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FISCAL IMPACT REPORT

SPONSOR Lopez DATE TYPED 2/23/2005 HB _____

SHORT TITLE Public Employee Collective Bargaining SB 1058

ANALYST Moser

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
NFI	NFI				

SOURCES OF INFORMATION

LFC Files

Responses Received From
State Personnel Office (SPO)

SUMMARY

Synopsis of Bill

Senate Bill 1058 amends the Public Employee Bargaining Act to allow public employers and employee representatives to negotiate collective bargaining agreements with provisions that may be in conflict with state law provided that the parties understand that the agreement will not become effective unless the applicable law is amended by the legislature.

The bill additionally provides that if a conflict arises between a rule promulgated by the personnel board and the terms of a collective bargaining agreement the terms of the collective bargaining agreement shall prevail.

The bill also amends the Personnel Act creating an option for employees in the filing of appeals over disciplinary actions. The bill would allow employees covered by a bargaining agreement the opportunity to either appeal directly to the board as currently allowed or to file a grievance through the applicable bargaining agreement.

Significant Issues

- Section 1, Section 10-7E-17(B) SCOPE OF BARGAINING: adds additional language to existing language to specifically allow the public employer and union representation to

enter into an agreement that is in violation of law with the understanding with both parties that the agreement will only become effective if the applicable law is amended in the future by the legislature. The proposed amendment to 10-7E-17(B) seems contradictory. In the first sentence, it permits the State and an exclusive bargaining agent to enter into an agreement which is in conflict with another statute, so long as they "understand" it will become effective only if the Legislature amends the law the agreement conflicts with. The second sentence seems to say that the parties cannot enter into an agreement which conflicts with existing legislation, no matter what their understanding. It is also unclear as to what "understanding" means. Does it mean that the agreement has to recite that its validity and effectiveness is conditioned on Legislative action? If one of the parties does not agree to negotiate language that would be in conflict with state law, could they be deemed to not be negotiating in good faith? Or, if language is negotiated based upon the chance that a statute can be changed, are the parties obligated to lobby for such change? And if they do not do so, is that considered to be bad faith negotiations?

- The purpose of the Personnel Act [10-9-1 NMSA 1978] is to establish for New Mexico a system of personnel administration based solely on qualification and ability, which will provide greater economy and efficiency in the management of state affairs. The state personnel board is charged in part with:
 - promulgating regulations to effectuate the Personnel Act [10-9-1 NMSA 1978];
 - hearing appeals and making recommendations to the employers;
 - making investigations, studies and audits necessary to the proper administration of the Personnel Act [10-9-1 NMSA 1978]; and
 - representing the public interest in the improvement of personnel administration in the system.

The Board is clearly charged with the promulgation of rules. This proposed change to law creates an opportunity for the parties to effectively negotiate their own personnel rules. Currently the state has two bargaining representatives identified and is not restricted from recognizing others. The State Personnel Office feels that this bill would set the stage to allow the collective bargaining agreement to over-rule the Personnel Act, the State Personnel Board rules, and the role of the State Personnel Board. The State administers one uniform merit based compensation system, rather than multiple systems that target specific employee groups. This bill is in direct conflict with the purpose of the Personnel Act as stated in 10-9-2 NMSA 1978 (Purpose of act; enactment under constitution).

- A 1965 Opinion of the State Attorney General (Number 65-78A) specifically stated that – *“The Personnel Act provides for a merit system, but not a seniority system”*.
- Passage of this bill would allow the Collective Bargaining Agreement to supercede the philosophy and intent of the personnel system and provide disparate treatment of groups of employees. This would allow the union to impose collective bargaining supported initiatives on those employees who choose not to be members of a union.
- This bill would cause widespread confusion due to contradictions in the law and the option of allowing a union represented employee the ability to choose one of multiple recourses, while non-represented employees will only use the existing State Personnel Board recourse. This would result in differing outcomes and confusion in interpreting previous decisions and foster future administration/compliance problems.

- The first provision in this bill would overrule the holding of the Supreme Court in *AFSCME Local 2238 v. Stratton*, 108 NM 163 (1989) and *AFSCME Local 2839 v. Udall*, 111NM 432 (1991) that State Personnel Board rules trump provisions in Collective Bargaining Agreements. The second provision would have the same effect. Additionally, it would overrule the current provision making the State Personnel Board the final authority over disciplinary actions and where the grievance procedure is elected; substitute the judgment of an arbitrator. The remedies available under the current State Personnel Board rules and those available in arbitration are similar, except that contrary to State Personnel Board rule, arbitrators often will not deduct unemployment comp from back pay. *See* 1.7.12.22(B)
- As stated in the Personnel Act [10-9-10(B) Board Duties], The Board Shall: (B) hear appeals and make recommendations to employers;

Annotation:

Board acts in quasi-judicial capacity in hearing appeals. – In hearing administrative appeals by employees from agency action, as distinguished from its function in adopting rules and creating policy, the state personnel board acts in a quasi-judicial capacity rather than a policy making function.. *Montoya v. Department of Finance and Administration*, 98 N.M. 408, 649 P.2d 476 (Ct. App. 1982).

- It is clear that the State Personnel Board is responsible for hearing administrative appeals by employees from agency action. This duty is already being performed by the board and by not passing this bill, represented and non-represented employees will have their appeals heard by a board that has quasi-judicial capacity and decisions will be uniformly made under one single personnel system.

Annotation:

Collective Bargaining – In New Mexico, there is an implied authority to bargain collectively in the public sector as an incident to the express grant of authority under the Personnel Act. *Local 2238 of AFSCME v. Stratton*, 108 N.M. 163, 769 P.2d 76 (1989).

- Collective bargaining contracts with governmental employees cannot in any way conflict with, contradict, expand or enlarge the rules of labor-management relations adopted by the state personnel board or any other governmental entity acting in this regard. The same applies to any merit system in place or to be adopted in the future. *Local 2238 of AFSCME v. Stratton*, 108 N.M. 163, 769 P.2d 76 (1989).
- It is also clear that any Collective Bargaining Agreement with the State of New Mexico cannot conflict, contradict, expand or enlarge the rules of labor management relations adopted by ...(state government). Passage of this bill would be in direct conflict with the Personnel Act, the State Personnel Board rules, and the role of the State Personnel Board.
- 10-7E-17 (D) SCOPE OF BARGAINING: adds additional language to specify that this is related to only a “Public” employer, solely for the purpose of uniformity.

- Allowing disciplinary actions (suspension, demotions and dismissals) to be taken through a grievance procedure will open the process to third party arbitration. Arbitrators will potentially be able to bind the state of New Mexico in resolving cases.

FISCAL IMPLICATIONS

The potential exists for significant fiscal implication to the state. With respect to discipline alone the potential for increased cost due to arbitration is substantial. In the area of negotiating contract provisions outside of the state personnel system poses the potential for substantial increases.

ADMINISTRATIVE IMPLICATIONS

The potential of creating different systems for the personnel issue of managing employees creates significant problems with respect to contract administration and personnel management. The potential for a bifurcated system becomes difficult in the management of the system.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

- Employees will have the same opportunity that they currently do in appealing disciplinary issues through the State Personnel Board.
- The State and the Union will not be placed in a situation where they mutually agree to an issue that is currently in violation of state law, with the “understanding” that it will be alright if the Legislature amends the law in the future.
- There will not be “undue” pressure on the Legislature to pass law based on an agreement between the State and the Union.
- The Personnel Act of 1964 will prevail as the guiding law/framework in administering a sound, equitable, merit-based human resource system in the classified service of state government.
- The Unions will suffer no harm if this bill is not passed and will continue to have a significant role in bargaining on behalf of the units represented.

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