

Bill as Introduced

HB 631-FN-LOCAL - AS INTRODUCED

2009 SESSION

09-0426

08/10

HOUSE BILL

631-FN-LOCAL

AN ACT

relative to public employee collective bargaining negotiations under the public employee labor relations act.

SPONSORS:

Rep. Burridge, Ches 3

COMMITTEE:

Labor, Industrial and Rehabilitative Services

ANALYSIS

This bill establishes a procedure for the negotiation and resolution of public employee collective bargaining disputes under the public employee labor relations act.

Explanation:

Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nine

AN ACT relative to public employee collective bargaining negotiations under the public
employee labor relations act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Obligation to Bargain. Amend RSA 273-A:3, II(a) to read as follows:

2 II.(a) Any party desiring to bargain shall serve written notice of its intention on the other
3 party at least ~~[120]~~ 240 days before the budget submission date; provided, however, that bargaining
4 with state employees shall commence not later than ~~[120]~~ 240 days before the deadline for
5 submission of the governor's proposed operating budget.

6 2 Resolution of Disputes. RSA 273-A:12 is repealed and reenacted to read as follows:

7 273-A:12 Negotiations and Resolution of Public Employee Disputes.

8 I. Negotiations between the employer and a bargaining unit comprised of employees shall
9 commence no later than 240 days prior to the employer's budget submission date.

10 II. If by 150 days before the employer's budget submission date the parties have been unable
11 to reach an agreement, an impasse shall be declared and the parties shall select a mediator. If the
12 parties are unable to mutually agree upon the selection of a mediator, the parties shall submit a
13 request to the board according to its procedures, for the appointment of a mediator.

14 III.(a) By 120 days preceding the employer's budget submission date, the mediator selected
15 by the parties or appointed by the board shall attempt to effect a voluntary resolution of the dispute.

16 (b) Only disputed cost items will be brought forward. Matters that are not associated
17 with cost and matters already agreed upon will not be part of the dispute resolution process.

18 (c) If the mediator is unable to effect settlement of the controversy within 45 days after
19 their appointment, either party may petition the board to refer the dispute to a neutral impasse
20 panel selected by the parties or appointed by the board.

21 (d) If the parties fail to find an agreement by 75 days before the submission of the
22 employer's budget, the disagreement shall be immediately referred to a neutral impasse panel.

23 IV. The neutral impasse panel shall consist of one member appointed by the employer, one
24 member appointed by the bargaining unit, and one public member appointed by the public employee
25 labor relation board who shall be the chairman of the panel. The cost of the members appointed to
26 the neutral impasse panel will split evenly between the bargaining unit and the employer.

27 V.(a) The neutral impasse panel shall convene hearings on all matters related to the dispute
28 not later than 60 days before the submission of the employer's budget. The panel shall have the
29 authority to conduct hearings. The parties may be heard either in person, by counsel, or by other
30 representatives as they may respectively designate. The parties may present, either orally, in
31 writing, or both, statements of facts, supporting witnesses, and other evidence in argument of their

1 positions with respect to each case. The panel may require the production of such additional
2 evidence, either oral or written, as it may desire from the parties.

3 (b) All matters presented to the neutral impasse panel for its determination shall be
4 decided by a majority vote of the members of the panel. The panel, prior to a vote on any issue in
5 dispute before it, shall upon the joint request of the members representing the public employer and
6 bargaining unit, respectively, refer the issues back to the parties for further negotiations.

7 (c) The neutral impasse panel shall make a just and reasonable determination of the
8 matters in dispute. The neutral impasse panel will have the authority to act on each issue
9 separately and choose the most equitable solution to each subject separately.

10 (d) Prior to arriving at such determination, the panel shall provide reasonable
11 opportunity for public comment; the panel may hold a public hearing or may extend the deadline for
12 submission of written comment. If the neutral impasse panel continues the hearing or extends the
13 deadline, it shall notify the public by any means it deems appropriate, including notice in the local
14 media and wherever else practicable.

15 (e) In arriving at such determination, the panel shall specify the basis for its findings,
16 taking into consideration, in addition to any other relevant factors, the following:

17 (1) Comparison of the wages, hours, and conditions of employment of the wages
18 involved in the impasse proceeding with the wages, hours, and conditions of employment of other
19 employees performing similar services or requiring similar skills under similar working conditions
20 with other employees generally in public and private employment in comparable communities.

21 (2) Comparison of peculiarities in regard to other trades or professions, including
22 hazards of employment, physical qualifications, educational qualifications, mental qualifications,
23 and job training and skills.

24 (3) The interests and welfare of the public and financial ability of the public
25 employer to pay.

26 (4) The terms of collective bargaining agreements negotiated between the parties in
27 the past providing for compensation and fringe benefits, including but not limited to the provisions
28 for salary, insurance, medical and hospitalization benefits, paid time off, and job security.

29 VI. The collective bargaining agreement reached under this section shall be deemed a public
30 document.

31 VII. A provision in any written contract to settle by arbitration a controversy thereafter
32 arising out of such contract, or an agreement in writing to submit to arbitration any controversy
33 existing at the time of the agreement, shall be valid, irrevocable, and enforceable, except where
34 grounds exist at law or in equity for the revocation of any contract.

35 VIII. Nothing in this chapter shall be construed to prohibit the parties from providing for
36 such lawful procedures for resolving impasses as the parties may agree upon; providing that no such
37 procedures shall bind the legislative body on matters regarding cost items. The parties shall share
38 equally all fees and costs of such procedures.

39 3 Effective Date. This act shall take effect January 1, 2010.

LBAO
09-0426
01/22/09

HB 631-FN-LOCAL - FISCAL NOTE

AN ACT relative to public employee collective bargaining negotiations under the public employee labor relations act.

FISCAL IMPACT:

The Public Employee Labor Relations Board, the Department of Administrative Services, the New Hampshire Association of Counties, and the New Hampshire Municipal Association state this bill will increase state, county, and local expenditures by an indeterminable amount in FY 2010 and each year thereafter. There will be no fiscal impact on state, county, and local revenue.

METHODOLOGY:

The Public Employee Labor Relations Board states this bill will establish procedures for the negotiation and resolution of public employee collective bargaining disputes under the public employee labor relations act through the creation of a neutral impasse panel. The panel would consist of three members: one member appointed by the employer, one member appointed by the employee association, and one member appointed by the Board. The costs for each member will fluctuate depending upon a panel member's professional fees. The panel member appointed by the Board would be a neutral arbitrator whose fees would range between \$800 and \$1,500 a day depending on experience and ability. The Board indicates state, county and local expenditures will also be increased by how often a panel may be convened and the length of the panel's decision making process.

The Department of Administrative Services states this bill will increase state expenditures by an indeterminable amount in FY 2010 and each year thereafter due to costs associated with the appointment of an impasse panel.

The New Hampshire Association of Counties states this bill will increase county expenditures by an indeterminable amount in FY 2010 and each year thereafter due to costs associated with the appointment of an impasse panel.

The New Hampshire Municipal Association states this bill will increase local expenditures by an indeterminable amount in FY 2010 and each year thereafter due to costs associated with the appointment of an impasse panel.

This bill does not contain an appropriation.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: February 19, 2009

LOB ROOM: 307 **Time Public Hearing Called to Order:** 1:08 p.m.

Time Adjourned: 1:48 p.m.

(please circle if present)

Committee Members: Reps. Goley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky.

Bill Sponsors: Rep. Burridge, Ches 3

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Delmar Burridge - Prime sponsor of the bill. This is identical bill to the one that was introduced last year, which the committee put into study committee. This bill solves the Evergreen problem. It puts the contract negotiations out to 240 days before the budget submission date, and sets other dates regarding the negotiations, which lead to a date for voluntary settlement, and sets down conditions. Everyone will have their ducks in a row well ahead of time. It allows for public comment, and considers the interests and welfare of the public and financial ability of the public employer to pay.

Question: Can you define which board is referred to in line 10-13 on page 1?

Response: The Labor Board.

Question: Why isn't this following the same way as legal negotiations are handled?

Response: For public employees and public money there is a different level of scrutiny. It front loads things for responsibility. It levels the playing field of fairness.

Question: Why not say at 60 days if there is impasse, it goes to the people to vote?

Response: It gives people time to reflect, and to change their minds.

Guy Scaife, Town of Milford - Opposes the bill. Time frames are important, but what are we attempting to fix? Deadlines encourage serious negotiations. The current process is six steps. This bill replaces five of those six steps in RSA 273 A:12. What is wrong with the current process? How many negotiations ever reach the step five? Unless there are many, there is no problem. Step five involves rejection by the voting body. Only disputed cost items will be brought forward. What about going to four day work weeks? This proposal would say that isn't important and wouldn't be driven forward. The Public Hearing would have a stacked audience, and wouldn't be of value. The neutral impasse panel wouldn't be neutral – each party would appoint a representative, who would duel each other. This would take the authority of the legislative body away.

* **Cordell Johnston, NH Municipal Association** - Opposes the bill. Agrees with Mr. Scaife. The bill takes the authority to approve and appropriate funds away from the legislative body. It's unconstitutional under article 28A. The state should be willing to find the money to pay for the increased costs to the municipalities. Handed out a proposed amendment. Takes the provision in page 1, line 26 and changes it to say cost will be split evenly between municipality and state.

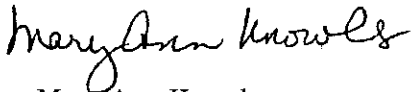
Question: What costs would neutral impasse panel put on municipality? Couldn't municipality win?

Response: It's just as possible they wouldn't.

Question: What is the violation of 28A?

Response: Requiring a political subdivision to take on additional costs without agreement of the legislative body, you are being forced to pay part of the cost of the panel.

Respectfully submitted,



Rep. Mary Ann Knowles
Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: 2/19/09

LOB ROOM: 307

Time Public Hearing Called to Order: ~~1:00~~ 1:08

Time Adjourned: 1:48

(please circle if present)

Committee Members: Reps. Soley, S. Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, H. Richardson, Pellegrino and Sedensky

Bill Sponsors: Rep. Burrige, Ches 3

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

① Rep. Delmar Burrige - sponsor

This is identical bill to the one that was introduced last year, which the committee put into study committee.

This bill solves the Evergreen problem. It puts the contract negotiations out to 240 days before the budget submission date, and sets other dates regarding the negotiations, which lead to a date for voluntary settlement, and sets down conditions. Everyone will have their ducks in a row well ahead of time. It allows for public comment, and considers the interests and welfare of the public and financial ability of the public employer to pay.

Q - Can you define which board is referred to in line 10-13 on page 1?

R - The Labor Board

Q - Why isn't this following the same way as legal negotiations are handled?

R - For public employees and public money there is a different level of scrutiny. It front loads things for responsibility. It levels the playing field of fairness.

Q Why not say at 60 days if there is impasse, it goes to the people to vote?

R - It gives people time to reflect, and to change their minds.

(2) Guy Scarfe - Town of Milford - opposed

Time frames are important, but what are we attempting to fix?

Deadlines encourage serious negotiations. The current process is six steps. This bill replaces 5 of those 6 steps in RSA 273 A:12. What is wrong with the current process? How many negotiations ever reach the step 5? Unless there are many, there is no problem. Step 5 involves rejection by the voting body.

Only disputed cost items will be brought forward. What about going to 4-day work weeks? This proposal could say that isn't important and wouldn't be driven forward.

The Public Hearing would have a stacked audience, and wouldn't be of value.

The neutral impasse panel wouldn't be neutral - each party would appoint a represent, who would duel each other.

This would take the authority ~~of~~ the legislative body away.

(3) * Cordell Johnston NH Municipal Ass.

Agrees with Mr. Scarfe. The bill takes the authority to approve and appropriate funds away from the legislative body. It's unconstitutional under article 28A. The state should be willing to find the money to pay for the increased costs to the municipalities.

Handed out a proposed amendment:

Takes the provision in page 1, line 26 and changes it to say cost will be split evenly between municipality and state.

Q - what costs would neutral impasse panel put on municipality?

Couldn't municipality win?

R - It's just as possible they wouldn't.

Q - what is the violation of 28A?

R - Requiring a political subdivision to take on additional costs without agreement of the legislative body, you are being forced to pay part of the cost of the panel.

Sub-Committee Actions

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: March 12, 2009

Subcommittee Members: Reps. Craig, J. Knowles, and Richardson

Comments and Recommendations: Not enough time to work on bill. Sponsor agrees to Retain.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. J. Knowles

Seconded by Rep. Richardson

Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Jim Craig
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: 3/12/09

Subcommittee Members: Reps. Craig, J. Knowles, + Bridle

Comments and Recommendations: NOT ENOUGH TIME TO WORK ON BILL. SPONSOR AGREES TO RETAIN.

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. J. KNOWLES
Seconded by Rep. RICHARDSON
Vote: 3-0

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

Tim Craig

Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: October 28, 2009

Subcommittee Members: Reps. Goley, Kelly, Gorman, Hofemann, Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantino, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino, and Sedensky

Comments and Recommendations: Committee of the Whole called to order 1:07. Speakers: Don Mitchell (Public Employee Labor Relations Board) wanted to layout components of Labor Relations Board procedures. The big trigger date is budget submission date: when the executive function of the government passes it on over to the legislative function. Usually, this is union to management when negotiations are desired. He discussed times, processes that take place. He stated that the period of 120 days is too short, and often serious negotiations don't take place until the last minute. If impasse occurs, negotiations go to mediation. Mediators can't always get to parties in a timely fashion. If mediation doesn't work, it goes to a fact-finder, and both parties argue the facts, and the fact-finder writes a report, which is given to the parties, who have 10 days before it's given to the public. If the ratifying body rejects it, the report is out the window. Everything starts from scratch. Fiscal note: Cost would be the panel that would be put in place. The single arbitrator would be the swing vote. A union might use one of their organizers. The Public Employee Labor Relations Board doesn't take a position, but would foot the bill for half of the third member of the panel without binding arbitration, there is no end point. Everyone is stuck where they are. Question: This is non-binding arbitration? ANS: Yes. Question: Binding arbitration would have some teeth? ANS: Some states have binding, and some compulsory. There is usually consideration of essential personnel. Question: Is "ratifying bodies" in the law? (in reference to #8 on list.) ANS: Yes. Question: My problem is #10 (on the list). How do you get to the end point when the parties agree to disagree? #10 states that the entire process is rejected. ANS: Usually, the arbitrator chooses "baseball" negotiation, and chooses what he/she thinks is the best offer. Some people use governmental agency, similar to the NLRB. Question: Of 463 contracts, 92 are in some stage of impasse? ANS: Yes. Question: I remember hearing that the PELRB is broken, and we need the right to strike. ANS: When people are intransigent, they remain so instead someone with a larger club comes along. When people have to reduce things to evidence, things become more clear. The system's broken when needs aren't being met. If it's not binding, there are no consequences. What occurs is stagnation. Question: We've discussed maybe letting the current process complete a couple cycles, and then say you can't go back again – something else has to happen and it has to go to a different body. Are there situations like that? ANS: I'm not aware of that, but I'm aware is that there isn't time to go through two cycles, due to budget timing. Most jurisdictions throughout the country have dictated what the end will be. That tends to be a motivator. As long as it's a "gaming thing," it will continue. It's all about control and the perception of control. Question: Putting "gaming" aside, how long should it take to negotiate and mediate? ANS: Arbitrarily, I would say two months. Question: Does PELRB have any direct input in negotiations? ANS: When asked, we'll appoint a neutral arbitrators. Question: In states that have arbitration, do they allow for an appeal? ANS: It's very narrow – has to be a violation of public policy. Question: Pros and cons for legislative body to set in advance, they want binding arbitration to be used if necessary? ANS: One party would determine the rules. Takes the ability for the two sides to come to an agreement themselves. The rules could

be changed each time you come into a contract. Question: What is the average time that units have been without contracts? ANS: The average is maybe a year to 18 months – most are current – meaning the contract ended in July. Chairman Goley stated that he hoped the Committee can determine and end game resolution. We'll meet again, and he wants members to contribute ideas.

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,
Rep. Mary Ann Knowles
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: October 28, 2009

Subcommittee Members: Reps. Goley, Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino, and Sedensky

Comments and Recommendations:

Amendments:

Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:
Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,
Rep.
Subcommittee Chairman/Clerk

①

Committee of the whole called to order at 10:07 AM

* Speaker - Don Mitchell (Public Employees Labor Relations Board)

wanted to lay out components of Labor Relations Board

procedures

The big trigger date is budget submission date - when

the executive function of the government passes it over

to the legislative function. Usually, this is union to

management when negotiations are desired.

He discussed times, processes that take place. He

stated that the period of 120 days is too short, and

often serious negotiations don't take place until the

last minute.

If Impasse occurs, negotiations go to mediation.

Mediators can't always get to parties in a timely fashion.

If mediation doesn't work, it goes to a fact-finder,

and both parties argue the facts, and the fact-finder

writes a report, which is given to the parties, who

have 10 days before it's given to the public.

If the ratifying body rejects it, the report is out

of the window. Everything starts from scratch.

Fiscal note: Cost would be the panel that would be

put in place. The single arbitrator could be the swing

vote. A union might use one of their organizers.

The Public ^{Employee} Labor Relations Board doesn't take

any position, but would foot the bill for half of

the third member of the panel.

(2) Without binding arbitration, there is no end point. Everyone is stuck where they are

Q - This is non-binding arbitration?
R - yes.

Q - Binding arbitration would have some teeth.
R - Some states have binding, and some compulsory. There is usually consideration of essential personnel.

Q - It's "ratifying bodies" in the law? (in reference to #8 on list).
R - Yes.

Q - My problem is #10 (on the list). How do you get to the end point when the parties agree to disagree? #10 states that the entire process is rejected.

R - usually, the arbitrator chooses "baseball" negotiation, and chooses what he/she thinks is the best offer. Some people use a governmental agency, similar to the NLRB.

Q - Of 463 contracts, 92 are in some stage of impasse?
R - yes.

Q - I remember hearing that the PFLRB is broken, and we need the right to strike.

R - When people are intransigent, they remain so instead of someone with a larger club comes along. When people have to reduce things to evidence, things become more clear. The system is broken when needs aren't being met. If it's not binding, there are no consequences. What occurs is stagnation.

Q - We've discussed maybe letting the current process complete a couple cycles and then say you can't go back again - something else has to happen and it has to go to a different body. Are there situations like that?

R - I'm not aware of that, but I'm aware is that there isn't time to go through two cycles, due to budget timing.

Most jurisdictions throughout the country have dictated what the end will be. That tends to be a motivator. As long as it's a "gaming thing," it will continue. It's all about control and the perception of control.

Q - Putting "gaming" aside, how long should it take to negotiate and mediate?

R - Arbitrarily, I would say two months.

Q - Does PELRB have any direct input in negotiations?

R - When asked, we'll appoint a neutral arbitrator.

Q - In states that have arbitration, do they allow for an appeal?

R - It's very narrow - has to be a violation of public policy.

Q - Pros & Cons for legislative body to set in advance, they want binding arbitration to be used if necessary?

R - One party would determine the rules. Takes the ability for the two sides to come to an agreement themselves. The rules could be changed each time you come into a contract.

Q - What is the average time that units have been without contracts?

R - The average is maybe a year to 18 months - most are current - meaning the contract ended in July.

Chairman Goley stated that he hoped the Committee can determine an end game resolution. We'll meet again, and he wants members to contribute ideas.

History of Binding Arbitration in NH:

- Similar bills have been introduced in 1989/1990 by Rep. Blackator and co-signed by then Sen. President Junie Blaisdell, and again in 1999/2000 legislative session.
- Those bills were for Police/Fire only.
- Those previous bills died in the legislature and the common denominator was the statement of “why would we have a person who does not know what goes on in the cities and towns govern what cities and towns will do.
- One of the major arguments brought up during the 1989/1999 bills was that Binding Arbitration does not allow for or takes away from the public’s input.
- Argument over “unfunded mandates” Article 28:A of the NH Constitution was an argument made in the 1989/1999 bill.

Methodology:

- Our bill’s foundation was taken from the 1999/2000 binding arbitration bill.
- Our bill includes all Public Employees. Our thoughts were that of fairness for everyone.
- Our Bill takes into consideration previous concerns regarding outside people dictating how cities and towns handle labor issues.
- As a result of those previous concerns our bill allows the PELRB to be the governing body for binding arbitration. Currently the PELRB handles ALL labor matters within the State of NH.

How the Negotiation Process works currently:

- Two parties decide to negotiate and sit down and negotiate a contract. Proposals are exchanged and so forth. If the two parties agree to a contract it goes to the governing body of the City/Town for a ratification vote. That is either to the City Council, Alderman or to the voters. If the two parties cannot agree to a contract either party can declare impasse. When impasse is declared the two parties go to fact finding. If the two parties cannot agree to the fact finder’s report, the two parties enter into mediation.
 - You will notice at the bottom of the bill’s text in the section regarding Methodology, the Department of Administrative Services, The New Hampshire Association of Counties and The New Hampshire Municipal Association states this bill will increase local expenditures by an indeterminable amount in FY 2010 and each year thereafter due to costs associated with the appointment of an impasse panel. What is

not stated in this is that these issues can also be applied to today's negotiation process as stated above.

- The fact finding and mediation process currently cost the unions and the cities and/or towns to enter into. The cost is no different than what is proposed in this bill.
- Furthermore, the three panel board is similar to what is currently used in disciplinary proceedings conducted by the PELRB.
- If the two parties cannot agree on fact finding or mediation, the process starts all over with the hiring of a new fact finder and a new mediator. The process is circular in nature. The two parties go round and round and round and it often takes months to schedule each step of that process further delaying the process.

How Binding Arbitration will work:

- This new legislation would allow for an additional step in the negotiation process, that of a neutral impasse panel.
 - The addition of Section II and III of the bill outlines a time table for mediation to begin. Currently there is no time table. This is to shorten the process.
 - Section III b. Only matters associated with cost can be brought to the Binding Arbitration process. We do not want to tie up the process over items that are not associated with cost.
 - Section III c. If after 45 days the mediator cannot assist the parties in reaching an agreement, either party can petition the PELRB to go to the next step, the Neutral Impasse Panel.
 - Section IV of the bill allows for fairness in the neutral impasse panel which allows both sides to choose a member. A member of the labor board would chair the panel. *(This is identical to the current way the PELRB handles disciplinary hearings.)*
 - Section V. again allows for a time frame on when the neutral impasse panel shall hold hearings on the matter. Again this is to shorten the process of a prolonged negotiation process.
 - Evidence will be presented to the Neutral Impasse Panel (NIP), orally, written or both.
 - The NIP has the authority to act on each issue separately (so 2 issues could be found in favor of the employees, 1 issue could be found in favor of the employer etc.)
 - The NIP chooses the most equitable solution on each subject, based on the information presented to them.
 - The NIP can hold a public hearing or have people send in comments, concerns etc.
 - This takes care of the earlier arguments that the public does not have input. This Binding Arbitration bill actually provides more power to the public in matters related to their public employees than they have now.

Currently the public has NO say in matters related to negotiations for those governing bodies with City Council or Alderman Forms of governments.

- Section V (e) gives the guidelines of what the NIP will use in determining an equitable decision.

Missing Section of the Bill – Original drafting contained the following:

- ***Line 34 VI. The determination of the neutral impasse panel shall be final and binding and shall supersede any otherwise applicable dispute resolution procedure provided by law; upon the parties for a period prescribed by the panel, but in no event shall the period exceed 1 year from the termination date of any previous collective bargaining agreement or if there is no previous collective bargaining agreement, then for a period not to exceed 2 years from the date of the determination by the panel.***

Article 28:A Issues:

- Unfunded mandate issue:
 - Issue #1: We are taking away the rights of the taxpayers, governing body to vote on the contract.
 - Currently this happens but the average person doesn't really know it's happening to them. Because in cities with a city council or alderman form of government, the public has no say in the process.
- It seems that the "unfunded mandate" argument gets raised as a "catch all" argument just like it appears that everyone in today's society is diagnosed with ADD and ADHD. Let me ask you these questions:
 - Is workman comp an unfunded mandate? Do cities and towns fund the cost associated with someone getting injured on the job? The cost of health care is so astronomical no one can foresee the cost of a medical procedure.
 - What about the cost of a mediator or fact finder? Is that an unfunded mandate because I am sure that the cities and towns do not foresee that negotiations will go to mediation and fact finding?
 - What about the case years ago in Manchester where the city and police union took 5 years to settle a contract. That is a lot of mediation and fact finding costs.
 - What would have happened if we had Binding Arbitration during the SEA and State contract dispute? I would think that you would have at least 250 people maybe more who would be very fond of Binding Arbitration.

- What about a reinstatement of an employee who was unjustly fired and receives back pay as a result of his reinstatement? The PELRB makes that decision and their decision in disciplinary matters is final and binding. Is the cost associated with that process and unfunded mandate?
- All of these expenses are the cost of engaging in negotiations and we would content that Binding Arbitration is a cost of engaging in binding arbitration.

Court Cases that address Article 28:A Issues:

- There is a Supreme Court case that resulted from a dispute arose from the construction of a new bypass, which required the reclassification of certain segments of Old Route 9 in Nelson.
 - They argued that now that the town is responsible for the maintenance of that road, it's an unfunded mandates in violation of Article 28:a.
 - The Justices stated, ""Invoking th[is] constitutional prohibition requires both a mandate of responsibility to the political subdivision and a requirement of additional local political subdivision expenditures by virtue of the mandate." Opinion of the Justices (Solid Waste Disposal), 135 N.H. 543, 545 (1992). Increased expenditures alone are not dispositive of whether a program or responsibility has been expanded. The reclassification of Old Route 9 does not violate Article 28-a because it is not a new or expanded responsibility or program. See Nashua School Dist. v. State, 140 N.H. 457, 461 (1995).
 - We would argue that Binding Arbitration is not a new or expanded responsibility or program. It incorporates mediation and fact finding which is currently part of the negotiation process is now.
 - Furthermore, in this court case, the justices stated, "We have previously held that Article 28-a does not preclude municipalities from reassuming financial responsibility for services for which they had been liable prior to its adoption in 1984. See Nashua School Dist., 140 N.H. at 459-61.
 - In Nashua School District the 1985 amendment to RSA 193:27, I, where they added Homes for Children to the definitions of education for children did not create an unfunded mandate in violation of part I, article 28-a. The trial court

found that the special education costs of students placed by the courts in "residential schools" had been paid by school districts prior to 1985. The court therefore concluded that the 1985 amendment does not transgress article 28-a because "school districts had been financially responsible for placements in 'residential schools' prior to the 1985 amendment to RSA 193:27."

- The obligation to bargain has been in effect since 1975, well before the 1985 amendment to Article 28-a.

Conclusion:

Our bill does allow for an ending to the process. The NIP's decision is final and binding. Binding Arbitration would have enough "teeth" in the bill that would prevent City's and Towns from stalling and would allow for an ending to a negotiation process that currently doesn't end.

You can choose to look at Binding Arbitration as a negative process or you can choose to look at Binding Arbitration as a positive process. We choose to look at the positive aspects of Binding Arbitration. Because we are also taxpayers; we tried to come up with a process that is fair to everyone, employees, employers and taxpayers as well. We think that this bill, with its amendment, has enough "teeth" to hold both parties accountable to each other and accountable to the taxpayers.

STATE OF NEW HAMPSHIRE
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

1. Letter by party seeking to negotiate or PELRB Order if first contract
 - Parties negotiate reasonable time and place
2. Notice of Impasse to PELRB
3. Assignment of Mediator
 - Elapsed time: State 75 days before Budget Submission Date; Others 45 days before Budget Submission Date
4. Factfinding
5. Factfinding Report
 - 30 days from appointment
6. Parties consideration
 - 10 Days
7. Factfinding report made Public
8. Submission to ratifying bodies
9. Submission to legislative body
10. Repeat entire process if rejected

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 10, 2009

Subcommittee Members: Reps. Goley, Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantino, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino, and Sedensky

Comments and Recommendations: Chair Goley reiterated that there is currently no end resolution in the bargaining process and is looking for ideas. He mentioned the issue of 28a being a problem. Comment: A number of committee members have discussed the possibility of binding arbitration. These needs to still be a mechanism for the voting body to have a voice if they think they can't afford the terms of the contract. They sought input from House Leadership but have not heard anything. Comment: The decision of an impass committee would probably be binding and would take away the will of the voters. It's a shifting of power. Comment: There have been cases where the two sides have agreed, but the voters have not. Is there something in between like an expanded fact finders report? Comment: How about letting the towns or cities have an option to buy into the process prior to starting deliberations? Comment: You would have to have a vote at an annual meeting prior to the start of negotiations. If a contract is up in June, do you have to wait until the following March? Do the voters get involved in the beginning or the end of the process? And the cities have a different legislative body. It would be up to the Alderman. Comment: I think we agreed that the system is broken, and focus has to be placed on both sides of the issue. If the voters decide not to agree, there is no focus of attention. Arbitration helps to focus on reasonable outcomes. It's not a shifting of power, it's leveling the playing field. Comment: Why can't you set a time frame for medication, and if it's not successful, you go to arbitration. People will know what they're doing, and will adjust. After that, give a copy of the arbitrators report to the voting body. Then the question is, what if the vote is no? Do you want to micromanage the process? Can there be a next step, like going back to arbitration one more time? Comment: What about other states? What have they done? ANS: It's the 28a issue that's unique. Comment: When the cost factor goes to the voters, if it goes into binding arbitration, where does the money for the costs come from? There would still need to be a warrant article. Comment: If the voters reject, is it binding? ANS: I don't think it can be because of 28a. Comment: It would require going back to negotiations. But it would solve the dispute between the negotiating teams. Comment: We need a new term for what we've been calling "binding arbitration." Comment: What about "mandatory" arbitration? Comment: I think we should go to "last best offer" rather than "fact-finding." Comment: We should have 2 or 3 parties from both sides in the negotiations. Can't they be designated as being dissected by the voting body? Comment: The voters give the authority to go into negotiations, but they should have the right under 28a to have a say at the end of negotiations. Comment: We need to get a handle on the 28a issue. Comment: We should hear from experts in negotiation. Chairman Goley will invite some experts and the committee will meet again.

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.:

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Mary Ann Knowles
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 10, 2009

Subcommittee Members: Reps. Goley, Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Mears, Infantino, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino, and Sedensky

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.
Subcommittee Chairman/Clerk

①

Sub-committee meeting on 10/10/2009

Chair Goley reiterated that there is currently no end resolution in the bargaining process and is looking for ideas. He mentioned the issue of 2ga being a problem.

Comment

A number of committee members have discussed the possibility of binding arbitration. There needs to still be a mechanism for the voting body to have a voice if they think they can't afford the terms of the contract. They sought input from House Leadership but have not heard anything

Comment

The decision of an impasse committee would probably be binding and would take away the will of the voters. It's a shifting of power.

Comment

There have been cases where the two sides have agreed, but the voters have not. Is there something in between like an expanded fact finders report?

comment

How about letting the towns or cities have an option to buy into the process prior to starting deliberations?

Comment

You would have to have a vote at an annual meeting prior to the start of negotiations. If a contract is up in June, do you have to wait until the following March? Do the voters get involved in the beginning or the end of the process? And the cities have a different legislative body. It would be up to the Aldermen.

(2) comment

I think we agreed that the system is broken, and focus has to be placed on both sides of the issue. If the voters decide not to agree, there is no focus of attention. Arbitration helps to focus on reasonable outcomes. It's not a shifting of power, it's leveling the playing field.

comment

Why can't you set a time frame for mediation, and if it's not successful, you go to arbitration. People will know what they're doing, and will adjust. After that, give a copy of the arbitrators report to the voting body. Then the question is, what if the vote is no? Do you want to micromanage the process? Can there be a next step, like going back to arbitration one more time?

comment

What about other states? What have they done?

(R) It's the 28a issue that's unique.

comment

When the cost factor goes to the voters, if it goes into binding arbitration, where does the money for the costs come from? There would still need to be a warrant article.

comment

If the voters reject, is it binding?

(P) I don't think it can be because of 28a.

comment

It would require going back to negotiations. But it would solve the ~~disagreement~~^{dispute} between the negotiating teams.

③

comment

we need a new term for what we've been calling "binding arbitration."

comment

what about "mandatory" arbitration?

comment

I think we should go to "last best offer" rather than "fact-finding."

comment

we should have 2 or 3 parties from both sides in the negotiations. Can't they be designated as being directed by the voting body?

comment

The voters give the authority to go into negotiations, but they should have the right under 28a to have a say at the end of negotiations.

comment

we need to get a handle on the 28a issue.

comment

we should hear from experts in negotiation.

Chairman Goley will invite some experts and the committee will meet again.

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 24, 2009

Subcommittee Members: Reps. Goley, Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino and Sedensky

Comments and Recommendations: Mark Roth, Divine Millimet, thinks bargaining process works in New Hampshire, as well as it can in an adversarial relationship. Interest arbitration creates a fundamental change in the process, when a final decision is binding on the principals. It has raised constitutional issues (similar to Article 8 in New Hampshire) in some states. Two basic approaches are used. 1) Wisdom of the arbitrator, who comes to a common ground, or "split the baby" approach. 2) Last best offer, or "baseball arbitration," where the principles have to choose one way or another. In Massachusetts, they began using the wisdom of the arbitrator, and soon discovered problems, so they switched to last best offer. It appears that in HB 631, the decision of an arbitrator would still go back to the legislative body, so it would probably avoid the constitutional issue, but there is a limited ability to assess the will of the voters in interest arbitration. Question: We are grappling with the perception that the process is too slow in New Hampshire, but understanding that we have to involve the public. Is there anywhere where there is a better process? ANS: The seal negotiations take place in the separate caucuses of the bargaining sides, to reach agreement on what is possible to achieve – that's the most difficult thing. So it's difficult to speed the process along. I think the system works because of the deadline to get an agreement on the warrant for the voters. You can make attempts to streamline, but there are such differences in resources from one community and another. It's hard to say if there's just one clear reason that agreements can't be reached. Question: Is it a systemic problem that negotiations lag until the last minute? ANS: Sure, it's human nature. Question: Do you feel the process needs to be changed? ANS: Overall, I think it serves the public well, but I know there's frustration. Bargaining is inherently adversarial. There is probably good reason when things bog down. Question: You see this bill going from one person to three people, and this would increase cost of negotiations? ANS: Yes. Question: You've seen last best offer work pretty well. We've had cases of negotiations going for long periods. Would last best offer help? ANS: Most settle out before the arbitrator makes a decision, so I think it could help negotiations. The question is whether it is sufficient for the voters.

John Krumpky, Represents Parties in Negotiations: The system does work. There are inefficiencies, but that is inherent in bargaining. I don't think there is any panacea that would shorten negotiations for everyone. I agree that with HB 631, there still is no binding arbitration. Question: So this bill doesn't have any teeth? ANS: That would be my reading of the bill.

Michael Brown, Senior Assistant Attorney General: If we legislate something of a binding form, would it meet 28a constitutionally? ANS: It raises concerns in the area of separation of powers. There is a shifting away from the voting body, although it still goes to them ultimately. It raises public funding and policy issues. I agree that the bill doesn't specify binding resolution. I have concerns about management prerogatives (the executive branch of government).

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Mary Ann Knowles
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 24, 2009

Subcommittee Members:

(Reps. Goley, Kelly, Gorman, Hofemann, J. Knowles, M. Knowles, Brennan, Craig, Weed, Rice, Mears, Infantine, Daniels, Bishop, Bridle, Gleason, Dumaine, Richardson, Pellegrino, and Sedensky)

Comments and Recommendations:

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.
Seconded by Rep.
Vote:

Respectfully submitted,
Rep.
Subcommittee Chairman/Clerk

①

11/24/09 HB 631-FN-Local work Session

Mark Roth - Divine Mill, met

Thinks bargaining process works in NH, as well as it can in an adversarial relationship.

Interest arbitration creates a fundamental change in the process, when a final decision is binding on the principals. It has raised constitutional issues (similar to Article 8 in NH) in some states.

Two basic approaches are used 1) wisdom of the arbitrator, who comes to a common ground, or "split the baby" approach. 2) Last best offer, or "baseball arbitration," where the principals have to choose one way or another. In MASS, they began using the wisdom of the Arbitrator, and soon discovered problems, so they switched to Last Best offer. It appears that in HB 631, the decision of an arbitrator would still go back to the legislative body, so it would probably avoid the constitutional issue, but there is a limited ability to assess the will of the voters in interest arbitration.

Q: We are grappling with the perception that the process is too slow in NH, but understanding that we have to involve the public. Is there anywhere where there is a better process?

A: The real negotiations take place in the separate caucuses of the bargaining sides, to reach agreement on what is possible to achieve - that's the most difficult thing. So it's difficult to speed the process along. I think the system works because of the deadline to get an agreement on the warrant for the voters. You can make attempts to streamline,

② but there are such differences in resources from one community to another. It's hard to say if there's just one clear reason that agreements can't be reached.

Q: Is it a systemic problem that negotiations lag until the last minute?

R: Sure, it's human nature.

Q: Do you feel the process needs to be changed?

R: Overall, I think it serves the public well, but I know there's frustration. Bargaining is inherently adversarial. There is probably good reason when things bog down.

Q: You see this bill going from one person to three people, and this would increase cost of negotiations?

R: Yes.

Q: You've seen Last Best offer work pretty well. We've had cases of negotiations going for long periods. Would Last Best offer help?

R: Most settle out before the arbitrator makes a decision, so I think it could help negotiations. The question is whether it is sufficient for the voters.

John Krumpky - Represents Parties in Negotiations

The system does work. There are inefficiencies, but that is inherent in bargaining. I don't think there is any panacea that would shorten negotiations for everyone. I agree that with HB 631, there still is no binding arbitration.

Q: So this bill doesn't have any teeth?

R: That would be my reading of the bill.

③

Michael Brown - Senior Ass't Attorney General

Q: If we legislate something of a binding form, would it meet 28a constitutionally?

R: It raises concerns in the area of separation of powers.

There is a shifting ^{away} from the voting body, although it still goes to them ultimately. It raises public funding and policy issues. I agree that the bill doesn't specify binding resolution. I have concerns ~~about~~ about management prerogatives (the executive branch of government).

Dear Chairman Goley:

I recently participated in your committee's information session on the holdover NH631. During the question and answer session, one of your members inquired as to the number of bargaining units that presently were "out of contract". While your committee was generous and understanding enough to forgo this exact information, I wanted to produce it if I could as the topic you are considering is serious one with respect to this agency.

Therefore I have attached a list that we have compiled and believe to be accurate as of this week. If you desire any additional information on this bill or any labor or employment question, please do not hesitate to contact me.

Very truly yours,

Don Mitchell

PS. I have taken the liberty of forwarding this information to Ms. Ebbs as well.

Donald E. Mitchell, Esquire

Executive Director

Public Employee Labor Relations Board

GAA Plaza, Building # 1

153 Manchester St.

Concord, NH 03301-5143

TEL: (603) 271-2587

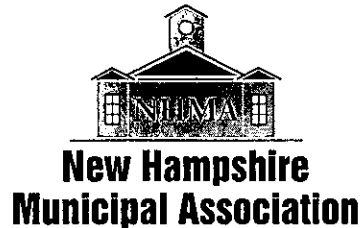
LEGISLATIVE COMMITTEE INFORMATION

1.	ALLENSTOWN SCHOOL SUPPORT STAFF
2.	AMHERST POLICE DEPT EMPLOYEES LOCAL 3657
3.	ASHLAND TOWN EMPLOYEES
4.	CHESHIRE COUNTY NURSING HOME EMPLOYEES LOCAL 2679
5.	CLAREMONT FIREFIGHTERS
6.	COMMUNITY COLLEGE SYSTEM OF NH
7.	CON-VAL EDUCATION ASSOCIATION
8.	CONWAY EDUCATION ASSOCIATION
9.	CONWAY EDUCATION SUPPORT PERSONNEL
10.	DEERFIELD EDUCATION ASSOCIATION
11.	DERRY FIREFIGHTERS
12.	DERRY FIRE OFFICERS
13.	DERRY POLICE
14.	DOVER EDUCATIONAL OFFICE PERSONNEL
15.	DOVER PUBLIC WORKS, LOCAL 572
16.	DOVER TEACHERS UNION
17.	ELLIS SCHOOL SUPPORT STAFF
18.	EXETER FIREFIGHTERS
19.	FREMONT EDUCATION ASSOCIATION
20.	FREMONT SUPPORT STAFF
21.	HAMPTON FIRE OFFICERS

22.	HAMPTON FIREFIGHTERS
23.	HAMPTON POLICE ASSOCIATION
24.	HAMPTON PUBLIC WORKS
25.	HAMPTON TOWN EMPLOYEES
26.	HANOVER FIREFIGHTERS
27.	HILLSBORO PARAPROFESSIONAL & SUPPORT STAF
28.	HILLSBORO TEACHERS
29.	HILLSBOROUGH COUNTY NURSING HOME EMPLOYEES LOCAL 2715
30.	HOLLIS, POLICE FIRE & COMMUNICIATIONS EMPLOYEES LOCAL 3657
31.	HOLLIS/BROOKLINE COOPERATIVE
32.	HOPKINTON EDUCATION ASSOCIATION
33.	HUDSON FIREFIGHTERS
34.	HUDSON LEADERSHIP TEAM LOCAL 1906
35.	HUDSON PSRP
36.	HUDSON TEACHERS
37.	KEENE STATE ADJUNCTS
38.	KEENE STATE EDUCATION ASSOCIATION
39.	KENSINGTON EDUCATION ASSOCIATION
40.	LEBANON FIREFIGHTERS
41.	LITCHFIELD EDUCATION ASSOCIATION
42.	LITCHFIELD POLICE EMPLOYEES
43.	MADISON EDUCATION ASSOCIATION
44.	MASCOMA VALLEY REGIONAL EDUCATION ASSOCIATION

45.	MEREDITH TOWN EMPLOYEES (New contract)
46.	MERRIMACK DISPATCHERS & SUPPORT STAFF (New contract)
47.	MERRIMACK (TOWN) MID-MANAGEMENT EMPLOYEES
48.	MILFORD POLICE DEPT EMPLOYEES LOCAL 3657
49.	MILFORD TOWN EMPLOYEES
50.	NH COURT SYSTEM
51.	NH FISH & GAME CONSERVATION OFFICERS
52.	NH FISH & GAME CONSERVATION SUPERVISORS
53.	NH HIGHWAY PATROL OFFICERS
54.	NH HIGHWAY PATROL SUPERVISORS
55.	NH TROOPERS ASSOCIATION
56.	NORTH HAMPTON FIREFIGHTERS
57.	NORTHWOOD TEACHERS ASSOCIATION
58.	PELHAM POLICE EMPLOYEES
59.	PITTSBURG EDUCATION ASSOCIATION
60.	PORTSMOUTH CITY EMPLOYEES LOCAL 1386
61.	PORTSMOUTH FIREFIGHTERS
62.	PORTSMOUTH POLICE OFFICERS
63.	PORTSMOUTH POLICE CIVILIANS
64.	PORTSMOUTH SCHOOL CUSTODIAL EMPLOYEES LOCAL 1386
65.	RETIREMENT SYSTEM (STATE OF NH)
66.	ROCHESTER DISPATCHERS (New unit)
67.	ROCHESTER FIREFIGHTERS
68.	RYE FIREFIGHTERS

69.	SALEM FIREFIGHTERS
70.	SANBORN REGIONAL EDUCATION ASSOCIATION
71.	SANDOWN POLICE DEPARTMENT
72.	SEABROOK EMPLOYEES
73.	SEABROOK POLICE
74.	SEABROOK SUPERVISORY EMPLOYEES LOCAL 2301
75.	STATE OF NH, STATE EMPLOYEES
76.	TAMWORTH EDUCATION SUPPORT PERSONNEL
77.	TIMBERLANE TEACHERS
78.	UNH POLICE
79.	WAKEFIELD PARAPROFESSIONALS' UNION
80.	WEARE EDUCATION ASSOCIATION
81.	WEARE POLICE EMPLOYEES
82.	WOLFEBORO FIREFIGHTERS
83.	YANKEE GREYHOUND (SECURITY)
84.	YANKEE GREYHOUND (MAINTENANCE)
85.	YANKEE GREYHOUND (OFFICIALS)



To: Rep. Jeff Goley, Chairman, and members of the House Labor Committee

From: Cordell Johnston, NH Municipal Association
Betsy B. Miller, NH Association of Counties
Dean Michener, NH School Boards Association

Re: **HB 631, relative to public employee collective bargaining negotiations**

Date: November 20, 2009

We listened carefully to your committee members' discussion concerning "Resolution of Disputes" and how it applies to difficult contract negotiations. The primary concern appeared to be with getting proposals submitted to the legislative body. Under current law, RSA 273-A:12 does what you want to accomplish. The current law provides for methods of dispute resolution with results that are reviewed and then submitted to the legislative body. The law looks complex but works as follows:

- Mediation shall occur:
 - if the parties request it; or
 - have bargained to impasse; or
 - if an agreement has not been reached within 60 days prior to the budget submission date.
- Fact finding shall occur:
 - if the parties so choose; or
 - if mediation doesn't result in agreement within 45 days prior to the budget submission date.
- Then, if either party's negotiating team rejects the fact finder's recommendations:
 - the full Board (governing body) and full union membership shall vote.
- If either the Board or the union membership rejects those recommendations:
 - the recommendations are submitted to the legislative body for a vote.

Thus, current law requires submission of the fact-finder's recommendation to the legislative body, even if the governing body does not support it. In 1993, the Supreme Court affirmed this process in the Derry case, stating, "... RSA 273-A:12 requires that fact-finder's report be submitted in its entirety to legislative body ..." We believe this dispute resolution process as provided in RSA 273-A:12 is exactly the methodology promoted by members of the Labor Committee at your committee meeting last week.

Attached is a copy of the current law, RSA 273-A:12. We are happy to discuss this issue with you further.

CHAPTER 273-A
PUBLIC EMPLOYEE LABOR RELATIONS

RSA 273-A:12 Resolution of Disputes.

I. Whenever the parties request the board's assistance or have bargained to impasse, or if the parties have not reached agreement on a contract within 60 days, or in the case of state employees 90 days, prior to the budget submission date, a neutral party chosen by the parties, or failing agreement, appointed by the board, shall undertake to mediate the issues remaining in dispute. If the parties so choose, or if mediation does not result in agreement within 45 days, or in the case of state employees 75 days, prior to the budget submission date, a neutral party chosen by the parties, or failing agreement, appointed by the board, shall make and report findings of fact together with recommendations for resolving each of the issues remaining in dispute, which findings and recommendations shall not be made public until the negotiating teams shall have considered them for 10 days.

II. If either negotiating team rejects the neutral party's recommendations, his findings and recommendations shall be submitted to the full membership of the employee organization and to the board of the public employer, which shall vote to accept or reject so much of his recommendations as is otherwise permitted by law.

III. (a) If either the full membership of the employee organization or the board of the public employer rejects the neutral party's recommendations, the findings and recommendations shall be submitted to the legislative body of the public employer at the next annual meeting of the legislative body, unless there is an emergency as defined in RSA 31:5 or RSA 197:3, which shall vote to accept or reject so much of the recommendations as otherwise is permitted by law.

(b) If the public employer is a local political subdivision with a city or town council form of government and if either the full membership of the employee organization or the board of the public employer rejects the neutral party's recommendations, the findings and recommendations shall be submitted within 30 days to the city council or aldermen or town council for approval. Within 30 days of the receipt of the submission, the city council or aldermen or town council shall vote to accept or reject the recommendations as otherwise is permitted by law.

IV. If the impasse is not resolved following the action of the legislative body, negotiations shall be reopened. Mediation may be requested by either party and may, at the mediator's option, involve the board of the public employer. In cases where the board of the public employer also serves as the legislative body of a municipality, the mediator may request no more than one less than a quorum of the legislative body to participate in the mediation.

V. Nothing in this chapter shall be construed to prohibit the parties from providing for such lawful procedures for resolving impasses as the parties may agree upon; providing that no such procedures shall bind the legislative body on matters regarding cost items. The parties shall share equally all fees and costs of such procedures.

VI. The parties shall share equally all fees and costs of mediation and fact-finding required by this chapter.

VII. For collective bargaining agreements entered into after the effective date of this section, if the impasse is not resolved at the time of the expiration of the parties' agreement, the terms of the collective bargaining agreement shall continue in force and effect, including but not limited to the continuation of any pay plan included in the agreement, until a new agreement shall be executed. Provided, however, that for the purposes of this paragraph, the terms shall not include cost of living increases and nothing in this paragraph shall require payments of cost of living increases during the time period between contracts.

Testimony

copy

1 HB 631

2 **Amendment proposed by New Hampshire Municipal Association**

3 STATE OF NEW HAMPSHIRE

4 *In the Year of Our Lord Two Thousand Nine*

5 AN ACT relative to public employee collective bargaining negotiations under
6 the public employee labor relations act.

7 *Be it Enacted by the Senate and House of Representatives in General Court*
8 *convened:*

9 1 Obligation to Bargain. Amend RSA 273-A:3, II(a) to read as follows:

10 II.(a) Any party desiring to bargain shall serve written notice of its intention
11 on the other party at least [~~120~~] **240** days before the budget submission date;
12 provided, however, that bargaining with state employees shall commence not
13 later than [~~120~~] **240** days before the deadline for submission of the governor's
14 proposed operating budget.

15 2 Resolution of Disputes. RSA 273-A:12 is repealed and reenacted to read as
16 follows:

17 273-A:12 Negotiations and Resolution of Public Employee Disputes.

18 I. Negotiations between the employer and a bargaining unit comprised of
19 employees shall commence no later than 240 days prior to the employer's
20 budget submission date.

21 II. If by 150 days before the employer's budget submission date the parties
22 have been unable to reach an agreement, an impasse shall be declared and
23 the parties shall select a mediator. If the parties are unable to mutually
24 agree upon the selection of a mediator, the parties shall submit a request to
25 the board according to its procedures, for the appointment of a mediator.

26 III.(a) By 120 days preceding the employer's budget submission date, the
27 mediator selected by the parties or appointed by the board shall attempt to
28 effect a voluntary resolution of the dispute.

29 (b) Only disputed cost items will be brought forward. Matters that are not
30 associated with cost and matters already agreed upon will not be part of the
31 dispute resolution process.

1 (c) If the mediator is unable to effect settlement of the controversy within 45
2 days after their appointment, either party may petition the board to refer the
3 dispute to a neutral impasse panel selected by the parties or appointed by the
4 board.

5 (d) If the parties fail to find an agreement by 75 days before the submission of
6 the employer's budget, the disagreement shall be immediately referred to a
7 neutral impasse panel.

8 IV. The neutral impasse panel shall consist of one member appointed by the
9 employer, one member appointed by the bargaining unit, and one public
10 member appointed by the public employee labor relation board who shall be
11 the chairman of the panel. The cost of the members appointed to the neutral
12 impasse panel will split evenly between the bargaining unit and the
13 ~~employer~~ *state*.

14 V.(a) The neutral impasse panel shall convene hearings on all matters
15 related to the dispute not later than 60 days before the submission of the
16 employer's budget. The panel shall have the authority to conduct hearings.
17 The parties may be heard either in person, by counsel, or by other
18 representatives as they may respectively designate. The parties may present,
19 either orally, in writing, or both, statements of facts, supporting witnesses,
20 and other evidence in argument of their positions with respect to each case.
21 The panel may require the production of such additional evidence, either oral
22 or written, as it may desire from the parties.

23 (b) All matters presented to the neutral impasse panel for its determination
24 shall be decided by a majority vote of the members of the panel. The panel,
25 prior to a vote on any issue in dispute before it, shall upon the joint request of
26 the members representing the public employer and bargaining unit,
27 respectively, refer the issues back to the parties for further negotiations.

28 (c) The neutral impasse panel shall make a just and reasonable
29 determination of the matters in dispute. The neutral impasse panel will have
30 the authority to act on each issue separately and choose the most equitable
31 solution to each subject separately.

32 (d) Prior to arriving at such determination, the panel shall provide
33 reasonable opportunity for public comment; the panel may hold a public
34 hearing or may extend the deadline for submission of written comment. If the
35 neutral impasse panel continues the hearing or extends the deadline, it shall
36 notify the public by any means it deems appropriate, including notice in the
37 local media and wherever else practicable.

1 (e) In arriving at such determination, the panel shall specify the basis for its
2 findings, taking into consideration, in addition to any other relevant factors,
3 the following:

4 (1) Comparison of the wages, hours, and conditions of employment of the
5 wages involved in the impasse proceeding with the wages, hours, and
6 conditions of employment of other employees performing similar services or
7 requiring similar skills under similar working conditions with other
8 employees generally in public and private employment in comparable
9 communities.

10 (2) Comparison of peculiarities in regard to other trades or professions,
11 including hazards of employment, physical qualifications, educational
12 qualifications, mental qualifications, and job training and skills.

13 (3) The interests and welfare of the public and financial ability of the public
14 employer to pay.

15 (4) The terms of collective bargaining agreements negotiated between the
16 parties in the past providing for compensation and fringe benefits, including
17 but not limited to the provisions for salary, insurance, medical and
18 hospitalization benefits, paid time off, and job security.

19 VI. The collective bargaining agreement reached under this section shall be
20 deemed a public document.

21 *VII. The amount by which the total cost of all items approved by the neutral impasse*
22 *panel exceeds the total cost of such items as proposed by the employer in its last offer*
23 *before the selection of the neutral impasse panel shall be paid by the state for the*
24 *duration of the collective bargaining agreement. If the employer is a political*
25 *subdivision, the employer shall annually submit an invoice for such excess amount to*
26 *the state treasurer, and the treasurer shall pay such excess amount to the employer*
27 *within 30 days after receipt of the invoice. The employer shall have no liability for any*
28 *such amounts that the state fails to pay.*

29 VIII. A provision in any written contract to settle by arbitration a controversy
30 thereafter arising out of such contract, or an agreement in writing to submit
31 to arbitration any controversy existing at the time of the agreement, shall be
32 valid, irrevocable, and enforceable, except where grounds exist at law or in
33 equity for the revocation of any contract.

34 ~~VII~~IX. Nothing in this chapter shall be construed to prohibit the parties
35 from providing for such lawful procedures for resolving impasses as the
36 parties may agree upon; providing that no such procedures shall bind the

- 1 legislative body on matters regarding cost items. The parties shall share
- 2 equally all fees and costs of such procedures.
- 3 3 Effective Date. This act shall take effect January 1, 2010.

Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: March 18, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.) **RETAIN**

Moved by Rep. Craig

Seconded by Rep. Mears

Vote: 17-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Mary Ann Knowles
Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: 3/18/09

LOB ROOM: 307

Amendments:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Retain

Moved by Rep. Craig

Seconded by Rep. Mears

Vote: (Please attach record of roll call vote.)

17-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,
Mary Ann Knowles
Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 24, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. Rice

Vote: 17-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 17-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 631-FN-LOCAL

BILL TITLE: relative to public employee collective bargaining negotiations under the public employee labor relations act.

DATE: November 24, 2009

LOB ROOM: 307

Amendments:

Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:
Sponsor: Rep.	OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. Gorman

Seconded by Rep. Rice

Vote: (Please attach record of roll call vote.) 17-0

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

17-0

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Mary Ann Knowles, Clerk

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: HB 631 Title: relative to public employee collective bargaining negotiations under the employee labor relations act
 PH Date: 2/19/09 Exec Session Date: 11/24/09

Motion: ITL Amendment #: _____

MEMBER	YEAS	NAYS
Goley, Jeffrey P, Chairman	✓	
Kelly, Sally H, V Chairman	✓	
Gorman, Mary J	✓	
Hofemann, Roland P	✓	
Knowles, John	✓	
Knowles, Mary Ann, Clerk	✓	
Brennan, William P	✓	
Craig, James W	✓	
Weed, Charles F		
Rice, Chip L	✓	
Mears, Lucy E	✓	
Infantine, William J	✓	
Daniels, Gary L	✓	
Bishop, Franklin C	✓	
Bridle, Russell D		
Gleason, John P	✓	
Dumaine, Dudley D		
Richardson, Herbert D	✓	
Pellegrino, Tony J	✓	
Sedensky, John B	✓	
	17	0
TOTAL VOTE:		

Committee Report

CONSENT CALENDAR

November 25, 2009

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Committee on LABOR, INDUSTRIAL AND
REHABILITATIVE SERVICES to which was referred
HB631-FN-L,**

**AN ACT relative to public employee collective
bargaining negotiations under the public employee
labor relations act. Having considered the same, report
the same with the following Resolution: RESOLVED,
That it is INEXPEDIENT TO LEGISLATE.**

Rep. Mary J Gorman

FOR THE COMMITTEE

COMMITTEE REPORT

Committee:	LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES
Bill Number:	HB631-FN-L
Title:	relative to public employee collective bargaining negotiations under the public employee labor relations act.
Date:	November 25, 2009
Consent Calendar:	YES
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

Testimony from lawyers representing Labor, Management, and the Attorney General's Office stated that HB 631 only transfers the responsibilities of who addresses disputed items, from a single fact finder to a panel of three. This bill will not accomplish what it was intended to do, which is bring an end resolution to the collective bargaining process. Therefore, the committee recommends ITL.

Vote 17-0.

Rep. Mary J Gorman
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

HB631-FN-L, relative to public employee collective bargaining negotiations under the public employee labor relations act. **INEXPEDIENT TO LEGISLATE.**

Rep. Mary J Gorman for LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES. Testimony from lawyers representing Labor, Management, and the Attorney General's Office stated that HB 631 only transfers the responsibilities of who addresses disputed items, from a single fact finder to a panel of three. This bill will not accomplish what it was intended to do, which is bring an end resolution to the collective bargaining process. Therefore, the committee recommends ITL. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

HB 631

ITL

Testimony from lawyers representing Labor, Management, and the Attorney General's Office stated that HB 631 only transfers the responsibilities of who addresses disputed items, from a single fact finder to a panel of three. This bill will not accomplish what it was intended to do, which is bring an end resolution to the collective bargaining process. Therefore, the committee recommends ITL.

Mary Gorman

A handwritten signature in black ink, appearing to be 'MG' or similar initials, located below the name 'Mary Gorman'.

HB 631

ITL

Testimony from lawyers representing Labor, Management, and the Attorney General's Office stated that HB 631 only transfers the responsibilities ~~from one individual to a panel of three.~~ This bill will not accomplish what it was intended to do, which is bring an end resolution to the collective bargaining process. Therefore, the committee recommends ITL.

Mary Gorman

at ~~the~~ ~~cost~~ of ^{who} ~~addressing~~ ^{addresses}
disputed items, from a single
Factfinder to a panel of 3

With this change the bill
would not accomplish what
it was intended to do, which
is bring an end resolution
~~then~~ to the collective
bargaining process, therefore
the committee recommends ITR

COMMITTEE REPORT

COMMITTEE: Labor, Industrial and Rehabilitative Service
BILL NUMBER: HB 631
TITLE: Relative to public employee collective bargaining negotiations under the public employee labor relations act
DATE: 11/27/09 CONSENT CALENDAR: YES NO

- OUGHT TO PASS
 OUGHT TO PASS W/ AMENDMENT
 INEXPEDIENT TO LEGISLATE
 RE-REFER
 INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Testimony from lawyers representing labor management and the Attorney General's office stated that HB 631 only transfers the responsibilities ^{from} ~~of~~ one ^{individual} ~~mediator~~ to a panel of three. ^{insert Here} The language of the bill does not mandate the intent of the bill which is binding arbitration. Therefore the committee recommends I TL.

COMMITTEE VOTE: 17-0

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Mary Gorman
For the Committee