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Poore, Sturgeon; Reps. Carson, Jaques, Kowalko,
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DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 8

AN ACT TO AMEND TITLE 19 AND TITLE 29 OF THE DELAWARE CODE AND CHAPTER 280, VOLUME 81 OF THE LAWS OF DELAWARE RELATING TO COLLECTIVE BARGAINING FOR STATE EMPLOYEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1302, Title 19 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1302. Definitions.

4 (d) "Certification" means official recognition by the Board, following a secret-ballot election ~~or demonstration of~~
5 ~~majority representation in accordance with § 1311A(e) of this title~~, that an employee organization is the exclusive
6 representative for all employees in an appropriate bargaining unit.

7 Section 2. Amend § 1311A, Title 19 of the Delaware Code by making deletions as shown by strike through and
8 insertions as shown by underline as follows:

9 § 1311A. Collective bargaining in the state service.

10 (a) Notwithstanding any other provision in this Code, exclusive representatives of the state merit employees, who
11 are in the classified service and not working in higher education, shall collectively bargain in the units ~~provided as~~
12 determined pursuant to subsection (b) of this section. The scope of bargaining shall include:

13 (1) Compensation, which shall be defined as the payment of money in the form of hourly or annual
14 salary, and any cash allowance or items in lieu of a cash allowance to a public employee by reason of said
15 employee's employment by a public employer, as defined in this chapter, whether the amount is fixed or
16 determined by time, ~~task~~ task, or other basis of calculations. Position classification, health care and other benefit
17 programs established pursuant to Chapters 52 and 96 of Title 29, workers compensation, disability ~~programs~~
18 programs, and pension programs shall not be deemed to be compensation for purposes of this section; and

19 (2) Any items negotiable for state merit employees pursuant to § 5938 of Title 29.

20 To the extent or where any of these items are covered by existing collective bargaining agreements, the provisions
21 negotiated pursuant to subsection (c) of this section shall supersede those agreements.

22 (b) For purposes of bargaining pursuant to this section, ~~employees shall be classified in the following bargaining~~
23 ~~units, each of which shall independently bargain compensation:~~

24 (1) ~~Labor, maintenance, trade and service workers which is composed of generally recognized blue collar~~
25 ~~and service classes including mechanics, highway, building and natural resource maintenance, skilled craft,~~
26 ~~equipment operators, toll collectors, food service, custodial, laundry, laborers, security officers and similar classes;~~

27 (2) ~~Nonprofessional patient care workers which is composed of institutional care classes including~~
28 ~~licensed practical nurses, nursing assistants, active treatment assistants, technicians, therapy aides and similar~~
29 ~~classes;~~

30 (3) ~~Social services, human services, and counseling which is composed of social workers, social service~~
31 ~~specialists, family therapists, youth counselors, teacher aides, activity aides, job service personnel, income~~
32 ~~maintenance personnel, eligibility specialists, vocational counselors, correctional counselors, child support~~
33 ~~enforcement personnel and similar classes;~~

34 (4) ~~Administrative support, technical and clerical which is composed of administrative specialists, clerks,~~
35 ~~account technicians, computer operators, office service personnel, officer workers, paralegals and similar~~
36 ~~nonprofessional classes;~~

37 (5) ~~Engineers, and administrative professionals which is composed of civil, environmental and other~~
38 ~~engineers, accountants, management analysts, fiscal officers, program managers, business professionals, auditors~~
39 ~~and similar professionals classes exempt from the Fair Labor Standards Act [29 U.S.C. § 201 et seq.];~~

40 (6) ~~Professional patient care which is composed of registered nurses, public health nurses, psychiatric~~
41 ~~nurses, therapists, dieticians and similar professional classes;~~

42 (7) ~~Professional education and library science which is composed of state agency teachers, counselors and~~
43 ~~librarians;~~

44 (8) ~~Regulatory licensing and inspectors which is composed of employees empowered to review certain~~
45 ~~public and business activities including regulatory inspectors, field auditors, motor vehicle inspectors and similar~~
46 ~~classes;~~

47 (9) ~~Law enforcement and investigative agents which is composed of agency police officers, natural~~
48 ~~resource and environmental control officers, deputy fire marshals I through V, investigators and similar~~
49 ~~occupations;~~

50 (10) ~~Correctional officers and similar correctional occupations;~~

51 (11) ~~Correctional supervisors and nonuniformed correctional employees who are employed in a secure~~
52 ~~Department of Correction facility or who have inmate contact which is composed of correctional lieutenants, staff~~
53 ~~lieutenants, correctional captains, nonuniformed correctional employees who are employed in a secure Department~~
54 ~~of Correction facility or who have inmate contact and similar occupations;~~

55 (12) ~~Scientists and medical professionals, which is composed of biologists, chemists, agricultural~~
56 ~~specialists, pharmacists, psychologists, psychiatrists, physicians, pathologists and similar occupations.~~

57 ~~The Board shall determine the proper assignment of job classifications to bargaining units and the bargaining unit~~
58 ~~status of individual employees and shall provide for certified bargaining representatives to combine bargaining units or~~
59 ~~portions of bargaining units of employees they represent within the bargaining unit defined in this section based upon the~~
60 ~~job classifications of the employees represented.~~

61 (b) Each exclusive representative shall bargain for compensation for the members of its exclusive bargaining unit
62 or units in a mutually agreed upon consolidated manner. The exclusive representative shall work with the Secretary of the
63 Department of Human Resources to determine how its exclusive bargaining unit or units shall be consolidated. If the
64 exclusive representative and the Secretary of the Department of Human Resources are unable to reach an agreement
65 regarding the manner in which to consolidate the bargaining unit or units, negotiations will default to the individual
66 bargaining units as certified by the Public Employment Relations Board.

67 ~~(c) The exclusive bargaining representatives of all of the employees in each individual bargaining unit identified~~
68 ~~above shall join together in a bargaining coalition to bargain collectively for that unit. Employee organizations that are part~~
69 ~~of the coalition shall exercise authority over decisions of the coalition proportional to the number of employees exclusively~~
70 ~~represented in the coalition by the employee organization. To the extent a finalized agreement on compensation items~~
71 ~~requires legislative approval or the appropriation of funds, the Governor shall recommend the same to the General~~
72 ~~Assembly for the ensuing fiscal years and the agreement provision requiring such appropriation shall be contingent on the~~
73 ~~specific appropriation of funds by the General Assembly. In the event the General Assembly fails to appropriate the funds~~
74 ~~necessary to implement the provision of an agreement, that provision shall be returned to the parties for negotiation or the~~
75 ~~provision may be implemented to the extent consistent with or limited by appropriations from the General Assembly, at the~~
76 ~~discretion of the General Assembly. Contracts shall be timed to become effective in accordance with the State's fiscal year.~~

77 ~~(d) Coalition compensation agreements shall not constitute a bar to an election in accordance with § 1311(b) of~~
78 ~~this title. Such bar shall be established by the noncompensation agreement covering employees in an appropriate unit.~~

79 (d) The parties may engage in collective bargaining for compensation simultaneously or separately from collective
80 bargaining for terms and conditions.

81 ~~(e) Notwithstanding any other provision in this Code to the contrary, where no employee organization is certified~~
82 ~~to represent some or all of the employees in a bargaining unit defined in subsection (b) of this section, an employee~~
83 ~~organization desiring to be certified as the exclusive representative of the unrepresented employees in such unit shall file a~~
84 ~~petition with the Board, accompanied by a combination of the uncoerced signatures of at least 30% of the unrepresented~~
85 ~~state employees in a unit described in said subsection (b) of this section. Alternatively, an employee organization may file~~
86 ~~a petition with the Board, accompanied by the uncoerced signatures of at least 30% of the combined total of unrepresented~~
87 ~~state employees and state employees currently represented by the petitioning employee organization in a unit described in~~
88 ~~said subsection (b) of this section. The Board or its designee shall act on such petition in accordance with §§ 1310 and 1311~~
89 ~~of this title. Nothing contained herein shall be deemed to prevent a public employer from voluntarily recognizing an~~
90 ~~employee organization as the exclusive bargaining representative for a specified bargaining unit without an election so long~~
91 ~~as the following conditions have been met:~~

92 ~~(1) A petition shall have been filed with the Board by an employee or group of employees or employee~~
93 ~~organization acting in their behalf alleging that a majority of employees in a unit identified in subsection (b) of this~~
94 ~~section above wish to be represented by an employee organization for such purposes; and~~

95 ~~(2) The Board verifies that a majority of the employees in such unit have, within 12 months of the~~
96 ~~submission of the petition to the Board, signed authorizations designating the employee organization specified in~~
97 ~~the petition as their exclusive bargaining representative and that no other employee organization is currently~~
98 ~~certified or recognized as the exclusive bargaining representative of any of the employees in the unit; and~~

99 ~~(3) The Board determines that notices have been posted, where notices to affected employees are~~
100 ~~normally posted, for a period of at least 10 calendar days, advising that exclusive recognition will be granted~~
101 ~~without an election to a named employee organization for such unit.~~

102 ~~(e) The negotiation of collective bargaining agreements shall be staggered over a period of time. Such schedule~~
103 ~~shall be determined by mutual agreement of the Secretary of Human Resources and the exclusive representative of all~~
104 ~~bargaining units prior to March 1, 2020. Existing collective bargaining agreements regarding compensation will remain in~~
105 ~~effect until such time as they, by their terms, expire. The grouping of bargaining units in a consolidated manner as~~
106 ~~contemplated in (b), above, shall be determined in advance of the expiration of the collective bargaining agreements~~
107 ~~existing as of the date of the enactment of this Act that were originally authorized through 76 Del Laws c 178.~~

108 (f) ~~Notwithstanding any provision in this Code to the contrary, collective bargaining pursuant to this section shall~~
109 ~~commence at least 150 days prior to the expiration date of any current collective bargaining agreement or in the case of a~~
110 ~~newly certified representative within a reasonable time after certification.~~

111 (f) Exclusive bargaining representatives may bargain for different pay rate increases for their individual
112 bargaining units, provided, however, that the compensation for any given bargaining unit or units may not exceed the pay
113 ranges for the respective pay grades, as established in the annual appropriations act.

114 (g) ~~Notwithstanding anything in this section to the contrary, a bargaining unit created pursuant to the provisions of~~
115 ~~subsection (b) of this section, shall not bargain for compensation as defined herein until all of the eligible employees in~~
116 ~~such unit are represented by an exclusive bargaining representative. Nothing contained in this subsection shall be~~
117 ~~interpreted to deny bargaining for any items negotiable for state merit employees pursuant to § 5938 of Title 29.~~

118 Section 3. Amend § 5938, Title 29 of the Delaware Code by making deletions as shown by strike through and
119 insertions as shown by underline as follows:

120 § 5938. Collective bargaining.

121 (c) The rules adopted or amended by the Board under the following sections shall apply to any employee in the
122 classified service represented by an exclusive bargaining representative or covered by a collective bargaining agreement
123 under Chapter 13 of Title 19, except in the case of collective bargaining agreements reached pursuant to § 1311A of Title
124 19: §§ 5915 through 5921, 5933, ~~5935~~ 5935, and 5937 of this title.

125 (d) The rules adopted or amended by the Board under the following sections shall not apply to any employee in the
126 classified service represented by an exclusive bargaining representative to the extent the subject thereof is covered in whole
127 or in part by a collective bargaining agreement under Chapter 13 of Title 19: §§ 5922 through 5925 of this title, except
128 where transfer is between agencies or where change is made in classification or pay ~~grade, grade;~~ §§ 5926 through 5928 of
129 this title, except where an employee laid off by 1 agency is reemployed by ~~another, another; and~~ §§ 5929 through 5932,
130 ~~5934~~ 5934, and 5936 of this title.

131 (e) The Secretary or the Secretary's designee and the Board shall meet with the exclusive bargaining
132 representative at reasonable times to negotiate in good faith with respect to any rule to be adopted or amended under §§
133 5915 through 5921, 5933, ~~5935~~ 5935, and 5937 of this title and, to the extent the subject thereof is not covered in whole or
134 in part by a collective bargaining agreement under Chapter 13 of Title 19, §§ 5922 through 5932, ~~5934~~ 5934, and 5936 of
135 this title.

136 Section 4. Amend Section 8, Chapter 280, Volume 81 of the Laws of Delaware by making deletions as shown by
137 strike through and insertions as shown by underline as follows:

138 Section 8. MERIT SYSTEM AND MERIT COMPARABLE SALARY SCHEDULES.

139 (a) All provisions of subsections (a) (1), (b), ~~(c)~~, and (i) through (l) of this section shall not apply to those Merit
140 System employees who are covered by a final collective bargaining agreement under 19 Del. C. § 1311A. The effective
141 dates of agreements pursuant to 19 Del. C. § 1311A shall occur simultaneously with the fiscal year following final
142 agreement between the State of Delaware and ratification of that agreement by the respective certified bargaining unit,
143 provided funds are appropriated in Section 1 of this Act for said agreements. All pay changes, in future agreements, shall
144 become effective on the first day of a full pay cycle. Section 1 of this Act makes no appropriation, and no subsequent
145 appropriation shall be made during the fiscal year, for any compensation items as defined in 19 Del. C. § 1311A reached as
146 a result of negotiations, ~~mediation~~ mediation, or interest arbitration. Should a bargaining agreement not be finalized by
147 December 1 or May 1 of each fiscal year, employees represented by the bargaining unit negotiating said agreement shall
148 receive compensation pursuant to the provisions of this section until such time as an agreement takes effect. A final
149 bargaining agreement shall be defined as an agreement between the State of Delaware and a certified bargaining unit, which
150 is not retroactive and in which the agreement's completion is achieved through ratification by the respective bargaining
151 unit, ~~mediation~~ mediation, or binding interest arbitration.

152 Section 5. This Act takes effect on January 1, 2020.

SYNOPSIS

This Act eliminates the set bargaining unit classifications established in 19 Del. C. § 1311A(b) and allows exclusive representatives of bargaining units to work with the Secretary of the Department of Human Resources to organize or consolidate bargaining units in a manner in which they can agree for purposes of collective bargaining. It also eliminates the requirement that exclusive bargaining representatives of exclusive bargaining units form a coalition for collective bargaining. The Act eliminates the provision allowing for an employee organization to seek to be certified for unrepresented employees. The Act provides that parties may engage in collective bargaining for compensation in conjunction with or separately from collective bargaining for terms and conditions. It requires that the negotiation of collective bargaining agreements be staggered over time while providing that collective bargaining agreements currently in place remain in place until they expire by their own terms. While the Act allows for exclusive representatives to bargain for different pay rate increases, it prohibits the compensation of bargaining units from exceeding the pay ranges for each pay grade as established each year in the appropriations act. In addition, it retains the existing scope of bargaining contained in 19 Del.C. Section 1311A(a).

Finally, this Act makes technical revisions to conform with the Delaware Legislative Drafting Manual.

Author: Senator Walsh