



# The Florida Senate

Interim Project Report 2001-022

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Committee on Governmental Oversight and Productivity

Senator Jack Latvala, Chairman

## COLLECTIVE BARGAINING IMPASSE - DATE FOR RESOLUTION

### SUMMARY

Florida law provides for the resolution of collective bargaining impasses between management and labor through the presentation of irresolvable issues to the legislative body. The Governor must present these impasse items as a part of the annual budget recommendations 45 days prior to the start of the Regular Legislative Session.<sup>1</sup> The legislative body disposes of impasses by the conduct of a joint hearing followed by execution of specific provisions incorporated within the Appropriations Bill. This report elicited proposals from State of Florida management and labor representatives to changes that would improve the impasse resolution process. Generally, the report concludes that adjustments to the time frames within the legislative decision-making cycle would provide a greater focus than is now afforded. Changes to the joint operating procedures of the Legislature would be indicated in addition to changes to the Florida Statutes.

### BACKGROUND

While the Florida Constitution bans strikes it does permit collective bargaining and further requires the Legislature to make provision for a civil service system.<sup>2</sup> To implement these requirements the Legislature enacted Ch. 447, F.S. to establish a structure for collective bargaining in Florida at all government levels. For most state employees the Governor is considered the employer, although representation is effected through the Department of Management Services (DMS); for members of the State University System the designated employer is the Board of Regents (BOR). The Legislature customarily assigns issues at impasse to a separately designated select committee of both houses formed exclusively to receive testimony on the subject during the Regular Session. It conducts its deliberations usually

within the last two weeks of the 60-day session, just prior to the passage of the final legislative budget 72 hours before adjournment but following the final mid-session consensus revenue estimates. The hearing panel receives testimony and proposes questions but refrains from passing a recommendation different in kind from that contained in the General Appropriations Act. The development of salary policy is a complex undertaking. It involves specific percentage and dollar amounts for state employees; permissive limits for formula-funded school board employees; contract vendors; casual labor; and adjustments that are job-specific. It is also heavily influenced by the budget control devices of salary rate and position lapse that determine money available for expenditure.

### METHODOLOGY

This report surveys the two state labor relations' agencies and the several collective bargaining units. Two labor representatives were not surveyed: supervisory employees have failed to collectively organize and a newly formed unit seeking to represent attorneys is yet to be certified. Each of the surveyed parties was queried as to the timing of the current process, the location of the decision-making, and recommendations for change.

### FINDINGS

One collective bargaining representative recommended that the Executive Branch should make the declaration of impasse as early as 60 days prior to the submission of the Governor's Recommended Budget to the Legislature. Ostensibly this would provide up to 161 days (60 days + 45 days + 60 day session - 3 days notice - 1 day publication) for legislative resolution. Yet another agent suggested the current time frame for the Executive Branch was satisfactory; its recommendation called for changing the *legislative* time frames to be set not later than the first 30 days of Session but after the final revenue estimates.

<sup>1</sup>Section 216.163, Florida Statutes.

<sup>2</sup>Art. I, s. 6; Art III, s. 14, State Constitution.

Still another collective bargaining representative suggested that no meaningful progress could be achieved without incorporation of economic and non-economic issues within the agency legislative budget request to the Governor. That unit also recommended creation of a task force to review alternative procedures, including binding arbitration, which would make the legislative impasse process unnecessary.

Two participants found the process to be essentially sound but embedded in a decision cycle that discourages negotiation in favor of collective legislative lobbying. Negotiations tend to resolve non-economic issues prior to impasse but it predictably leaves the major financial issues to external parties in the statehouse where constituency issues predominate. One of these participants suggested further that the Legislature should impose a moratorium on the referral of bills to committee that affected open items at the bargaining table. It also should refer to the separate legislative appropriations subcommittees the associated economic issues during their budget deliberations.

To another participant the timing of the process is the most problematic. A full exchange of positions can occur only when there is a sanction, such as binding arbitration, recognized by the parties as mutually and equally injurious. This may not prove to be an impermissible binding of the Legislature's constitutional prerogative to appropriate if a revised special master process only allocates *appropriated* amounts. Regardless, the Legislature should insert itself only when the implementation exceeds all recognized reasonable and legal parameters.

## RECOMMENDATIONS

Any single change to the current statutory time frames operates to either management or labor's advantage. For management, the status quo supports the Executive Branch's position that the Recommended Budget is *the* strategic document upon which wage and benefit determinations should be made. Salary and benefit policy is determined only after broader economic policy. For labor, the reverse is just as true: the longer the nominal time frame for impasse the greater the opportunity for

influencing the outcome. Salaries and benefits are the largest components of the public budget, whether provided directly by employees or indirectly by contract vendors. Since items at impasse tend to affect economic rather than non-economic interests, the appropriations bill is the only means of resolving such differences. Accordingly, the following changes are suggested:

1. The nominal statutory time frames for impasse declaration suggest difficulties with successful outcomes as well as obstacles with process. One consequence to the significant advancement of a date change would force a Governor to declare an impasse barely one week after a statewide election in November but prior to vacation of office in January. This leaves the successor with the ability to set only a reactive position and the departing executive unable to direct a future budget policy. There is merit, however, in requiring that the annual legislative budget requests for the DMS and the BOR contain recommendations to the Governor on salary and benefit policy. This would support the requirements of s. 216.023, F.S., that such budget requests *must* be “. . . based on the agency's independent judgment of its needs.”

2. The Senate and House of Representatives should amend their joint rules to provide a fixed date for conduct of the impasse hearing after receipt of the final revenue estimates, usually at the mid-point of the Session. This would give all parties a date toward which to work and also permit its incorporation into the legislative calendar to complement the budget cycle.

3. A revised joint rule also could consider establishing the impasse hearing as a direct function of the budget conference committee. If held immediately prior to its final conference report vote it would avoid the difficulties attendant to securing membership for a time-limited committee, not directly connected with the setting of budget policy. Such an alternative would change the forum and raise its visibility, but may not alter the result.

**COMMITTEE(S) INVOLVED IN REPORT** (*Contact first committee for more information.*)

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**MEMBER OVERSIGHT**

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