply with the decision based on available appropriations. If the legislature does not provide sufficient appropriations, layoffs are a possibility. In New Mexico, the law makes it clear that specific appropriations are necessary to implement an arbitration decision. We think the New Mexico model; is the best choice for Colorado. Given the political climate in the State, we believe all aspects of the Agreement requiring appropriations should be submitted to the legislature for specific approval.

5. Finally, one state, Rhode Island, set up a binding arbitration provision except that for wage issues, the decision is advisory. Here's a link to that section of the Rhode Island law:
<http://www.rilin.state.ri.us/Statutes/TITLE36/36-11/36-11-9.HTM>
The entire RI law is at: <http://www.rilin.state.ri.us/Statutes/TITLE36/36-11/INDEX.HTM>

Ken, I'm happy to provide any additional information you may need.