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Collective Bargaining Not Needed for Contracting

For more than a decade, business leaders and public administrators have promoted market competition to boost governmental efficiency and effectiveness. It's a central tenet for New Democrats wanting to "Reinvent Government," for Republican governors across the nation and for big city mayors of both parties.

Among the many labels attached to the concept are these: Managed competition, contracting out, "competing out," privatization, public-private partnerships – all terms suggesting the various nuanced implementation strategies designed to bring market competition and the private sector into previously protected governmental monopolies. So mainstream has the idea become that in many states, the Nineties could accurately be described as the decade of competition – but not here in Washington.

That may be changing. For the third biennium in a row, a bill before the Legislature would allow state agencies to contract with private firms for services previously done by state employees.

Strings are attached. Contracting would only be permitted if clear savings or efficiencies would result. And state employees could compete with private firms for agency contracts. This kind of public-private competition for contracts typically is referred to as "managed competition," the approach currently favored by most policy analysts.

Given the documented success of managed competition, that's not an impossible standard.

The other condition is political, and potentially a poison pill. As with earlier bills, the measure proposed by the Governor would widen the scope of state-employee collective bargaining. SB 5363 would permit classified civil-service employees to bargain about wages, hours, and terms and conditions of employment.

The bill would permit, but not require, collective bargaining to include contract terms.

It would not grant the right to strike.

The Legislature would approve or deny the funds to implement a collective-bargaining agreement. If denied, state agencies and state-employee bargaining units could reopen negotiations. Ultimately, state agencies, represented by the Governor or his designee, could implement their last and best offer should the Legislature refuse to grant more funds.

Why are two seemingly unrelated policy proposals—contracting with private firms and state-employee collective bargaining—paired in the same bill? Politics.

The state employees' union has vigorously opposed past bills authorizing what's known as "contracting out." But, according to the Locke administration, the union has indicated it would accede to contracting out if state employees were allowed to collectively bargain wages and benefits.

State employee unions also want an explicit right to bargain the terms of agency contracts with private firms. Leaving little to chance, the Washington State Labor Council is pressing for two amendments to the bill. The Labor Council says one would require private firms contracting with state agencies to pay their workers wages and benefits that are comparable to what state employees receive. The other would obligate the state to address the needs of state employees

displaced when an agency contracts out a service.

Gov. Gary Locke, who requested the bill, opposes these amendments as unwarranted statutory overlays that would restrict the flexibility of the give and take in negotiating contracts.

All states permit some form of contracting with private firms. Washington contracts out many services. But it has one of the most, if not the most, restrictive laws in the country.

Washington does not permit contracting out when doing so would displace current (or even potential) state employees. As the Washington Research Council observed in a 1988 report on the issue, the statutory prohibition followed a 1978 Supreme Court decision. The Court ruled that "... where a new need for services which have been customarily and historically provided by civil servants arises, and where there is no showing that civil servants could not provide those services, a contract for such services is unauthorized. ... This is so *regardless of the cost savings* which might be made through such a contract." (Emphasis added.)

There's clearly no direct link between managed competition and collective bargaining. While most states allow their administrators more latitude with respect to competitive contracting, only about half the states allow full-scope collective bargaining – including wages, hours, terms and conditions – by state employees. In twenty-five states full-scope bargaining was instituted by statute, in two by executive order, according to the Washington Public Employment Relations Commission. Five states, including Washington, allow limited collective bargaining.

Does contracting-out necessarily fall within the scope of collective bargaining? According to the International Personnel Management Association, "It is virtually the universal rule that the contracting of governmental services is mandatorily negotiable when the purpose of contracting is to reduce the direct costs of services, and the form of contracting involves the replacement of public employees in an existing bargaining unit with those of an independent contractor to do the same work under similar conditions of employment."

Business organizations have traditionally opposed the trade-off contained in the Governor's proposal. Managed competition has worked under collective bargaining – and some of us have successfully changed a flat tire in the rain – but the task is cleaner without the added environmental challenge.

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