
SENATE BILL 5716

State of Washington

54th Legislature

1995 Regular Session

By Senators A. Anderson, Schow, Oke and Johnson

Read first time 02/02/95. Referred to Committee on Labor, Commerce & Trade.

1 AN ACT Relating to mandatory arbitration for educational employees;
2 amending RCW 41.59.010 and 41.59.120; and adding new sections to
3 chapter 41.59 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 41.59.010 and 1975 1st ex.s. c 288 s 2 are each
6 amended to read as follows:

7 It is the purpose of this chapter to prescribe certain rights and
8 obligations of the educational employees of the school districts of the
9 state of Washington, and to establish procedures governing the
10 relationship between such employees and their employers which are
11 designed to meet the special requirements and needs of public
12 employment in education.

13 It is further the intent of this chapter to recognize that
14 education is one of the paramount duties of the state and that the
15 uninterrupted and dedicated service of educational employees is vital
16 to the welfare and well-being of the citizens of the state of
17 Washington. To promote the dedicated and uninterrupted public service,
18 an effective and adequate means of settling disputes is provided.

1 **Sec. 2.** RCW 41.59.120 and 1975 1st ex.s. c 288 s 13 are each
2 amended to read as follows:

3 (1) Negotiations between an employer and an exclusive bargaining
4 representative shall begin not later than May 1st of any year in which
5 the contract will expire. If no agreement has been reached before June
6 15th of the year in which a contract will expire, either an employer or
7 an exclusive bargaining representative may declare that an impasse has
8 been reached between them in collective bargaining and may request the
9 commission to appoint a mediator for the purpose of assisting them in
10 reconciling their differences and resolving the controversy on terms
11 which are mutually acceptable. ((If the commission determines that its
12 assistance is needed,)) Not later than five days after the receipt of
13 a request therefor, ((it)) the commission shall appoint a mediator in
14 accordance with rules and regulations for such appointment prescribed
15 by the commission. The mediator shall meet with the parties or their
16 representatives, or both, forthwith, either jointly or separately, and
17 shall take such other steps as he may deem appropriate in order to
18 persuade the parties to resolve their differences and effect a mutually
19 acceptable agreement. The mediator, without the consent of both
20 parties, shall not make findings of fact or recommend terms of
21 settlement. The services of the mediator, including, if any, per diem
22 expenses, shall be provided by the commission without cost to the
23 parties. Nothing in this subsection (1) shall be construed to prevent
24 the parties from mutually agreeing upon their own mediation procedure,
25 and in the event of such agreement, the commission shall not appoint
26 its own mediator unless failure to do so would be inconsistent with the
27 effectuation of the purposes and policy of this chapter. Mediation
28 procedures shall be completed before July 15th of the year in which the
29 contract will expire.

30 (2) If the mediator is unable to effect settlement of the
31 controversy within ten days after his or her appointment, either party,
32 by written notification to the other, may request that their
33 differences be submitted to fact-finding with recommendations, except
34 that the time for mediation may be extended by mutual agreement between
35 the parties but shall not be extended later than July 15th of the year
36 in which the contract is to expire. Within five days after receipt of
37 the aforesaid written request for fact-finding, the parties shall
38 select a person to serve as fact-finder and obtain a commitment from
39 that person to serve. If they are unable to agree upon a fact-finder

1 or to obtain such a commitment within that time, either party may
2 request the commission to designate a fact-finder. The commission,
3 within five days after receipt of such request, shall designate a
4 fact-finder in accordance with rules and regulations for such
5 designation prescribed by the commission. The fact-finder so
6 designated shall not be the same person who was appointed mediator
7 pursuant to subsection (1) of this section without the consent of both
8 parties.

9 The fact-finder, within five days after his appointment, shall meet
10 with the parties or their representatives, or both, either jointly or
11 separately, and make inquiries and investigations, hold hearings, and
12 take such other steps as he may deem appropriate. For the purpose of
13 such hearings, investigations and inquiries, the fact-finder shall have
14 the power to issue subpoenas requiring the attendance and testimony of
15 witnesses and the production of evidence. If the dispute is not
16 settled within ten days after his appointment, the fact-finder shall
17 make findings of fact and recommend terms of settlement within thirty
18 days after his appointment, which recommendations shall be advisory
19 only.

20 (3) Such recommendations, together with the findings of fact, shall
21 be submitted in writing to the parties and the commission privately
22 before they are made public. Either the commission, the fact-finder,
23 the employer, or the exclusive bargaining representative may make such
24 findings and recommendations public if the dispute is not settled
25 within five days after their receipt from the fact-finder.

26 (4) The costs for the services of the fact-finder, including, if
27 any, per diem expenses and actual and necessary travel and subsistence
28 expenses, and any other incurred costs, shall be borne by the
29 commission without cost to the parties.

30 (5) Nothing in this section shall be construed to prohibit an
31 employer and an exclusive bargaining representative from agreeing to
32 substitute, at their own expense, their own procedure for resolving
33 impasses in collective bargaining for that provided in this section or
34 from agreeing to utilize for the purposes of this section any other
35 governmental or other agency or person in lieu of the commission.

36 (6) Any fact-finder designated by an employer and an exclusive
37 representative or the commission for the purposes of this section shall
38 be deemed an agent of the state.

1 (7) Any fact-finding procedures under this section shall be
2 completed by July 15th of the year in which the contract will expire.

3 NEW SECTION. Sec. 3. (1) If an agreement has not been reached
4 following a reasonable period of negotiations and mediation but in no
5 event later than July 15th of the year in which the contract expires,
6 and the executive director of the commission, upon the recommendation
7 of the assigned mediator, finds that the parties remain at impasse,
8 then an interest arbitration panel shall be created under subsection
9 (3) of this section to resolve the dispute. However, if both parties
10 to the dispute, through a written agreement, agree to continue to work
11 under terms that are mutually agreed upon until a new contract is
12 signed, the provisions of this section may be waived.

13 (2) The issues for determination by the arbitration panel shall be
14 limited to the issues certified by the executive director.

15 (3) Within five days following the issuance of the determination of
16 the executive director, each party shall name one person to serve as
17 its arbitrator on the interest arbitration panel. The two members so
18 appointed shall meet within five days following the appointment of the
19 later appointed member to attempt to choose a third member to act as
20 the neutral chair of the interest arbitration panel. Upon the failure
21 of the arbitrators to select a neutral chair within five days, the two
22 appointed members shall use one of the two following options in the
23 appointment of the third member, who shall act as chair of the panel:

24 (a) By mutual consent, the two appointed members may jointly
25 request the commission, and the commission shall appoint a third member
26 within two days of such request; or

27 (b) Either party may apply to the commission, the federal mediation
28 and conciliation service, or the American arbitration association to
29 provide a list of five qualified arbitrators from which the neutral
30 chair shall be chosen by the parties. Each party shall pay the fees
31 and expenses of its arbitrator. The fees and expenses of the neutral
32 chair shall be shared equally between the parties. Other costs of the
33 arbitration proceedings shall be borne by the commission.

34 (4) The interest arbitration panel shall promptly establish a date,
35 time, and place for a hearing and shall provide reasonable notice
36 thereof to the parties to the dispute.

1 (5) An informal hearing shall be held. Each party shall have the
2 opportunity to present evidence and make argument. No member of the
3 interest arbitration panel may present the case for a party to the
4 proceedings. The rules of evidence prevailing in judicial proceedings
5 may be considered, but are not binding. Any oral testimony or
6 documentary evidence or other data deemed relevant by the chair of the
7 interest arbitration panel may be received in evidence.

8 (6) The proceedings shall be recorded.

9 (7) The interest arbitration panel has the power to administer
10 oaths, require the attendance of witnesses, and require the production
11 of such books, papers, contracts, agreements, and documents as may be
12 deemed by the panel to be material to a just determination of the
13 issues in dispute. If any person refuses to obey a subpoena issued by
14 the interest arbitration panel, or refuses to be sworn or to make an
15 affirmation to testify, or any witness, party, or attorney for a party
16 is guilty of any contempt while in attendance at any hearing held under
17 this section, the interest arbitration panel may invoke the
18 jurisdiction of the superior court in the county where the labor
19 dispute exists, and the court has jurisdiction to issue an appropriate
20 order. Any failure to obey the order may be punished by the court as
21 contempt.

22 (8) The hearing conducted by the interest arbitration panel shall
23 be concluded within twenty days following the selection or designation
24 of the neutral chair of the arbitration panel.

25 (9) The neutral chair shall consult with the other members of the
26 interest arbitration panel, and, within twenty days following the
27 conclusion of the hearing, the neutral chair shall make written
28 findings of fact and a written determination of the issues in dispute,
29 based on the evidence presented. In making the written findings of
30 fact and a written determination of the issues in dispute, the neutral
31 chair may consider but shall not be bound by any offers made by the
32 parties to the dispute.

33 (10) A copy shall be served on the commission, on each of the
34 other members of the interest arbitration panel, and on each of the
35 parties to the dispute.

36 (11) The determination shall be final and binding upon both
37 parties, subject to review of the record by the superior court upon the
38 application of either party within thirty days solely upon the question

1 of whether the decision of the interest arbitration panel was arbitrary
2 or capricious.

3 NEW SECTION. **Sec. 4.** An interest arbitration panel created
4 pursuant to section 3 of this act, in the performance of its duties
5 under this chapter, exercises a state function and is, for the purposes
6 of this chapter, a state agency. Chapter 34.05 RCW does not apply to
7 proceedings before an interest arbitration panel under this chapter.

8 NEW SECTION. **Sec. 5.** In making its determination, the
9 interest arbitration panel shall be mindful of the legislative purpose
10 enumerated in RCW 41.59.010 and as additional standards or guidelines
11 to aid it in reaching a decision, it shall take into consideration the
12 following factors:

- 13 (1) The constitutional and statutory authority of the employer;
- 14 (2) Stipulations of the parties;
- 15 (3) Negotiations between the parties before arbitration;
- 16 (4) The public interest and the financial capability of the school
17 district;
- 18 (5) The interests and welfare of the employee group;
- 19 (6) Changes in the cost-of-living;
- 20 (7) The existing conditions of employment of the employee group and
21 those of similar groups;
- 22 (8) The salaries, fringe benefits, and other conditions of
23 employment prevailing in the state labor market; and
- 24 (9) Such other factors that are normally or traditionally taken
25 into consideration in the determination of wages, hours, and conditions
26 of employment.

27 NEW SECTION. **Sec. 6.** During the pendency of the proceedings
28 before the interest arbitration panel, existing wages, hours, and other
29 conditions of employment shall not be changed by action of either party
30 without the consent of the other but a party may so consent without
31 prejudice to his or her rights or position under this chapter.

32 NEW SECTION. **Sec. 7.** If the representative of either or both
33 the educational employee and the employer refuse to submit to the
34 procedures set forth in RCW 41.59.120 and section 3 of this act, the
35 parties, or the commission on its own motion, may invoke the

1 jurisdiction of the superior court for the county in which the labor
2 dispute exists and such court shall have jurisdiction to issue an
3 appropriate order. A failure to obey such order may be punished by the
4 court as contempt of court. A decision of the interest arbitration
5 panel shall be final and binding on the parties, and may be enforced at
6 the instance of either party, the interest arbitration panel, or the
7 commission in the superior court for the county where the dispute
8 arose.

9 NEW SECTION. **Sec. 8.** If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 9.** Sections 3 through 7 of this act are
14 each added to chapter 41.59 RCW.

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