

HJR 17- NEGOTIATED SETTLEMENTS

A Report Prepared for the
Legislative Finance Committee

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INTRODUCTION

The 2013 Legislature passed HJR 17, a resolution to study state pay plans. The purpose of this report is to provide the legislature with information on:

- The legislative history of unions and negotiated settlements in relation to state government
- The legislative role in the appropriations of pay as it relates to negotiated settlements
- The number and distribution of state employees belonging to bargaining units for purposes of pay and related working conditions

The public policy role of the legislature in relation to bargaining units, negotiated settlements, and pay includes:

- Affording state employees the right to bargain collectively
- Establishing the level of funding for personal services costs, which includes:
 - Employee salaries
 - State share of the employee's health insurance costs
 - Employer share of retirement costs
 - Employer costs of other insurance and taxes such as worker's compensation insurance costs or the employer share of social security

LEGISLATIVE HISTORY IN RELATION TO COLLECTIVE BARGAINING

While Congress passed the National Labor Relations Act (NLRA) in 1935 guaranteeing the right of employees to organize and bargain collectively with their employers, NLRA specifically excluded employees of state and local governments from the requirements. It should be noted that while statutory authorization for collective bargaining was not provided for the majority of state employees until 1973 there were 55 collective bargaining agreements in existence prior to legislative recognition of employee bargaining rights in Montana. The 55 agreements were negotiated in various ways including by the:

- Board of Examiners
- State agency personnel
- Local personnel managers

At the time no single state agency had the responsibility to oversee the labor relations of state government.

In 1969 the Montana Legislature recognized the right of the Registered Professional and Licensed Practical Nurses to bargain collectively. The Professional Negotiations Act for Teachers was passed in 1971 and the 1973 Legislature passed the Collective Bargaining for Public Employees Act expanding the right to collective bargaining to state employees. Teachers and Montana University System employees were included in the Collective Bargaining for Public Employees Act in 1975 and the legislature repealed the Professional Negotiations Act for Teachers at the same time.

These statutes remain for the most part unchanged since their adoption.

LEGISLATIVE ROLE IN THE APPROPRIATION OF PAY WITHIN NEGOTIATED SETTLEMENTS

The Collective Bargaining for Public Employees Act included a requirement defining bargaining in good faith in relation to the legislature by including a clause that negotiating in good faith may be met by the submission of a negotiated settlement to the legislature in the executive budget or by bill or joint resolutions in statute. The statute allows the executive the latitude to decide whether to conduct a bargaining session prior to the legislative session.

According to a staff report prepared for the Personnel and Labor Relations Study Commission in 1982:

In 1979 negotiations on economic matters (salary and benefits) were not completed prior to the beginning of the legislative session. The American Federation of State, County, and Municipal employees at three institutions went on strike during that session for 37 days. As a result of this

“concerted action”, the legislature communicated their desire to have negotiations completed prior to the beginning of the session. This past legislative session (1981 Legislature) began with the economic negotiations completed. Several members of the legislature expressed their concern in being asked to “rubber stamp” the settlements without having the opportunity to have input.

While concerns continue to be raised about the legislature’s role in the process in regard to the timing of the pay and benefit negotiations, the statute pertaining to the submission of a negotiated settlement by the executive has not been amended since it was adopted.

The legislature clarified its intent that statute related to pay and benefits take precedence over bargaining agreements by including in law its intent that pay schedules supersede any other plan or systems established through collective bargaining after the adjournment of the legislature in 1979. The legislature continued to amend the year in the intent language until broadband pay legislation was adopted. At that time the legislature included statute that required that:

- Pay adjustments supersede any other plan or systems established through collective bargaining after the adjournment of the legislature
- Total funds required to implement the pay increases for any employee group or bargaining unit may not be increased through collective bargaining over the amount appropriated by the legislature

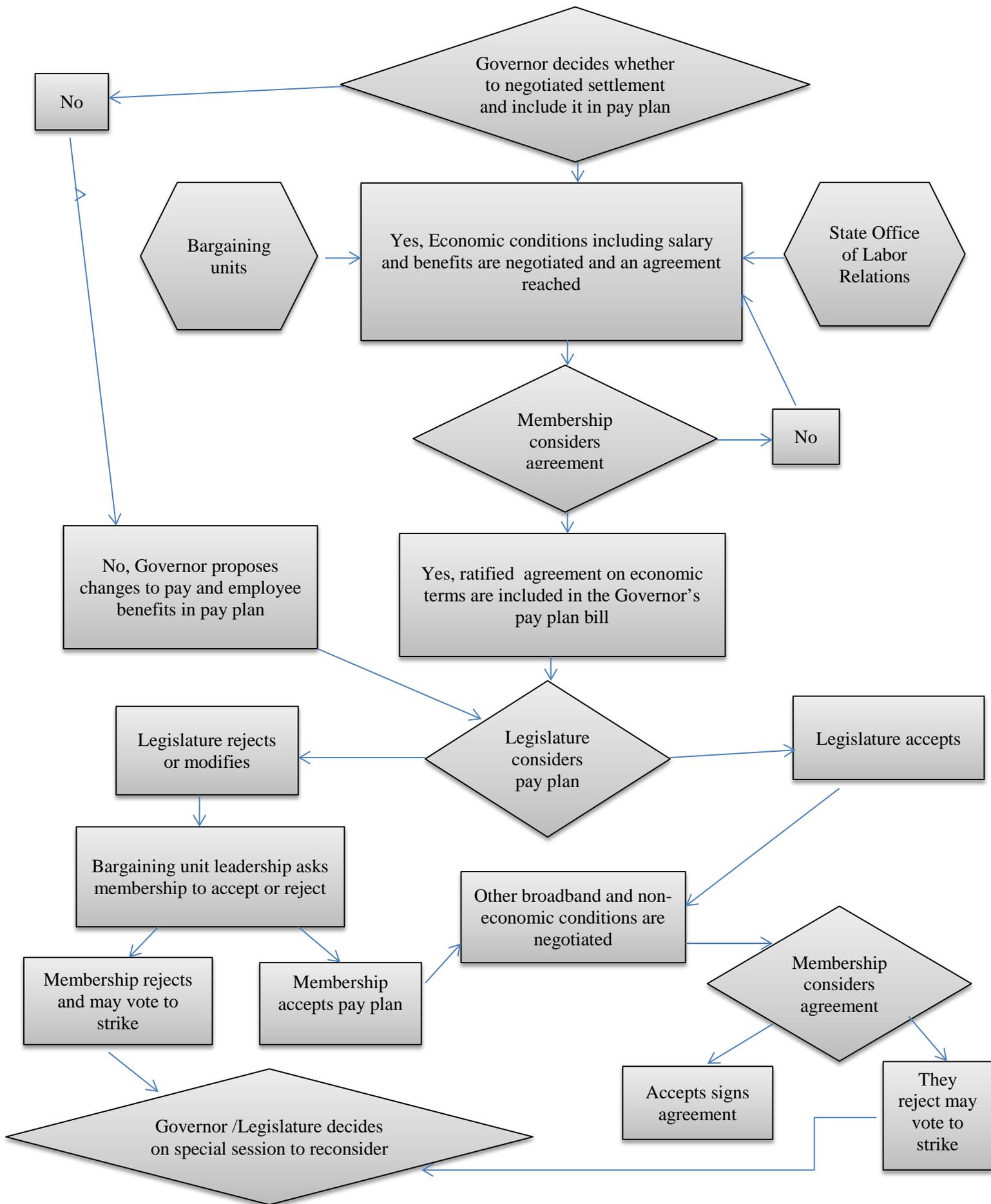
Statute related broadband pay allows state agencies to increase state employee pay above the amounts provided in the pay plan as long as they do not exceed their total appropriation authority over the biennium. Further information on collective bargaining and the legislative role can be found in the Legislative Services Division report State Employee Salaries and Collective Bargaining – Legislative Considerations, March 2014.

Current Process for Collective Bargaining

For the last several biennia, the State Office of Labor Relations in the Department of Administration has conducted two separate negotiations to reach agreement with the various bargaining units:

- Negotiations to reach settlement on economic conditions including salary and employee benefits such as contributions to health insurance
- Negotiations to reach a settlement on areas within the contracts that are not considered non-economic, mainly working conditions

The figure below shows the process used to conduct negotiated settlements and the various entities involved in the process.



As shown the process begins with the executive's decision of whether to negotiate salary and related employee benefits prior to the legislative session. The employees that belong to a bargaining unit vote to accept or reject settlement offers at several stages including whether to accept:

- Economic conditions if the Governor and bargaining units reach agreement prior to the legislative session
- If the pay plan as passed by the legislature is changed from the negotiated settlement reached prior to the session
- A negotiated settlement agreement including other broadband and non-economic conditions following the legislative session

Should the legislature wish to alter the process in terms of its ability to impact the funding levels proposed in negotiated settlements, it would need to address the timing of the negotiations and the authority of the Governor to determine whether to conduct negotiations prior to the legislative session.

STATE AGENCIES WITH EMPLOYEES INCLUDED IN COLLECTIVE BARGAINING AGREEMENTS

Montana has a number of state agencies that participate in collective bargaining agreements. Figure 2 shows the state agencies, the respective designated bargaining unit, and the number of employees covered by the agreements. It should be noted that included in employee numbers are all employees working for the agencies on February 11, 2014 including:

- Full-time regular employees
- Seasonal employees
- Part-time regular employees
- Short-term workers
- Employees in modified positions
- Temporary workers
- Positions supported by non-budgeted proprietary rates or statutory appropriations

As a result, the number of employees in an agency will not correspond to the FTE shown in HB 2.

Figure 2

Montana State Employees Included in Collective Bargaining As of February 11, 2014					
Agency	Bargaining Unit	Number of		Percentage of Total	
		Union Employees	Total *		
Office of the Public Defender	American Federation of State, County & Municipal Employees	168	232	72.41%	
Department of Public Health and Human Services	American Federation of State, County & Municipal Employees	166	3,165	5.24%	
	Montana Developmental Center Craft Council	11	3,165	0.35%	
	Montana Education Association and Montana Federation of Teachers	1,048	3,165	33.11%	
	Montana Nurses Association	77	3,165	2.43%	
	Montana Public Employees Association	944	3,165	29.83%	
	Montana State Hospital Craft Council	29	3,165	0.92%	
Department of Transportation	American Federation of State, County & Municipal Employees	492	2,234	22.02%	
	Department of Transportation Craft Council	415	2,234	18.58%	
	Montana Public Employees Association	798	2,234	35.72%	
Department of Administration	Capitol Complex Craft Council	16	561	2.85%	
	Montana Public Employees Association	49	561	8.73%	
Montana Historical Society	Capitol Complex Craft Council	1	73	1.37%	
Department of Military Affairs	Montana Education Association and Montana Federation of Teachers	41	73	56.16%	
	Great Falls Airport Firefighters Association	26	203	12.81%	
	International Brotherhood of Teamsters	12	203	5.91%	
	Montana Education Association and Montana Federation of Teachers	37	203	18.23%	
Department of Natural Resources and Conservation	International Association of Machinists	11	569	1.93%	
Department of Labor and Industry	Labor Relations and Appeals Union	8	838	0.95%	
	Montana Public Employees Association	444	838	52.98%	
Department of Corrections	Montana Education Association and Montana Federation of Teachers	737	1,281	57.53%	
	Montana Public Employees Association	72	1,281	5.62%	
	Montana State Prison Craft Council	16	1,281	1.25%	
Department of Fish, Wildlife, and Parks	Montana Education Association and Montana Federation of Teachers	98	911	10.76%	
	Montana Public Employees Association	105	911	11.53%	
Montana School for the Deaf and Blind	Montana Education Association and Montana Federation of Teachers	63	177	35.59%	
	United Food and Commercial Workers	25	177	14.12%	
Department of Revenue	Montana Public Employees Association - Revenue	471	652	72.24%	
	Montana Public Employees Association	8	652	1.23%	
Office of Public Instruction	Montana Public Employees Association	133	330	40.30%	
Montana State Fund	Montana Public Employees Association	227	281	80.78%	
Department of Justice	Montana Public Employees Association	348	827	42.08%	
Department of Environmental Quality	Montana Public Employees Association	273	433	63.05%	
Department of Agriculture	Montana Public Employees Association	<u>69</u>	<u>115</u>	<u>60.00%</u>	
Total Employees		<u>7,438</u>	<u>12,882</u>	<u>57.74%</u>	

In agencies where multiple trade groups such as electricians, plumbers, and painters serve a single state facility, such as the Montana State Prison within the Department of Corrections or the Montana Developmental Center in the Department of Public Health and Human Services, the various groups have formed craft councils. Bargaining negotiations are conducted with the craft council members rather than each trade individually. In the figure above the bargaining units shown individually may also be included in the craft council. For example, the International Brotherhood of Teamsters is shown as representing employees in the Department of Military Affairs in Figure 2 but they may also represent employees in the Montana State Prison Craft Council, the Montana State Hospital Craft Council, or the Department of Transportation Craft Council.

Summary

The legislative public policy role in relation to bargaining agreements includes:

- Outlining state employee rights to collectively bargaining
- Developing the requirements for state employee pay plans and benefits such as retirement and health insurance
- Providing funding for personal services including employee benefits

Impacts to state employee pay plans and benefits are made in statute for all employees, both those in bargaining units and those not. The legislature has clearly articulated its intention that negotiated settlements must comply with legislative requirements for state pay plans outlined in statute.

Current statute has the Governor determine whether to include a negotiated settlement in the pay plan or to collectively bargain at the conclusion of the legislative session on economic areas of a contract.

Legislative Option

The legislature may wish to discuss with the executive and the various unions the challenges and risks of changing statute on the timing of the negotiations.