
SENATE BILL 6560

State of Washington

53rd Legislature

1994 Regular Session

By Senator Talmadge

Read first time 01/27/94. Referred to Committee on Education.

1 AN ACT Relating to certificated employees; amending RCW
2 28A.405.210, 28A.405.300, and 28A.405.370; adding new sections to
3 chapter 28A.405 RCW; and repealing RCW 28A.405.310, 28A.405.320,
4 28A.405.330, 28A.405.340, 28A.405.350, 28A.405.360, and 28A.405.380.

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

6 **Sec. 1.** RCW 28A.405.210 and 1990 c 33 s 390 are each amended to
7 read as follows:

8 No teacher, principal, supervisor, superintendent, or other
9 certificated employee, holding a position as such with a school
10 district, hereinafter referred to as "employee", shall be employed
11 except by written order of a majority of the directors of the district
12 at a regular or special meeting thereof, nor unless he or she is the
13 holder of an effective teacher's certificate or other certificate
14 required by law or the state board of education for the position for
15 which the employee is employed.

16 The board shall make with each employee employed by it a written
17 contract, which shall be in conformity with the laws of this state, and
18 except as otherwise provided by law, limited to a term of not more than
19 one year. Every such contract shall be made in duplicate, one copy to

1 be retained by the school district superintendent or secretary and one
2 copy to be delivered to the employee. No contract shall be offered by
3 any board for the employment of any employee who has previously signed
4 an employment contract for that same term in another school district of
5 the state of Washington unless such employee shall have been released
6 from his or her obligations under such previous contract by the board
7 of directors of the school district to which he or she was obligated.
8 Any contract signed in violation of this provision shall be void.

9 In the event it is determined that there is (~~probable~~) just cause
10 or causes that the employment contract of an employee should not be
11 renewed by the district for the next ensuing term such employee shall
12 be notified in writing on or before May 15th preceding the commencement
13 of such term of that determination, which notification shall specify
14 the cause or causes for nonrenewal of contract. Such determination of
15 (~~probable~~) just cause for certificated employees, other than the
16 superintendent, shall be made by the superintendent. Such notice shall
17 be served upon the employee personally, or by certified or registered
18 mail, or by leaving a copy of the notice at the house of his or her
19 usual abode with some person of suitable age and discretion then
20 resident therein. Every such employee so notified, at his or her
21 request made in writing and filed with the president, chair or
22 secretary of the board of directors of the district within ten days
23 after receiving such notice, shall be granted opportunity for hearing
24 pursuant to (~~RCW 28A.405.310~~) section 3 of this act to determine
25 whether there is sufficient cause or causes for nonrenewal of contract:
26 PROVIDED, That any employee receiving notice of nonrenewal of contract
27 due to an enrollment decline or loss of revenue may, in his or her
28 request for a hearing, stipulate that initiation of the arrangements
29 for a hearing (~~officer as provided for by RCW 28A.405.310(4)~~) under
30 section 3 of this act shall occur within ten days following July 15
31 rather than the day that the employee submits the request for a
32 hearing. If any such notification or opportunity for hearing is not
33 timely given, the employee entitled thereto shall be conclusively
34 presumed to have been reemployed by the district for the next ensuing
35 term upon contractual terms identical with those which would have
36 prevailed if his or her employment had actually been renewed by the
37 board of directors for such ensuing term.

38 This section shall not be applicable to "provisional employees" as
39 so designated in RCW 28A.405.220; transfer to a subordinate

1 certificated position as that procedure is set forth in RCW 28A.405.230
2 shall not be construed as a nonrenewal of contract for the purposes of
3 this section.

4 **Sec. 2.** RCW 28A.405.300 and 1990 c 33 s 395 are each amended to
5 read as follows:

6 In the event it is determined that there is ((probable)) just cause
7 or causes for a teacher, principal, supervisor, superintendent, or
8 other certificated employee, holding a position as such with the school
9 district, hereinafter referred to as "employee", to be discharged or
10 otherwise adversely affected in his or her contract status, such
11 employee shall be notified in writing of that decision, which
12 notification shall specify the ((probable)) just cause or causes for
13 such action. Such determinations of ((probable)) just cause for
14 certificated employees, other than the superintendent, shall be made by
15 the superintendent. Such notices shall be served upon that employee
16 personally, or by certified or registered mail, or by leaving a copy of
17 the notice at the house of his or her usual abode with some person of
18 suitable age and discretion then resident therein. The notice shall
19 contain information about the right to a hearing under section 3 of
20 this act. Every such employee so notified, at his or her request made
21 in writing and filed with the president, chair of the board or
22 secretary of the board of directors of the district within ten days
23 after receiving such notice, shall be granted opportunity for a hearing
24 pursuant to ((RCW 28A.405.310)) section 3 of this act to determine
25 whether or not there is sufficient cause or causes for his or her
26 discharge or other adverse action against his or her contract status.

27 In the event any such notice or opportunity for hearing is not
28 timely given, or in the event cause for discharge or other adverse
29 action is not established by a preponderance of the evidence at the
30 hearing, such employee shall not be discharged or otherwise adversely
31 affected in his or her contract status for the causes stated in the
32 original notice for the duration of his or her contract.

33 If such employee does not request a hearing as provided herein,
34 such employee may be discharged or otherwise adversely affected as
35 provided in the notice served upon the employee.

36 Transfer to a subordinate certificated position as that procedure
37 is set forth in RCW 28A.405.230 shall not be construed as a discharge

1 or other adverse action against contract status for the purposes of
2 this section.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 28A.405
4 RCW to read as follows:

5 (1) An employee aggrieved by a decision of a superintendent or
6 school board to discharge or adversely affect the employee's contract
7 status may appeal the decision to an independent arbitrator. A written
8 notice of appeal shall be submitted to the superintendent within ten
9 days from the receipt of the notice of the decision.

10 (2) The school board and the employee shall meet within ten
11 calendar days from the receipt of the notice of appeal and select an
12 independent arbitrator to conduct the appeal, or, in the event the
13 parties fail to agree on an independent arbitrator, they shall request
14 the presiding judge in the judicial district in which the public school
15 is located to select the independent arbitrator. The presiding judge
16 shall select the independent arbitrator within five working days from
17 the date of the parties' request.

18 (3) A qualified independent arbitrator shall be appointed who is
19 knowledgeable about employment practices and school procedures. A
20 person shall not be appointed to serve as the independent arbitrator
21 who has any direct or indirect financial interest in the outcome of the
22 proceeding, has any relationship to any party in the proceeding, is
23 employed by the school board, or is a member of or employed by any
24 professional organization of which the school employee is a member.

25 (4) Appeals from the decision of the superintendent or school board
26 shall be decided after a hearing before the independent arbitrator.
27 The school board shall have the burden of proving by a preponderance of
28 the evidence that, at the time of the notice of intent to recommend
29 discharge, the local superintendent had just cause to discharge the
30 employee. The school board shall present its evidence first, with the
31 employee presenting his or her evidence thereafter.

32 (5) The hearing shall be held within thirty working days from the
33 selection of the independent arbitrator. The independent arbitrator
34 shall give written notice of the date, time, and place of the hearing.
35 The notice shall be sent to the employee and the school board.

36 (6) Each party has the right to be represented by counsel at the
37 hearing before the independent arbitrator.

1 (7) Discovery shall be limited to depositions and requests for
2 production of documents on a time schedule to be established by the
3 independent arbitrator.

4 (8) The independent arbitrator may issue subpoenas for the
5 attendance of witnesses and for the production of books, records,
6 documents, and other evidence and may administer oaths. Subpoenas so
7 issued shall be served and enforced in the manner provided by law for
8 the service and enforcement of subpoenas in a civil action or in the
9 manner provided by the American arbitration association's voluntary
10 labor arbitration rules if that entity is used by the parties.

11 (9) The rules of civil procedure shall not apply to the hearing,
12 but the hearing shall be conducted so that both contentions and
13 responses are amply and fairly presented. To this end, the independent
14 arbitrator shall permit either party to call and examine witnesses,
15 cross-examine witnesses, and introduce exhibits. The technical rules
16 of evidence shall not apply, but, in ruling on the admissibility of
17 evidence, the independent arbitrator may require reasonable
18 substantiation of statements or records tendered, the accuracy or truth
19 of which is in reasonable doubt.

20 (10) An official record shall be made of the hearing. Either party
21 may order a transcript of the record at the party's own expense.

22 (11) The independent arbitrator shall render a written decision
23 affirming or reversing the action of the superintendent or school
24 board. The decision shall contain findings of fact and conclusions of
25 law. The parties shall receive the written decision of the independent
26 arbitrator within thirty working days from the conclusion of the
27 hearing.

28 (12) Unless a party can demonstrate prejudice arising from a
29 departure from the procedures established in this section, and RCW
30 28A.405.210 and 28A.405.300, the departure shall be presumed to be
31 harmless error.

32 (13) The decision of the independent arbitrator shall be final and
33 binding on both parties and shall be nonappealable except where the
34 decision was procured by corruption, fraud, deception, or collusion, in
35 which case it may be appealed to superior court by filing a notice of
36 appeal.

37 (14) Each party shall bear its own costs and expenses. The
38 independent arbitrator's fees and other expenses incurred in the

1 conduct of the arbitration shall be assigned at the discretion of the
2 independent arbitrator.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 28A.405
4 RCW to read as follows:

5 (1) Payment of compensation to any employee under RCW 28A.405.300
6 employed by a school board shall terminate as of the date, after a
7 hearing, that a written copy of the decision of the superintendent or
8 school board to discharge or otherwise adversely affect the contract
9 status of the employee is served on the person. If the compensation of
10 the affected person during the term of a written employment contract is
11 to be paid monthly during a twelve-month period for services to be
12 performed during a period less than twelve months, the person shall be
13 entitled to a pro rata share of the compensation payments due for the
14 period during the twelve months in which no services were to be
15 performed.

16 (2) If the action of the superintendent or school board in
17 discharging or adversely affecting the contract status of an employee
18 is reversed on appeal, payment of compensation to the person shall be
19 reinstated in full but subject to any additional compensation allowed
20 other employees of like qualifications and experience employed by the
21 school district and including reimbursement for compensation during the
22 entire period the compensation was terminated less an offset for any
23 compensation received by the person from a school district during the
24 period the compensation was terminated.

25 **Sec. 5.** RCW 28A.405.370 and 1990 c 33 s 400 are each amended to
26 read as follows:

27 The provisions of chapter 28A.645 RCW shall not be applicable to
28 RCW 28A.405.300 (~~(through 28A.405.360)~~) and sections 3 and 4 of this
29 act.

30 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each
31 repealed:

32 (1) RCW 28A.405.310 and 1990 c 33 s 396, 1987 c 375 s 1, 1977 ex.s.
33 c 7 s 1, & 1975-'76 2nd ex.s. c 114 s 5;

34 (2) RCW 28A.405.320 and 1990 c 33 s 397, 1969 ex.s. c 34 s 14, &
35 1969 ex.s. c 223 s 28A.58.460;

1 (3) RCW 28A.405.330 and 1990 c 33 s 398 & 1969 ex.s. c 223 s
2 28A.58.470;

3 (4) RCW 28A.405.340 and 1975-'76 2nd ex.s. c 114 s 6, 1969 ex.s. c
4 34 s 15, & 1969 ex.s. c 223 s 28A.58.480;

5 (5) RCW 28A.405.350 and 1990 c 33 s 399, 1975-'76 2nd ex.s. c 114
6 s 7, 1969 ex.s. c 34 s 16, & 1969 ex.s. c 223 s 28A.58.490;

7 (6) RCW 28A.405.360 and 1988 c 202 s 26, 1971 c 81 s 71, & 1969
8 ex.s. c 223 s 28A.58.500; and

9 (7) RCW 28A.405.380 and 1990 c 33 s 401, 1975-'76 2nd ex.s. c 114
10 s 8, 1973 c 49 s 3, & 1969 ex.s. c 34 s 18.

11 NEW SECTION. **Sec. 7.** If any provision of this act or its
12 application to any person or circumstance is held invalid, the
13 remainder of the act or the application of the provision to other
14 persons or circumstances is not affected.

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