

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.

FACE THE STATE**Murphy, Christine**

From: Hsieh, Jason [jhsieh@NGA.ORG]
Sent: Tuesday, August 14, 2007 7:41 AM
To: Murphy, Christine
Cc: Welling, Craig
Subject: RE: State Employee Collective Bargaining

Christine:

As the NGA does not collect the type of information you were seeking, I contacted several other organizations regarding collective bargaining through executive order. Since this is not information we collect, we should not be quoted in any way regarding the information below.

Because different researchers may have found different information, you may want to compare what AFL-CIO and NCSL have (for instance, AFL-CIO states IA has some CB through EO, whereas NCSL does not).

National Conference of State Legislatures (NCSL)

Attached is a 50-state table that compiles findings from NCSL regarding state employee collective bargaining authorized by Executive Order.

AFL-CIO

AFL-CIO states that Governor executive orders to establish collective bargaining rights for state employees is a relatively recent occurrence. Mostly, executive orders apply to a small portion of workers, lately those who prior to the order have no status as employees but who were classified as individual contractors under a state funded program. Recent executive orders of this type cover home health care and/or home child care workers. The order usually establishes a state agency to which these prior contractors are attached as employees. Recent executive orders accomplishing this or rescinding earlier orders establishing collective bargaining rights are:

Oregon (Kulongoski, Aug. 2007) - Adult home care workers
Ohio (Strickland, July 2007) - home health care workers

New York (Spitzer, May 2007) - child care workers

New Jersey (Corzine, Aug. 2006) - child care workers

Illinois (Blagojevich, Feb. 2005) - child care workers

Iowa - (Vilsack, 2005) - home elderly and disabled care workers

Missouri (Holden, 2001) - rescinded by Blunt in 2005

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Kentucky (Patton, 2001) order created a state worker advisory council, rescinded by Fletcher in 2004

Maryland (Glendenning, 1996) - state workers except university system, codified in 1999 legislation

Indiana (Bayh, 1989) – in 2005, Daniels rescinded several executive orders allowing state worker collective bargaining

National Association of State Personnel Executives (NASPE)

Per NASPE, the state employee collective bargaining rights for IN, MO, and KY were established through executive order before being rescinded (as seen above).

American Federation of State, County, and Municipal Employees (AFSCME)

I have a list of states that have collective bargaining for state employees through legislation as opposed to executive order. Let me know if you want these states, provided by AFSCME.

Please let me know if you need further information or assistance!

Jason Hsieh
202-624-7803



From: Murphy, Christine [mailto:christine.l.murphy@state.co.us]
Sent: Wednesday, August 01, 2007 2:47 PM
To: Hsieh, Jason
Cc: Welling, Craig
Subject: RE: State Employee Collective Bargaining

Jason --

Prompt response and promising answer. Thanks very much. I very much appreciate being able to turn to you all for this information look forward to hearing whatever you discover.

Christy Murphy

10/1/2007

Christine L. Murphy
Senior Policy Analyst
Governor's Office of Policy and Initiatives

-----Original Message-----

From: Hsieh, Jason [mailto:jhsieh@NGA.ORG]
Sent: Wednesday, August 01, 2007 12:35 PM
To: Murphy, Christine
Subject: State Employee Collective Bargaining

Christine:

I just wanted to let you know I received an email regarding your question on states that have authorized state employee collective bargaining by executive order. I am doing some research on it and hope to get back to you early next week.

Jason Hsieh, MPH

Health Policy Analyst

National Governors Association

Center for Best Practices

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The logo for "FACE THE STATE" is displayed in white text on a dark blue rectangular background. The word "FACE" is on the left, "THE" is in the middle and smaller, and "STATE" is on the right. Each word has a horizontal line underneath it.



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State	Executive Orders Authorizing State Employee Collective Bargaining
Alabama	No executive order found re: state employees and collective bargaining.
Alaska	State employee collective bargaining not authorized by executive order or legislation. ¹
Arizona	State employee collective bargaining not authorized by executive order or legislation. ²
Arkansas	No executive order found re: state employees and collective bargaining.
California	In 1979, an executive order created the Department of Personnel Administration (DPA) to oversee collective bargaining, hear union contract grievances, and replace the Office of Employer-Employee Relations. ³
Colorado	State employee collective bargaining not authorized by executive order or legislation. ⁴
Connecticut	No executive order found re: state employees and collective bargaining.
Delaware	<u>Executive Order No. 70</u> During the current legislative session, a measure that would give state employees collective bargaining rights passed both houses and is awaiting the governor's signature. ⁵
Florida	Requires collective bargaining, but not authorized by Executive Order. ⁶
Georgia	No executive order found re: state employees and collective bargaining.
Hawaii	No executive order found re: state employees and collective bargaining.
Idaho	No executive order found re: state employees and collective bargaining.
Illinois	<u>Executive Order No. 6</u>
Indiana	Executive order authorizing collective bargaining by state employees rescinded by Governor Daniels on January 11, 2005. ⁷
Iowa	No executive order found re: state employees and collective bargaining.
Kansas	No executive order found re: state employees and collective bargaining.
Kentucky	Governor Patton's executive order authorizing collective bargaining by state employees through the employee advisory council rescinded by Governor Fletcher in 2003. ⁸

¹ Elizabeth McLaughlin, *How Many People Have the Right to Bargain Collectively?* at <http://www.seanc25.org/collect.html>.

² McLaughlin, *How Many People Have the Right?*

³ California Performance Review, "SO41 Consolidate California's Dual Personnel Management System," <http://cpr.ca.gov/report/cprpt/issrec/stops/pm/so41.htm>.

⁴ McLaughlin, *How Many People Have the Right?*

⁵ Chuck Jordan, "Labor To Advance Bargaining Rights For State Employees," *Congress Daily*, 07/23/2007.

⁶ McLaughlin, *How Many People Have the Right?*

⁷ Rebecca Clarren, "New Governor Trashes Union Rights of Indiana State Workers," *The New Standard*, 01/26/2005. <http://newstandardnews.net/content/index.cfm/items/1409>.

⁸ Philip Berg, "State of the Unions: The Impact of Administrative Changes in State-Sector Labor Relations," <http://www.training.ia.mo.gov/solutionsarchive/solutionsBwint04.pdf>.

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State	Executive Orders Authorizing State Employee Collective Bargaining
Louisiana	No executive order found re: state employees and collective bargaining.
Maine	No executive order found re: state employees and collective bargaining.
Maryland	Governor Parris Glendening signed an Executive Order in 1996 that covered approximately 30,000 state employees. In 1999 the state legislature put the Executive Order into state law. In 2001, a second collective bargaining bill was enacted that covered 12,000 public higher education employees. ⁹
Massachusetts	No executive order found re: state employees and collective bargaining.
Michigan	No executive order found re: state employees and collective bargaining.
Minnesota	No executive order found re: state employees and collective bargaining.
Mississippi	State employee collective bargaining not authorized by executive order or legislation. ¹⁰
Missouri	Governor Blunt repealed his predecessor's executive order granting bargaining rights to state employees. ¹¹
Montana	Executive Order No. 1-93
Nebraska	No executive order found re: state employees and collective bargaining.
Nevada	No executive order found re: state employees and collective bargaining.
New Hampshire	No executive order found re: state employees and collective bargaining.
New Jersey	No executive order found re: state employees and collective bargaining.
New Mexico	State employees' right to collective bargaining authorized by Executive Order. ¹²
New York	On May 11, 2007, Governor Spitzer signed an Executive Order giving child-care providers the right to unionize. Although child-care providers would not be considered state employees under the measure, they could bargain with the state for increased subsidies, grants, changes in regulations and possible benefits such as buying into a state-funded health insurance plan. ¹³
North Carolina	Only employees of the State Port Authority have collective bargaining rights. ¹⁴
North Dakota	No executive order found re: state employees and collective bargaining.
Ohio	On July 17, 2007, Governor Strickland signed an Executive Order giving collective bargaining rights to independent home health care workers who contract with the state to provide Medicaid-funded services for the elderly and disabled in their homes. ¹⁵
Oklahoma	No executive order found re: state employees and collective bargaining.
Oregon	Executive Order No. 07-07 allows the Oregon Department of Human Services to engage in collective negotiations with SEIU Local 503, on behalf of persons operating adult foster homes who receive fees or payments from the state. Executive Order No. 07-03 allows collective bargaining by the Oregon Employment Department, Child Care Division with family child care providers
Pennsylvania	No executive order found re: state employees and collective bargaining.

⁹ AFSCME MD website at http://www.afscmecouncil92.org/HTML/YourRights/your_rights.html.

¹⁰ McLaughlin, *How Many People Have the Right?*

¹¹ American Federation of Teachers, "Bargaining Rights Repealed in Indiana and Missouri," *Public Employee Advocate*, Washington, D.C.: February/March, 2005. http://www.aft.org/pubs-reports/pe_advocate/febmar05/unityteam.htm.

¹² McLaughlin, *How many People Have the Right?*

¹³ Norah Machia, "Day-care workers eye more benefits," *Watertown Daily Times*, 05/16/2007.

¹⁴ The State Employees Association of North Carolina, Inc., *Report of the SEANC Collective Bargaining Study Committee*, <http://www.seanc25.org/CB%20Report.htm#General%20Findings>.

¹⁵ Jim Provance, "Ohio home health-care workers get labor rights: Collective bargaining will improve service, Strickland says," *The Blade*. (Toledo: 07/18/2007).

State	Executive Orders Authorizing State Employee Collective Bargaining
Rhode Island	No executive order found re: state employees and collective bargaining.
South Carolina	State employee collective bargaining not authorized by executive order or legislation. ¹⁶
South Dakota	No executive order found re: state employees and collective bargaining.
Tennessee	No executive order found re: state employees and collective bargaining.
Texas	No executive order found re: state employees and collective bargaining.
Utah	State employee collective bargaining not authorized by executive order or legislation. ¹⁷
Vermont	No executive order found re: state employees and collective bargaining.
Virginia	State employee collective bargaining not authorized by executive order or legislation. ¹⁸
Washington	The Civil Service Reform Law was signed into law in 2002 by Governor Locke. The bill expanded the collective bargaining rights of state employees. ¹⁹
West Virginia	State employee collective bargaining not authorized by executive order or legislation. ²⁰
Wisconsin	In 1972, Governor Patrick Lucey issued an executive order creating an affirmative action unit in the Bureau of Personnel. Chapter 196, Laws of 1977, created the Department of Employment Relations and transferred to it from the Department of Administration the organizational units and functions of the Employee Relations Division, including affirmative action, personnel, collective bargaining and human resources services. 2003 Wisconsin Act 33 eliminated the Department of Employment Relations and transferred its functions to the new Office of State Employment Relations. ²¹
Wyoming	No executive order found re: state employees and collective bargaining.



¹⁶ McLaughlin, *How Many People Have the Right?*.

¹⁷ McLaughlin, *How Many People Have the Right?*.

¹⁸ McLaughlin, *How Many People Have the Right?*.

¹⁹ Philip Berg, "State of the Unions."

²⁰ McLaughlin, *How Many People Have the Right?*.

²¹ Wisconsin Office of State Employment Relations, *History and Description of OSER*.

<http://oser.state.wi.us/category.asp?linkcatid=372&linkid=25>