
SENATE BILL 5762

State of Washington

62nd Legislature

2011 Regular Session

By Senators Prentice, Swecker, Honeyford, and Tom

Read first time 02/10/11. Referred to Committee on Labor, Commerce & Consumer Protection.

1 AN ACT Relating to making interest arbitration panel determinations
2 related to local government; amending RCW 41.56.450 and 41.56.465; and
3 creating a new section.

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

5 NEW SECTION. **Sec. 1.** The state, under chapter 41.56 RCW, has
6 established guidelines and factors to be considered in determining
7 interest arbitration decisions setting compensation and benefit
8 spending levels for certain public employees. These factors include
9 the selection of an arbitration panel and neutral chair to make final
10 and binding determinations upon the parties subject to this chapter.
11 Additionally, these guidelines include criteria which the arbitration
12 panel must consider in making a determination.

13 The legislature finds that it is necessary to further define the
14 qualifications of the neutral chair of an arbitration panel to ensure
15 that determinations made by the panel are fair and just, based on a
16 full understanding of the factors presented.

17 Additionally, the legislature finds it in the interest and welfare
18 of the public for the arbitration panel to consider the financial

1 ability of the respective unit of government when making a
2 determination.

3 **Sec. 2.** RCW 41.56.450 and 1983 c 287 s 2 are each amended to read
4 as follows:

5 (1) If an agreement has not been reached following a reasonable
6 period of negotiations and mediation, and the executive director, upon
7 the recommendation of the assigned mediator, finds that the parties
8 remain at impasse, then an interest arbitration panel shall be created
9 to resolve the dispute. The issues for determination by the
10 arbitration panel shall be limited to the issues certified by the
11 executive director. Within seven days following the issuance of the
12 determination of the executive director, each party shall name one
13 person to serve as its arbitrator on the arbitration panel. The two
14 members so appointed shall meet within seven days following the
15 appointment of the later appointed member to attempt to choose a third
16 member to act as the neutral (~~(chairman)~~) chair of the arbitration
17 panel. Upon the failure of the arbitrators to select a neutral
18 (~~(chairman)~~) chair within seven days, the two appointed members shall
19 use one of the two following options in the appointment of the third
20 member, who shall act as (~~(chairman)~~) chair of the panel: (~~(+1)~~) (a)
21 By mutual consent, the two appointed members may jointly request the
22 commission to, and the commission shall, appoint a third member within
23 two days of such request. Costs of each party's appointee shall be
24 borne by each party respectively; other costs of the arbitration
25 proceedings shall be borne by the commission; or (~~(+2)~~) (b) either
26 party may apply to the commission, the federal mediation and
27 conciliation service, or the American arbitration association to
28 provide a list of five qualified arbitrators from which the neutral
29 (~~(chairman)~~) chair shall be chosen. Each party shall pay the fees and
30 expenses of its arbitrator, and the fees and expenses of the neutral
31 (~~(chairman)~~) chair shall be shared equally between the parties.

32 The arbitration panel so constituted shall promptly establish a
33 date, time, and place for a hearing and shall provide reasonable notice
34 thereof to the parties to the dispute. A hearing, which shall be
35 informal, shall be held, and each party shall have the opportunity to
36 present evidence and make argument. No member of the arbitration panel
37 may present the case for a party to the proceedings. The rules of

1 evidence prevailing in judicial proceedings may be considered, but are
2 not binding, and any oral testimony or documentary evidence or other
3 data deemed relevant by the ((~~chairman~~)) chair of the arbitration panel
4 may be received in evidence. A recording of the proceedings shall be
5 taken. The arbitration panel has the power to administer oaths,
6 require the attendance of witnesses, and require the production of such
7 books, papers, contracts, agreements, and documents as may be deemed by
8 the panel to be material to a just determination of the issues in
9 dispute. If any person refuses to obey a subpoena issued by the
10 arbitration panel, or refuses to be sworn or to make an affirmation to
11 testify, or any witness, party, or attorney for a party is guilty of
12 any contempt while in attendance at any hearing held hereunder, the
13 arbitration panel may invoke the jurisdiction of the superior court in
14 the county where the labor dispute exists, and the court has
15 jurisdiction to issue an appropriate order. Any failure to obey the
16 order may be punished by the court as a contempt thereof. The hearing
17 conducted by the arbitration panel shall be concluded within twenty-
18 five days following the selection or designation of the neutral
19 ((~~chairman~~)) chair of the arbitration panel, unless the parties agree
20 to a longer period.

21 The neutral ((~~chairman~~)) chair shall consult with the other members
22 of the arbitration panel, and, within thirty days following the
23 conclusion of the hearing, the neutral ((~~chairman~~)) chair shall make
24 written findings of fact and a written determination of the issues in
25 dispute, based on the evidence presented. A copy thereof shall be
26 served on the commission, on each of the other members of the
27 arbitration panel, and on each of the parties to the dispute. That
28 determination shall be final and binding upon both parties, subject to
29 review by the superior court upon the application of either party
30 solely upon the question of whether the decision of the panel was
31 arbitrary or capricious.

32 (2) An arbitrator serving as neutral chair for cases under interest
33 arbitration under this section shall be considered qualified if the
34 arbitrator can demonstrate all of the following:

35 (a) Current membership in one of the following organizations:
36 National academy of arbitrators; American arbitration association; or
37 federal mediation and conciliation services;

1 (b) A minimum of eight hours of training in the area of public
2 sector fiscal and budgetary matters. The commission is directed to
3 develop or certify qualifying training programs in consultation with
4 labor and management representatives; and

5 (c) Is geographically located in the northwest region of the United
6 States.

7 **Sec. 3.** RCW 41.56.465 and 2007 c 278 s 1 are each amended to read
8 as follows:

9 (1) In making its determination, the panel shall be mindful of the
10 legislative purpose enumerated in RCW 41.56.430 and, as additional
11 standards or guidelines to aid it in reaching a decision, the panel
12 shall consider the following criteria, but give first priority to (a)
13 and (b) of this subsection and secondary priority to (c) through (f) of
14 this subsection:

15 (a) The constitutional and statutory authority of the employer;

16 (b) The reasonable financial ability of the employer to pay for the
17 compensation and fringe benefit provisions of a collective bargaining
18 agreement giving due consideration and weight to the other services
19 provided by, and other priorities of, the unit of government as
20 determined by the governing body. A reasonable operating reserve
21 against future contingencies as determined by the governing body, which
22 does not include funds in contemplation of settlement of the labor
23 dispute, shall not be considered as available toward a settlement;

24 (c) Stipulations of the parties;

25 ~~((e))~~ (d) The average consumer prices for goods and services,
26 commonly known as the cost of living;

27 ~~((d))~~ (e) Changes in any of the circumstances under (a) through
28 ~~((e))~~ (d) of this subsection during the pendency of the proceedings;
29 and

30 ~~((e))~~ (f) Such other factors, not confined to the factors under
31 (a) through ~~((d))~~ (e) of this subsection, that are normally or
32 traditionally taken into consideration in the determination of wages,
33 hours, and conditions of employment. For those employees listed in RCW
34 41.56.030~~((7))~~ (14)(a) who are employed by the governing body of a
35 city or town with a population of less than fifteen thousand, or a
36 county with a population of less than seventy thousand, consideration
37 must also be given to regional differences in the cost of living.

1 (2) For employees listed in RCW 41.56.030(~~(+7)~~) (14) (a) through
2 (d), the panel shall also consider a comparison of the wages, hours,
3 and conditions of employment of personnel involved in the proceedings
4 with the wages, hours, and conditions of employment of like personnel
5 of like employers (~~(of similar size)~~) on the west coast of the United
6 States. However, when an adequate number of comparable employers
7 exists within the state of Washington, other west coast employers may
8 not be considered. Like employers shall be determined by factors
9 including, but not limited to, population size, geographic location,
10 financial conditions, population demographics, workforce size, assessed
11 valuation, and labor market characteristics.

12 (3) For employees listed in RCW 41.56.030(~~(+7)~~) (14) (e) through
13 (h), the panel shall also consider a comparison of the wages, hours,
14 and conditions of employment of personnel involved in the proceedings
15 with the wages, hours, and conditions of employment of like personnel
16 of public fire departments (~~(of similar size)~~) on the west coast of the
17 United States. However, when an adequate number of comparable
18 employers exists within the state of Washington, other west coast
19 employers may not be considered. Like public fire departments shall be
20 determined by factors including, but not limited to, population size,
21 geographic location, financial conditions, population demographics,
22 workforce size, assessed valuation, and labor market characteristics.

23 (4) For employees listed in RCW 41.56.028:
24 (a) The panel shall also consider:
25 (i) A comparison of child care provider subsidy rates and
26 reimbursement programs by public entities, including counties and
27 municipalities, along the west coast of the United States; and
28 (ii) The financial ability of the state to pay for the compensation
29 and benefit provisions of a collective bargaining agreement; and
30 (b) The panel may consider:
31 (i) The public's interest in reducing turnover and increasing
32 retention of child care providers;
33 (ii) The state's interest in promoting, through education and
34 training, a stable child care workforce to provide quality and reliable
35 child care from all providers throughout the state; and
36 (iii) In addition, for employees exempt from licensing under
37 chapter 74.15 RCW, the state's fiscal interest in reducing reliance

1 upon public benefit programs including but not limited to medical
2 coupons, food stamps, subsidized housing, and emergency medical
3 services.

4 (5) For employees listed in RCW 74.39A.270:

5 (a) The panel shall consider:

6 (i) A comparison of wages, hours, and conditions of employment of
7 publicly reimbursed personnel providing similar services to similar
8 clients, including clients who are elderly, frail, or have
9 developmental disabilities, both in the state and across the United
10 States; and

11 (ii) The financial ability of the state to pay for the compensation
12 and fringe benefit provisions of a collective bargaining agreement; and

13 (b) The panel may consider:

14 (i) A comparison of wages, hours, and conditions of employment of
15 publicly employed personnel providing similar services to similar
16 clients, including clients who are elderly, frail, or have
17 developmental disabilities, both in the state and across the United
18 States;

19 (ii) The state's interest in promoting a stable long-term care
20 workforce to provide quality and reliable care to vulnerable elderly
21 and disabled recipients;

22 (iii) The state's interest in ensuring access to affordable,
23 quality health care for all state citizens; and

24 (iv) The state's fiscal interest in reducing reliance upon public
25 benefit programs including but not limited to medical coupons, food
26 stamps, subsidized housing, and emergency medical services.

27 (6) Subsections (2) and (3) of this section may not be construed to
28 authorize the panel to require the employer to pay, directly or
29 indirectly, the increased employee contributions resulting from chapter
30 502, Laws of 1993 or chapter 517, Laws of 1993 as required under
31 chapter 41.26 RCW.

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