NEVADA LEGISLATURE WEEKLY UPDATE FROM:
THE PEACE OFFICERS RESEARCH ASSOCIATION NEVADA,
LAS VEGAS POLICE PROTECTIVE ASSOCIATION,
THE SOUTHERN NEVADA CONFERENCE OF POLICE SHERIFFS' AND
THE COMBINED LAW ENFORCEMENT ASSOCIATIONS OF NEVADA LOBBYISTS.

WEEK 7 UPDATE March 20, 2015

As stated last week, the individual legislator bills were finally doled out late Tuesday afternoon March 17. Senator Roberson's long awaited PERS bill SB241 contained a much different approach to "fixing" PERS than Assemblyman Kirner's AB190. Roberson's bill (not scheduled for a hearing as of this weekend) affected only new employees and new retirees hired or retired on or after July 1, 2015. For regular employees it moved the retirement age to 65; it reduced the contribution rate to 2.25%; if increased the amount of time it would take to reach a 75% retirement to 33 1/3 years. It still left the ability to retire at 30 years but it meant that the regular employees would not receive the 75% amount.

The judicial retirement system would be the same and similar as the regular retirement. As I stated last week, currently the judicial retirement is 100% funded by the state. Any new judges after July 1, 2015 would have the same requirements as the regular employees PERS system.

For police/fire, the contribution rate remained at 2.5%. The 20 at 50, 10 at 55 and 5 at 60 remained. Police/Fire would still be able to retire at 75% with 30 years.

The inflation factor for retirees would be reduced from its current version to 2%, 2.5%, and 3% and after ten years to CPI for all four of the current NV PERS retirement systems Regular, Police/Fire, Legislators and Judicial.

Also removed from the current system would be the ability to purchase time and use that time to offset the number of years one has to work. For example, you could purchase 5 years at 25 years of service, but you would still have to work the remaining 5 years or face a penalty. Assemblywoman Kirkpatrick's AB387 is very similar to SB406 with similar language regarding the purchase of time and making the judicial and legislative similar to the regular retirement system.

Assemblyman Trowbridge had his AB280, PERS bill introduced on Monday. This bill would increase the years that your PERS retirement is based on from the high 3 consecutive years to your high 5 consecutive years. It has not been scheduled for a hearing as yet.

The long awaited collective bargaining bill AB182 has now been scheduled for Wednesday, March 25 at 1:30 in the Assembly Commerce and Labor Committee. We see this as the "union busting" bill and have informed Assemblyman Kirner of that fact. We are prepared to testify at that hearing by opposing the entire bill. We are asking that you all send professional opposing e-mails to Assemblyman Kirner at the below listed e-mail and to the entire committee as well. There is no reason to destroy the current system that has been in place for 46 years as it has proven to be the best conflict resolution process and peace keeping procedure to all of local government management and labor.

Also being heard on Wednesday, March 25, along with AB182, is another collective bargaining bill AB249. This is more fiscal in nature but it restricts what funds can and cannot be used during our negotiations process. We do plan on having another expert witness on collective bargaining to testify on the qualities of this excellent process. Our position will be to oppose the entire bill.

We just found out that AB158, the other collective bargaining bill, by Senator Settelmeyer was amended and passed out Friday afternoon. This is a "transparency bill." The bill was heard Friday afternoon in the Senate Government Affairs.

OK, here are questions and talking points to AB182. The talking points were put together by LVPPA attorneys. We provided the questions. Feel free to use these to develop your own positions to provide to the committee prior to the hearing on Wednesday.

DUES DEDUCTIONS:

1) Section 1 of the bill prohibits a local government from entering into an agreement to pay dues to an employee organization through deductions from compensation.

Explain why dues deductions are appropriate and not costly or burdensome to local government or state government employers?

Currently local government association members complete a form asking payroll to automatically deduct their dues from their biweekly paychecks and then payroll completes a direct deposit each pay period to the Association with all of its members' dues. This amounts to a total of one direct deposit each pay period, which is nothing more than a strike of the keyboard every other week once it is set up. To the employer, this is simply not an unreasonable burden; in fact, it is no burden whatsoever. Further, the employee organization automatic payroll deduction spot for association dues is just one of several automatic payroll deductions that the agency has agreed to provide. These include; AFLAC, Health Insurance, United Way, etc.

The current practice of allowing local government employers to provide automatic payroll deductions for employee organization dues and to directly deposit those funds with the employee organizations is not burdensome upon the employer.

Obviously because we oppose this change, we think that the current statutory language that lists the subject of dues deductions as a mandatory subject of collective bargaining should remain, rather than be removed as proposed by section 4 (2)(l) of this Bill.

EMPLOYER PAID RELEASE TIME FOR CERTAIN LARGE ASSOCIATIONS:

2) Section 1 of the bill prohibits a local government employer from providing paid leave or paying compensation or benefits for time spent by an employee in providing services to an employee organization.

Explain why it is cost effective and not burdensome for certain local government employers to provide paid leave and compensation to certain large employee associations?

Having an employee organization run by some of the current members of the bargaining unit is a benefit to both the employees they are representing and to the local government employer as well. Many of the issues dealt with by law enforcement employee organizations involve not only general employment issues of pay, overtime, call out, etc. but also matters particular to policing such as use of force, searches, seizures, handling of inmates at a correctional facility, etc. These are matters best understood by other police and corrections officers.

An employee organization staffed by members of its bargaining unit is able to informally resolve many issues between its member employees and the employer, in part because they all share a common institutional knowledge about particular matters, the controlling policy, what training was given on a particular matter, etc. Similarly, even as to issues not necessarily particular to policing, an employee organization staffed by members of its bargaining unit has a full understanding about how all provisions of the collective bargaining agreement pertain to those particular employees as well as the history over time of a particular policy or contract provision.

Again this institutional knowledge allows for many issues that often arise to be resolved short of protracted administrative proceedings and/or litigation. This is good not only for the employee but also for the employer. Forcing employee organizations to employ outside groups and/or attorneys to run them, as this legislation would do, will result in issues being drug out over time and perhaps pushed into unnecessary administrative proceedings and/or litigation, especially in circumstances where the groups or individuals running these employee organizations are billing on an hourly basis. And this means extra time and money, not only for the employee organizations but for the local government employers as well.

Additional points to keep in mind:

Although the salaries of the positions are funded by the local government employer with tax dollars, at least with regard to large employee organizations, everything else associated with running the organization comes from the members' dues. In other words, the office building, the office staff, the office supplies, stipends for the officers to use their personal vehicles, etc. are all funded with dues money and not tax dollars.

These arrangements in which local government employees are released to an employee organization full or half time are the result of negotiations and a resulting contract between the parties. This is yet further evidence that this arrangement is looked upon favorably by employers, as suggested above. **Furthermore, given that these are contracts entered into by the local governments, the legislature cannot enact any law that impairs them. (See, Article 1,**

section 10 of the United States Constitution and Article 1, section 5 of the Nevada Constitution both of which essentially say that no state shall make any law impairing the obligation of contracts.)

ELIMINATING SUPERVISORY EMPLOYEES:

3) Sections 2, 3 and 7 of the bill change the definition of certain employees, prohibit the inclusion of certain supervisory, administrative and confidential employees in a bargaining unit and expand the definition of "confidential employee".

Explain the benefits of supervisory employees (not confidential or unclassified) to have the benefits of collective bargaining?

The 2011 legislative session created a definition for the term "supervisory employee" (see NRS 288.075). The enacted definition of "supervisory employee" was then affirmed by the EMRB in a decision rendered in 2012 (see *City of Reno v. Reno Firefighters Local 731, IAF, et. al.*, EMRB Case No. A1-046049).

In my opinion, eliminating Supervisors from collective bargaining will have a negative impact on promotions. Most CBA's have supervisory language that mirrors non-supervisory due process rights and benefits. Compensation is usually higher as is reduction in force (RIF) language.

REDUCTION IN FORCE (RIF):

4) Sections 4 and 5 of the bill revise provisions relating to a reduction in force to be allowed not only because of lack of work or lack of money but also because of a reduction or elimination of services or a budgetary reallocation or loss of revenue, and that any reduction in force need not be done based strictly on seniority. (It is unclear whether this is still only to address reductions in force of school districts specifically or now to apply to all public employees in general.)

Explain the benefits of RIF by seniority and how it has been used in the past?

As to this proposal, our initial thought is that we would not oppose a local government employer's ability, pursuant to management rights, to reduce the force or lay off employees because of an elimination of services, a budgetary reallocation or expenditure or a loss of revenues, in addition to lack or work or lack of funds, as proposed by Section 4 (3) (b) of this Bill.

We do however believe that any reduction in force must follow seniority as it does now. If there is a desire to eliminate employees because of poor performance, we are not necessarily opposed to that so long as it is justified and documented, but it should not be done under the guise of a reduction in force. In other words, we are opposed to the proposed language in Section 5 that would allow for reduction in force to be based upon something other than seniority.

As an aside, because this statutory proposal would allow public employers to simply lay off employees in an entirely random fashion, one could foresee a scenario in which an administrator of a police department, a fire department or a school district would choose to lay off starting with the very most senior employees as these are the highest paid employees. In other words, this proposal would allow an employer to lay off in a fashion that is discriminatory in nature against the most seasoned employees simply because they make more money, disregarding long standing policies and contracts respecting seniority status.

THE EVERGREEN CLAUSE:

5) Section 6 of the bill provides that a collective bargaining agreement between a local government employer and a recognized employee organization expires for certain purposes at the end of the term stated in the agreement.

What are the benefits of an evergreen clause? What is an evergreen clause?

This proposal is an effort to prohibit what is commonly referred to as an Evergreen Clause, which is a clause that basically provides that an agreement shall remain in full force and effect until a new agreement is signed by the parties. In other words, these types of clauses attempt to perpetuate an existing agreement indefinitely into the future unless and until both parties agree on a successor agreement. So without mutual consent, the old agreement never expires. Some feel that both management and labor should have reservations about this type of provision as it essentially confers veto power on the other party.

Our thought is that as long as we still have binding impasse arbitration as we do now, this type of provision remains necessary to expedite resolution. With arbitration, if we cannot agree, we declare impasse and go to final and binding arbitration and the arbitrator's decision is retroactive to the date the former contract expired.

Our concern is that this Bill proposes not only the elimination of "Evergreen Clauses," but also proposes the elimination of statutory impasse arbitration (7 below). Under a scenario where both of these provisions would pass, then an employee organization would have no ability to prevent an employer from freely imposing its will as to all terms and conditions of employment.

If the parties could not agree at the table, this provision would allow the old contract to simply expire, and the proposal in 7 below would prevent an employee organization from declaring impasse and having the dispute proceed to arbitration. There is no reason to change the current system.

Statutory impasse procedures (binding arbitration or binding fact finding) are the chief peace keeping tools in collective bargaining. An "Evergreen Clause" and binding fact finding for the entire agreement ensure that impasse will have a rapid resolution. Both, in my opinion, are needed.

PUBLIC NOTICE OF TENTATIVE AGREEMENTS (TRANSPARENCY):

6) Sections 8-10 of the bill require public notice of final offers made by each party during collective bargaining negotiations, mediation and fact-finding.

Explain the transparency issues and why this is needed? Explain why the "open meeting" law in collective bargaining doesn't work? Explain why open negotiations do not work?

It should be noted that we have already expressed in regard to SB158 that we have no objection to making our final position public as proposed, once it has been ratified by the relevant membership.

This proposal goes further and seeks to make final positions public in three additional circumstances, all of which we disagree with as will be set forth below.

Section 8 (5) would make the final offers public at the conclusion of collective bargaining negotiations that did not result in agreement. Section 9 (6) would make final offers public at the conclusion of mediation that did not result in agreement. We believe that as to these first two circumstances, the parties may still have room to move off their current positions. However, once these positions are made public, they create an expectation on the part of either the members of the relevant bargaining unit or the public, the public agency and funding source of that agency. Once that occurs, people on both sides get very dug in to these publicized positions and this makes further movement and a potential resolution unlikely. Obviously, as the goal of negotiation is to come to an agreement that everyone can live with without having it imposed by an outside decision maker, it makes sense not to publicize the parties' positions at this point.

Section 10 (6) would make final offers public at the conclusion of fact finding (whether advisory or binding) but before the fact finder makes his recommendation or award. At this point the matter is in the hands of a neutral party who has already heard the evidence. There would be no reason to make positions public at this time and we can only imagine that the aim of this proposal is to place some outside pressure on the decision maker to proceed in a certain way based on public opinion which is not a relevant or appropriate consideration under the statute.

These same three provisions also require the local government employer to hold a public meeting in accordance with the provisions of chapter 241 of NRS to inform the public of those offers. While we object to publicizing the offers at these times as set forth above, assuming this passes and these proposals are to be made public, we believe the suggested language should be changed in all three sections to read that there will be a meeting as set forth above during which both the local government employer and the employee organization will be available to inform the public of those offers. We just want to ensure that both offers are fully and properly explained and that both parties are present for the presentation to ensure transparency and accuracy.

ELIMINATION OF FINAL AND BINDING FACT FINDING:

7) Section 10 of the bill eliminates final and binding fact-finding except upon the election of the governing body. Additionally, Section 15 of the bill proposes the elimination of 288.205

which also speaks to fact finding in the case of police and fire employee organizations. Finally, Section 15 proposes the elimination of 288.215 and 288.217 which are the provisions allowing a collective bargaining impasse involving firefighters, police officers, and education employees to be submitted to final and binding arbitration.

Explain interest arbitration? Explain binding arbitration? Explain advisory fact finding? Explain binding fact finding? Explain NRS 288.200 fact finding? Explain regular employee advisory/binding fact finding? Explain NRS 288.215 police fire binding arbitration and last best offer arbitration? Explain NRS 288.217 education employees binding arbitration/last best offer arbitration?

Explain the usefulness of experienced neutrals (arbitrators) their training and how their decisions are not arbitrary and capricious?

Under existing law, if an impasse is reached in collective bargaining, 288.200 and 288.205 establish a process of fact finding. Currently, the findings and recommendations of a fact finder are final and binding if both parties agree that they will be. Additionally, under current law, a statutory panel can determine that the fact finder's recommendations be final and binding.

Current law also provides for a procedure of final and binding arbitration based on "last best offers" for matters involving police, fire and education employees who have not agreed to make fact finding final and binding or who have not otherwise resolved their dispute.

AB182 proposes that the fact finder's recommendations would now be entirely advisory unless the local government employer, alone, decides in advance to have the fact finder's recommendation be final and binding upon the parties. This proposal eliminates any input on this decision by the involved employee organization. Additionally, this proposal likewise eliminates any ability of a panel to make the findings final and binding. Furthermore, the bill entirely does away with final and binding impasse arbitration for police, fire and education employees.

We have an alternative proposal to both the current law and the Bill's proposal. We suggest that if a negotiation process does not result in agreement between the parties (Section 8), and if they are not able to resolve their dispute through mediation (Section 9), at this point the parties may agree to either submit the matter to fact finding under 288.200 and 288.205 or to submit the impasse to binding arbitration under 288.215 (police and fire) and 288.217 (teachers).

The outcome of either process would automatically be final and binding on the parties. In other words, the parties could elect to go to fact finding in which case the fact finder can make an award by selecting portions of each parties' final proposals, or they can elect to go to binding arbitration in which case the arbitrator could select portions of each parties final proposal or make his/her award based on a selection of one of the parties' "last best offers" in its entirety. But again, in either case the process would be final and binding and would fully conclude the matter.

Thus, we object to the elimination of 215 and 217. These are procedures that are objective, cost effective resolutions to situations where the parties to a negotiation simply cannot concur. They

are conducted by a neutral, experienced arbitrator familiar with the provisions of NRS 288. Furthermore, the current requirement that each party to the dispute must submit "last best offers," really encourages reasonableness by both parties if and when they get to this point in the process.

ELIMINATING NRS 288.201, 202 AND 203:

8) Section 15 proposes the elimination of 288.201, 288.202 and 288.203.

Explain the advisory vs. binding fact finding process and how the Employee Management Relations Board process works for making and impasse resolved through binding fact finding?

These three statutes address forming a panel tasked with determining whether the findings and recommendations of a fact finder are final and binding. Ideally, this peace keeping process should be kept and binding fact finding given to all regular employees. Currently there is no "tie breaker" unless binding fact finding is agreed to mutually by the parties.

FISCAL EMERGENCY:

9) Section 13 of the bill removes a portion of the budgeted ending fund balance (of not less than 16.6% of the total budgeted expenditures) from the scope of collective bargaining and from consideration by a fact finder.

Explain how this is applied in SB168 fiscal emergency? How does this change what is going on today in collective bargaining? See NRS 288.150 2w.

We have been in communication with Senator Settelmeyer regarding SB168. We have also been in communication with Assemblyman Wheeler and O'Neil with AB249, and exploring options to these concerns. The 16.6 % is the amount already addressed in another bill that we have also not opposed as this is the amount of reserves recommended by the Government Finance Officers Association (the GFOA).

Here are the Assembly Commerce and Labor committee members:

Randy Kirner - Chair
Victoria Seaman - Vice Chair
Paul Anderson
John Ellison
Michele Fiore
Ira Hansen
Erven T. Nelson
P.K. O'Neill
Stephen H. Silberkraus
Irene Bustamante Adams
Maggie Carlton

Olivia Diaz
Marilyn K. Kirkpatrick
Dina Neal
James Ohrenschall

The attack on all of what we have worked by those in control of both Senate and Assembly is continuing. The LVPPA has drafted the below listed message for all of us to use as a model to contact our legislators, both Republicans and Democrats, and our constitutional officers, to request their assistance in defeating these needless attacks on our benefits.

PLEASE DO YOUR PART AND START E-MAILING THESE LEGISLATORS IMMEDIATELY. FEEL FREE TO EDIT AND/OR PLAGIARIZE THE BELOW LISTED MESSAGES.

A message from the LVPPA:
The Nevada Legislature has already passed a bill assaulting prevailing wage, and there are other attacks on labor issues that are meant to hurt our members. It's time for us to stand up and fight back. Please send a message to Republican legislators urging them to stop attacking worker's rights and send a message to Democratic legislators to stand firm and protect the middle class. It's easy: just copy the full list below and paste in your e-mail address line. Then copy the following or write your own message:

Sample message for Republican legislators:

As a hard working Nevadan and a supporter of organized labor, I urge you to oppose any legislation that would restrict collective bargaining and reduce our wages, our health benefits, and our retirement programs. These initiatives will dramatically impact the quality of life for thousands of working families like mine, and have a devastating impact on our already fragile economy. Thank you.

ltgov@ltgov.nv.gov; Paul.Anderson@asm.state.nv.us; Derek.Armstrong@asm.state.nv.us; Jill.Dickman@asm.state.nv.us; Vicki.Dooling@asm.state.nv.us; Chris.Edwards@asm.state.nv.us; John.Ellison@asm.state.nv.us; Michele.Fiore@asm.state.nv.us; David.Gardner@asm.state.nv.us; John.Hambrick@asm.state.nv.us; Ira.Hansen@asm.state.nv.us; Pat.Hickey@asm.state.nv.us; Brent.Jones@asm.state.nv.us; Randy.Kirner@asm.state.nv.us; Erven.Nelson@asm.state.nv.us; PK.Oneill@asm.state.nv.us; James.Oscarson@asm.state.nv.us; Victoria.Seaman@asm.state.nv.us; Shelly.Shelton@asm.state.nv.us; Stephen.Silberkraus@asm.state.nv.us; Lynn.Stewart@asm.state.nv.us; Robin.Titus@asm.state.nv.us; Glenn.Trowbridge@asm.state.nv.us; Jim.Wheeler@asm.state.nv.us; Melissa.Woodbury@asm.state.nv.us; Greg.Brower@sen.state.nv.us; Patricia.Farley@sen.state.nv.us; Pete.Goicoechea@sen.state.nv.us; Don.Gustavson@sen.state.nv.us; Scott.Hammond@sen.state.nv.us; Joe.Hardy@sen.state.nv.us; Becky.Harris@sen.state.nv.us; Ben.Kieckhefer@sen.state.nv.us; Mark.Lipparelli@sen.state.nv.us; Mike.Roberson@sen.state.nv.us; James.Settelmeyer@sen.state.nv.us

Sample message for Democrats, we recommend the following:

Thank you for your continued support of labor organizations and working families. There is legislation being proposed that would restrict collective bargaining and reduce our wages, our health benefits, and our retirement programs. We urge you to stand with us in opposing these measures because of the impact on the quality of life for thousands of hard working Nevadans and on our already fragile economy. Thank you.

Elliot.Anderson@asm.state.nv.us; Nelson.Araujo@asm.state.nv.us; Teresa.BenitezThompson@asm.state.nv.us; Irene.BustamanteAdams@asm.state.nv.us; Maggie.Carlton@asm.state.nv.us; Richard.Carrillo@asm.state.nv.us; Olivia.Diaz@asm.state.nv.us; Edgar.Flores@asm.state.nv.us; Amber.Joiner@asm.state.nv.us; Marilyn.Kirkpatrick@asm.state.nv.us; Harvey.Munford@asm.state.nv.us; Dina.Neal@asm.state.nv.us; James.Ohrenschall@asm.state.nv.us

You can also call or email Governor Brian Sandoval and urge him to support workers and their families: 775-684-5670 and 702-486-2500 or http://gov.nv.gov/Contact/Email-the-Governor/

On behalf of our coalition,

Ron Dreher, Chris Collins, Rusty McAllister, Tim Ross, Ryan Beaman, Marlene Lockard, Marty Bibb, Stephen Augspurger , Lonnie Shields, Stan Olsen, Jason Soto, Pat Sanderson, Priscilla Maloney, Fran Almaraz, Carla Fells, Alyson Kendrick, Michelle Russell, Jason Soto, and the entire Nevada labor movement

Thank you,
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