THE PUBLIC SECTOR

Dumb and dumber

by Jonathan Holtzman

Sometimes the complex and arcane quality of the issues employment lawyers and HR professionals deal with every day means we see the negative consequences of legislative actions, labor agreements, and other decisions at variance with the public's desires. But the public does not. Worse, we see some terrible ideas enacted in the guise of "reform." Even though the public is increasingly interested in the workings of government, the news media simply can't convey the issues and problems in the depth necessary to enable the public to make informed decisions. Is a "deal" that saves $300 million over 10 years a coup or a cover-up? It depends.

This problem is especially acute when it comes to issues such as civil service reform and pensions. However, a few pieces of legislation winding their way through the state legislature are shockingly bad policy and not especially arcane. Legislators are presumably confident that the public has no interest in the details, perhaps because the bills have superficial appeal.

In the category of dumb and dumber, the winner is **Assembly Bill (AB) 455,** which would require that one-half of every local civil service commission be selected by the largest union in that jurisdiction. The remainder would be selected by the "governing body" — the city council or board of supervisors in most cases.

The importance of civil service commissions varies greatly from place to place. In many smaller cities and counties, the commissions still hear disciplinary appeals. But even in larger jurisdictions, where discipline is often handled through the grievance process, they're enormously important bodies. They typically control the procedures through which employees are examined, hired, promoted, and laid off, among other things.

So much of what the public perceives as the rigidity of public employment rules is due to, for example, highly restrictive rules concerning the number of applicants an agency can consider for hiring. Many jurisdictions still operate under the "rule of three," meaning the hiring agency must select among only the three highest-scoring applicants on a list. Sounds fair, you say? Perhaps, but that assumes (1) the process tests for the skills needed for the job and (2) the difference in scores among, say, even the top *10* applicants is statistically meaningful.

Unions have historically opposed permitting agencies to select among a "band" of statistically equally qualified applicants. They also have insisted on layoff "bumping" rules that assume employees are fungible. Yet "bumping" between departments often puts people in jobs for which they have no background or training, displacing people with a career's worth of experience. In one jurisdiction, for example, a software engineer was bumped to make way for a more senior civil engineer.

Slowly, ever so slowly, many agencies have been moving to change those restrictive and illogical rules and restore some measure of managerial discretion in employment decisions. AB 455 would put an end to that innovation the day it's signed into law. Unless, of course, the unions decide to effectively do away with civil service commissions and substitute seniority systems, which are so common in unionized private-sector jobs.

Unfortunately, AB 455 isn't the only bill on the horizon with the potential to make it even harder for public-sector leaders to do their jobs, maintain the fiscal stability of their cities, and save public services. Here is a short summary of a few other gems:

- **AB 506** would create obstacles for local governments that file for Chapter 9 federal bankruptcy, requiring an evaluation process that effectively leaves the decision in the hands of a mediator.
- **AB 646** would impose substantial costs on cities by lengthening impasse procedures. This bill gives unions the right to request a fact-finding panel once impasse has been reached. The panel would be authorized to investigate and hold hearings as well as issue subpoenas, significantly extending the existing timeline associated with collective bargaining negotiations.
- **Senate Bill 931** would further restrict public agency authority, prohibiting the use of public funds for outside consultants or legal advisers for the purpose of advising the public employer about ways to minimize or deter the exercise of public employee union activities.

In the current environment, unionized employees are being asked to make substantial concessions, and it's probably natural that the legislature and the governor will give sweeteners "under the radar." But beware of how those gifts affect local governments and their constituents.

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