Bargaining in States without Public Sector Collective Bargaining Legislation

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Introduction

Approximately one half of all states and territories lack comprehensive collective bargaining legislation. In states such as Idaho, only some employees are covered by the statute granting collective bargaining rights.\(^1\) In Kansas, public employees have the right to “meet and confer” but not to bargain.\(^2\) In other states, employees have collective bargaining rights by way of court decisions, attorney general opinions, local ordinances or executive orders. Our report focuses on developments that have occurred in 2010 in states without comprehensive collective bargaining statutes.

A useful list of public sector collective bargaining laws is found online at http://www.afscme.org/members/11075.cfm. A copy of this list has been attached to this report.

The Public Safety Employer-Employee Cooperation Act of 2010

At the end of 2010, there was another unsuccessful vote regarding proposed federal legislation that would grant collective bargaining rights to public safety employees. This bill, entitled the Public Safety Employer-Employee Cooperation Act of 2010 (S. 3991) was introduced in the Senate by Senator Harry Reid on November 30th and failed on a procedural vote on December 8th. The Senate voted 55-43 on whether to bring the bill up for consideration. In this procedural vote, the bill would have needed sixty votes to “invoke cloture” and end a filibuster.

This bill is related to three other bills that were introduced in the 111\(^{th}\) Congress each of which were entitled the Public Safety Employer-Employee Cooperation Act of 2009, (S. 1611 and S. 3194 and H.R. 413). Similar legislation has been introduced in Congress since 1995.

Public safety employees covered by the legislation are firefighters, police officers and emergency medical personnel. These employees would be granted collective bargaining rights, even in states without collective bargaining statutes. The act would establish minimum standards for state

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\(^1\) Idaho Code §§ 44-1801 to 44-1811 for firefighters §§ 33-1271 to 1276 for teachers.

collective bargaining statutes and authorize the Federal Labor Relations Authority (FLRA) to determine whether the state statutes meet the standards. The standards include (1) the right of employees to join and form unions, (2) the requirement that the employer recognize the employees’ labor organization, (3) the right to bargain over wages, hours and working conditions, (4) the provision of an impasse resolution mechanism such as mediation or interest arbitration, and (5) the requirement that statutory or contractual rights be enforceable through a state agency, if the state chooses, and, at the election of the aggrieved party, state courts.

The FLRA would have additional authority in states where the collective bargaining statutes were found not to meet the minimum standards. In those states, the FLRA would be the administrative agency, and would have the authority to determine the appropriateness of bargaining units, conduct representation elections, determine whether bargaining occurred in good faith, conduct unfair labor practice proceedings, resolve exceptions to arbitrator awards, and protect the collective bargaining rights of public safety employees.

**State Efforts against Card Check Procedures**

An effort known as Save Our Secret Ballot (www.sosballot.org) had campaigns in several states to put constitutional amendments on the ballot that would prohibit card check procedures. These campaigns were in reaction to the effort to enact the Employee Free Choice Act's card check provision, In the November 2010 election, the ballot measures were successful in four states: Arizona, South Carolina, South Dakota and Utah. On its website, Save Our Secret Ballot states that its next efforts will be in Florida, Michigan and Ohio.

On January 13, 2011, the National Labor Relations Board sent letters to the attorney generals of the four states which had successful ballot measures and stated that these amendments are in conflict with federal labor law and are therefore preempted by the Supremacy Clause of the U.S. Constitution. The states were advised to take measures to stop the ratification or enforcement of the Constitutional amendments and asked to respond within two weeks. The states were also advised that the Board has authorized its Acting General Counsel to file lawsuits in federal court, if necessary, to enjoin the states from enforcing the new laws.

**North Carolina**

On January 21, 2010, Governor Bev Perdue of North Carolina issued an executive order which created a meet and confer process between the state and North Carolina’s largest state employee organization. The organization, State Employees Association of North Carolina is Local 2008 of the Service Employees International Union (SEIU).

The order gives employee association representatives the right to meet with the governor and the state personal director annually. For state agencies where at least 20 percent of state employees belong to the association, the agency directors are to designate someone to meet quarterly with the association’s representatives. The association would also be granted “reasonable access” to state facilities for recruitment, distribution of materials and consultations with members.
This development is especially notable because North Carolina not only lacks a collective bargaining statute; it is one of the two states with complete bans on collective bargaining by public employees. The other state is Virginia.

Missouri

Missouri does not currently have a public sector collective bargaining statute for all employees. Its statute only grants “meet and confer” rights to some public employees.\(^3\) Until 2007, employers were not bound by any agreement reached under this statute. In 2007, the Missouri Supreme Court interpreted a provision in the state’s Constitution to provide collective bargaining rights for public employees. Article 1, Section 29 of Missouri’s Constitution states “that employees shall have the right to organize and to bargain collectively through representatives of their own choosing.” This provision had been added to the Missouri Constitution in 1945. In 1947, the state Supreme Court had ruled that this provision did not apply to public employees. In 2007 the Court reversed itself and held that the Constitutional provision did apply to public employees.

In the absence of a collective bargaining statute, disputes have arisen over the interpretation of the Constitutional provision. One dispute is about whether the phrase to “bargain collectively” means that employees should have an exclusive representative or if the phrase “through representatives of their own choosing” means that a bargaining unit could have multiple representatives. Some school districts have created policies which allow multiple groups to act as teacher bargaining representatives.

In 2010, two lawsuits concluded regarding this practice. Both of the lawsuits had been filed by the Missouri National Education Association. In one of the cases, a court upheld the representation election policy of the Springfield School District which would have allowed teachers to vote for one union, multiple unions or no representation. Ultimately, an election was held and the teachers voted for one representative. In the other lawsuit, a judge ruled that Bayless School District’s policy was improper because it required employees to elect two representatives. In the Bayless case, the union’s argument was that the phrase to “bargain collectively” is historically known to mean bargain with exclusive representation. The school district’s argument was that is that “representatives” could mean non-exclusive representation, and that because the state does not have a statute regarding this policy, each school district can set its own policy. The Bayless School District did not appeal the court’s decision which favored the union. A court mandated representation election was conducted in May 2010 and the teachers elected to be represented by Bayless Education Association over the “No Representation” option.

Alabama

Alabama Governor Bob Riley signed Senate Bill 2, which supporters deemed an ethics bill aimed at “cleaning up government.” Senate Bill 2 eliminates state employee payroll deductions for membership dues for political organizations. As unions are considered political organizations participating in political activities, unions are now prohibited from collecting dues through automatic

\(^3\) Mo. Rev. Stat. §§ 105.500 - 105.530
payroll withdrawal. Dues may be collected if they will be used for non-political activities such as insurance, benefit negotiations, communications, and benevolent funds. They may not, however, be used for funding political campaigns and for funding political polling. The state teacher’s union, Alabama Education Association, intends to bring a suit to challenge the legislation.

**Indiana**

In Indiana, a proposal is advancing that would limit collective bargaining between school districts and teachers' unions to wages and wage-related benefits. Other subjects such as evaluation procedures, dismissal procedures and working conditions would no longer be included. The bill would also limit teacher contracts to two years, which is the length of the state budget cycle.

**Efforts in States with Collective Bargaining Legislation**

Although this report focuses on states without collective bargaining legislation, there are efforts in many states with public sector collective bargaining, which if successful, could limit bargaining rights.

As a response to budget deficits, governors in several states with collective bargaining for government employees are advocating for legislation to limit the power of unions, primarily public sector unions, in both the collective bargaining and political processes. In several union-heavy states like Indiana, Maine, Michigan, Missouri, Ohio, Pennsylvania and Wisconsin, lawmakers are introducing legislation right-to-work legislation. Such proposals include laws that would eliminate mandatory union membership and dues in organized workplaces.

The newly-elected Republican Governor of Ohio, John Kasich, plans to eliminate the collective-bargaining rights of 14,000 state-financed child care and home health-care workers. Another newly-elected Republican governor, Scott Walker of Wisconsin, may seek to decertify public sector unions.

In Illinois, leaders of the Democratic Party are pushing for bills limiting the rights for educational employees, including eliminating the right to strike, reducing collective bargaining powers and imposing lesser standards for terminating teachers.

Republican state representatives in Maine have moved to dissolve the Legislature’s Joint Standing Committee on Labor, which has existed since 1887. The Labor Committee oversees wage and workplace safety laws, union negotiations and the Maine State Retirement System. Maine’s Republican leaders stated that they plan to either shift these matters to other committees or create a joint committee on labor and business issues.
Public Sector Collective Bargaining Laws

**NOTE:** These links go to the most current version of the law available on the Web. They may not be the most current law and should be used with caution.

**Alaska**
- Public Employment Relations Act — Alaska Statutes Title 23, Ch. 40, § 23.40.070 et seq.
- Employees of the Alaska Railroad Corporation — Alaska Statutes Title 42, Ch. 40, § 42.40.720 et seq.

**California**
- State Employer-Employee Relations (Ralph C. Dills Act) — Government Code §§ 3512-3524
- Excluded Employees Bill of Rights — Government Code §§ 3525 - 3539.5
- Local Public Employee Organizations (Meyers-Milias-Brown Act) — Government Code §§ 3500-3510
- Public Educational Employer-Employee Relations Act — Government Code §§ 3540 - 3549.3
- Higher Education Employer-Employee Relations — Government Code §§ 3560-3599
- Fire Fighters: Right to Bargain Collectively — Labor Code §§ 1960-1964

**Connecticut**
- Municipal Employee Relations Act — Conn. Gen. Stats., Title 7, § 7-467 et seq.
- Teachers’ bargaining rights — Conn. Gen. Stats., Title 10, Ch. 166, § 10-153a et seq.

**Delaware**

**District of Columbia**
- Public employee bargaining rights — D.C. Code Ann. § 1-617.01 et seq.

**Florida**
- Public Employees Act — Fla. Stats., Ch. 447, § 447.201 et seq.

**Georgia**

**Hawaii**
- Public employee bargaining rights — Hawaii Rev. Stats., Ch. 89, § 89-1 et seq.

**Idaho**
- Teachers’ bargaining rights — Idaho Code §§ 33-1271 to 33-1276
- Firefighters’ bargaining rights — Idaho Code §§ 44-1801 to 44-1811

**Illinois**

**Indiana**
- Certified Educational Employee Bargaining — Ind. Code Ann. §§ 20-7.5-1-1 to 20-7.5-1-14

**Iowa**
- Public Employment Relations Act — Iowa Code §§ 20.1 - 20.26
- Child care providers: Executive Order No. 45 and Executive Order No. 46, 2006

**Kansas**
- Look up acts in the Kansas Statutes:

Kentucky
Firefighters' bargaining rights — Kentucky Rev. Statutes, Ch. 345, § 345.010 et seq.
Police bargaining rights — Kentucky Rev. Statutes, Ch. 78, § 78.400 et seq.

Maine

Maryland
Teachers — Md. Code Ann., Educ. §§ 6-401 - 6-411

Massachusetts

Michigan
Michigan Civil Service Commission Employee Relations Policy — Michigan Department of Civil Service Rules, Chapter 6
Michigan Const. Art. XI

Minnesota
Public Employment Labor Relations Act — Minn. Stat. §§ 179A.01 - 179A.25

Missouri

Montana

Nebraska
State Employees Collective Bargaining Act — Nebraska Const. Article 13, Ch. 81, § 81-1369 et seq. (WARNING: Large (3103 K) document; must scroll to section)
Industrial Relations Act — Nebraska Const. Article 8, Ch. 48, § 48-801 et seq. (must scroll to section)

Nevada

New Hampshire

New Jersey

New Mexico
Public Employee Bargaining Act — New Mexico Statutes Annotated 10-7E-1 to 10-7E-26

New York
Public Employees’ Fair Employment Act (Taylor Act) — N.Y. Civ. Serv. Law §§ 200-214
New York City Employees — N.Y. City Charter Ch.54; N.Y. Admin. Code, Sec. 1173-1.0 et seq.
NOTE: The NY City Charter and Administrative Code are available online at http://public.leginfo.state.ny.us/menuf.cgi. Click on “Laws of New York” then scroll down to “Miscellaneous”, under which you will find these codes.
North Dakota
No public sector bargaining laws.

Ohio
Public Employees' Collective Bargaining — Ohio Rev. Code Ann. §§ 4117.01-4117.23

Oklahoma
School employees — Okla. Stat. Ann., Title 70, Ch. 70, §§ 509.1 - 509.10

Oregon

Pennsylvania

Rhode Island
Organization of State Employees — R.I. General Laws, § 36-11-1 et seq.

South Dakota
Public Employees' Unions — S.D. Codified Laws §§ 3-18-1 to 3-18-17

Tennessee
Education Professional Negotiations Act — Tenn. Code. Ann. §§ 49-5-601 to 49-5-613 (must scroll to sections)

Texas

Vermont
State Employees Labor Relations Act — Vt. Stat. Ann., Title 3, Ch. 27, §§ 901-1006

Washington
State civil service employees' bargaining rights — Was. Rev. Code § 41.06.150 et seq.
Public Employees' Collective Bargaining — Was. Rev. Code § 41.56.010 et seq.
Marine Employees - Public Employment Relations — Was. Rev. Code § 47.64.011 et seq.
Port District Employees - Collective bargaining and arbitration — Was. Rev. Code § 53.18.010 et seq.

Wisconsin
State employees' bargaining rights — Wis. Stat. Ann. §§ 111.80 - 111.97
Municipal employees' bargaining rights — Wis. Stat. Ann. §§ 111.70 - 111.77

Wyoming