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Management Alert

First Contract Interest Arbitration Now Applies To Illinois Non-Public Safety Employees

On August 18, 2009, Governor Pat Quinn signed into law what is arguably one of the most significant changes to Illinois public sector labor relations since the advent of interest arbitration for local public safety personnel in 1986. Public Law 96-0598 (formerly Senate Bill 1715) now requires interest arbitration as a way to resolve first contract labor disputes for public sector bargaining units of less than 35 non-public safety employees. Although Public Law 96-0598 does not take effect until January 1, 2010, Illinois public employers should begin preparing now for a host of legal and practical issues that will likely arise as unions scramble to take advantage of this new bargaining tool. A brief summary of the Act's contents is provided below.

Coverage

As an amendment to the Illinois Public Labor Relations Act (IPLRA), Public Act 96-0598 applies to all non-educational public employers in Illinois, including but not limited to State executive branch departments, municipalities, counties, townships, and special districts (e.g., fire protection, library, sanitary, and park).

Public Act 96-0598 applies only to bargaining units that have fewer than 35 non-public safety employees. In this respect, Public Act 96-0598 will not apply to bargaining units of police officers, firefighters, and security personnel. The more traditional bargaining and interest arbitration rules outlined in Section 14 of the IPLRA will still apply to those public safety groups.

Public Act 96-0598 will also apply only to negotiations for first contracts. Successor collective bargaining agreements are apparently not subject to the amendment. It is unclear from the face of the legislation whether bargaining units that were certified before the effective date of Public Act 96-0598, but which have yet to finalize a first contract, will be subject to interest arbitration.

Effective Date

Public Act 96-0598 does not specify an official effective date. However, according to legislative rules and the General Assembly's web page, Public Act 96-0598 is not scheduled to take effect until January 1, 2010.

Accelerated Start Date for Bargaining

Public Act 96-0598 provides for an accelerated start date for the bargaining of first contracts. Specifically, bargaining must now commence within 10 days of a union's written request (unless the parties mutually agree to a different timetable). Currently, the more flexible "good faith" bargaining standard applies to the scheduling and timing of a first bargaining session. Depending on competing interests and schedules, parties sometimes do not meet for a first bargaining session

until several months after a union is first certified by the Illinois Labor Relations Board. This lead-up time is often important so that the parties can evaluate bargaining priorities, consult their respective constituents (e.g., bargaining unit members or the employer's governing body), research external comparables and select bargaining team members and a chief negotiator. These tasks will now have to be completed either within 10 days of a union's initial written request to bargain, or overlap into the first few bargaining sessions.

Accelerated Date for Mediation

According to Public Act 96-0598, either party may demand mediation after the passage of only 90 days (roughly three months) from the commencement of bargaining. Due to the vast number of economic and non-economic issues that must be addressed as part of any first contact, parties often are nowhere near the point where mediation would be helpful when only 90 days have passed. In many cases, the parties at the 90-day mark have not even fully discussed a majority of issues that ultimately find their way into an initial collective bargaining agreement. Regardless of these bargaining realities, a union can invoke mediation even if the parties are nowhere close to exhausting their discussions on various economic and non-economic issues. Especially where a labor organization is anxious to secure a first contract, mediation may be invoked in order to open the way for final and binding interest arbitration.

Binding Interest Arbitration For All First Contracts

Most significantly, Public Act 96-0598 imposes binding interest arbitration on parties for the resolution of first contracts in units of fewer than 35 employees. Currently, if an employer and union cannot agree on the terms of a first contract for non-public safety personnel, a union can strike or engage in some other type of work action as a way to exert economic pressure on an employer. The employer similarly can exercise its right to unilaterally implement its last, best final offer once a legal bargaining impasse has been reached. Beyond these economic weapons, however, neither side currently has the ability to force the other to accept undesirable contract terms.

This will change on January 1, 2010 for new bargaining units of less than 35 employees. After 30 days have elapsed since mediation was first held, either party can submit a request for interest arbitration to the Illinois Labor Relations Board. At that point, interest arbitration proceedings will apparently proceed though the normal process outlined for public safety personnel under Section 14 of the Illinois Public Labor Relations Act, with one major exception.

According to the plain language of Public Act 96-0598, a union will still retain its right to strike up until the "actual convening" of interest arbitration proceedings. This language suggests that a union will enjoy the best of both worlds (i.e., it can engage in a work stoppage up to the first day of an interest arbitration hearing as a way to bring traditional economic pressure on the employer—and, if that work stoppage is ineffective, the union can still participate in interest arbitration in an attempt to secure favorable contract terms from a third party arbitrator). The right to lawfully strike ceases once the interest arbitration proceeding is convened.

Immediate Effect Of Public Act 96-0598

In the short term, Public Act 96-0598 will likely prompt a renewed emphasis on union organizing among certain groups of unorganized public employees. Unions like Local 150 of the International Union of Operating Engineers have already started distributing handbills and pamphlets to unorganized municipal public employees around the Chicago metropolitan area,

lauding the benefits of the statutory amendment. Recent decisions by the Illinois Labor Relations Board also may make it easier for unions to organize small splinter groups of public employees at the departmental (or sub-department) level. Specifically, the Labor Board has shown a recent reluctance to insist that unions organize broader units of employees who perform similar job functions.

In the long term, interest arbitration will potentially make negotiations for a first contract more complicated. When interest arbitration is the end result of any set of negotiations, parties must carefully plan their proposals and counter-proposals in order to maximize their position before a third party interest arbitrator. Such planning takes on greater importance in light of the fact that the terms of a first collective bargaining agreement are being established. As many labor practitioners will acknowledge, a first contact is a critical document for the future of an employer's labor-management relationship with a union.

Other Public Sector Labor Legislation Affecting Interest Arbitration

On the same date Governor Quinn signed Public Act 96-0598 into law, he effectively "approved" another piece of labor legislation that may have further impact on how Illinois public sector employers and unions select interest arbitrators. Among other things, House Bill 2445 amends the interest arbitration procedures outlined in Section 14 of the IPLRA. Currently, parties wishing to go to interest arbitration typically request a panel of arbitrators from the Illinois Labor Relations Board. House Bill 2445, however, will change that procedure, requiring that parties select arbitrators pursuant to any grievance-arbitration procedures found in their collective bargaining agreement. The Bill also provides for strict deadlines by which the parties must report the identity of an arbitrator to the Labor Board. House Bill 2445 is not yet law, having been partially vetoed by Governor Quinn in regard to an unrelated Labor Board staffing issue. Final passage of the Bill is expected to occur during the fall veto session.

Public employers whose employees are still largely unorganized may want to consider whether they should begin preparing now for the date when Public Act 96-0598 takes effect. Seyfarth Shaw attorneys can help develop ways for addressing the bargaining and union organizing implications of this new law.

For more information about the impact and/or significance of Public Act 96-0598 for your jurisdiction, please contact the Seyfarth attorney with whom you work, or any labor and employment attorney on our website.

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