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**SENATE BILL 5055**

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**State of Washington 67th Legislature 2021 Regular Session**

**By** Senators Nguyen, Saldaña, Billig, Darneille, Das, Hunt, Keiser, Kuderer, Liias, Lovelett, Nobles, Stanford, and Wilson, C.

AN ACT Relating to law enforcement personnel collective bargaining; amending RCW 41.56.122, 41.56.125, 41.56.100, 41.56.905, 36.65.050, and 41.80.020; and adding a new section to chapter 41.58 RCW.

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

NEW SECTION. **Sec.**  A new section is added to chapter 41.58 RCW to read as follows:

(1) For the purposes of this section, the definitions in this subsection have the meanings given them.

(a) "Employer" means a political subdivision or law enforcement agency employing law enforcement personnel.

(b) "Law enforcement personnel" means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipality, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection (1)(b), "primary function" means that function to which the greater allocation of resources is made.

(c) "Grievance" means a dispute or disagreement regarding any disciplinary action, discharge, or termination decision arising under a collective bargaining agreement covering law enforcement personnel.

(d) "Grievance arbitration" means binding arbitration of a grievance under the grievance procedures established in a collective bargaining agreement covering law enforcement personnel.

(2)(a) The arbitrator selection procedure established under this section applies to all grievance arbitrations for disciplinary actions, discharges, or terminations of law enforcement personnel which are heard on or after January 1, 2022.

(b)(i) The grievance procedures for all collective bargaining agreements covering law enforcement personnel negotiated or renewed on or after January 1, 2022, must include the arbitrator selection procedure established in this section.

(ii) Grievance procedures in collective bargaining agreements covering law enforcement personnel negotiated or renewed prior to January 1, 2022, that do not contain the arbitrator selection procedures established in this section expire upon the expiration date of the collective bargaining agreement and may not be extended or rolled over beyond the expiration date of the collective bargaining agreement.

(c) This section does not require any party to a collective bargaining agreement in existence on the effective date of this section to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this act unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(3) All fees charged by arbitrators under this section must be in accordance with a schedule of fees established by the commission on an annual basis.

(4) The commission must appoint a roster of nine persons suited and qualified by training and experience to act as arbitrators for law enforcement personnel grievance arbitrations under this section.

(a) The commission may only consider appointing persons who possess:

(i) A minimum of six years' experience as a full-time labor relations advocate and who has been the principal representative of either labor or management in at least six arbitration proceedings;

(ii) A minimum of six years' experience as a full-time labor mediator with substantial mediation experience;

(iii) A minimum of six years' experience as an arbitrator and who has decided at least six cases involving collective bargaining disputes; or

(iv) A minimum of six years' experience as a practitioner or full-time instructor of labor law or industrial relations, including substantial content in the area of collective bargaining, labor agreements, and contract administration.

(b) In making these appointments, and as applicable, the commission must consider these factors:

(i) A candidate's familiarity, experience, and technical and theoretical understanding of and experience with labor law, the grievance process, the field of labor arbitration, and the law enforcement profession;

(ii) A candidate's ability and willingness to travel through the state, conduct hearings in a fair and impartial manner, analyze and evaluate testimony and exhibits, write clear and concise awards in a timely manner, and be available for hearings within a reasonable time after the request of the parties; and

(iii) A candidate's experience and training in cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences.

(5) The appointments are effective immediately upon selection by the commission.

(6) Initial appointments to the roster of arbitrators must be made as follows:

(a) Three appointments to expire on the first Monday in January 2024;

(b) Three appointments to expire on the first Monday in January 2025; and

(c) Three appointments to expire on the first Monday in January 2026.

(7) Subsequent appointments to the roster of arbitrators must be for three-year terms to expire on the first Monday in January, with the terms of no more than three arbitrators to expire in the same year.

(8) Nothing in this section prevents roster arbitrators from issuing decisions, or retaining jurisdiction to address issues relating to remedy, after the expiration of their term, if the arbitration hearing occurred during the term of their appointment.

(9) An arbitrator may be reappointed to the roster upon expiration of the arbitrator's term. If the arbitrator is not reappointed, the arbitrator may continue to serve until a successor is appointed, but in no case later than July 1st of the year in which the arbitrator's term expires.

(10) The commission may remove an arbitrator from the roster through a majority vote. A vacancy on the roster caused by a removal, a resignation, or another reason must be filled by the commission as necessary to fill the remainder of the arbitrator's term. A vacancy on the roster occurring with less than six months remaining in the arbitrator's term must be filled for the existing term and the following three-year term.

(11) A person appointed to the arbitrator roster under this section must complete training as required by the commission during the person's appointment. The commission may adopt rules establishing training requirements consistent with this section. The commission may also establish fees in order to cover the costs of developing and providing the training. At a minimum, an initial training must include:

(a) At least six hours on the topics of cultural competency, racism, implicit bias, and recognizing and valuing community diversity and cultural differences; and

(b) At least six hours on topics related to the daily experience of law enforcement personnel, which may include ride-alongs with on-duty officers or other activities that provide exposure to the environments, choices, and judgments required of officers in the field.

(12) An arbitrator appointed to the roster of arbitrators must complete the required initial training within six months of the arbitrator's appointment.

(13)(a) The executive director must assign an arbitrator or panel of arbitrators from the roster to each law enforcement personnel grievance arbitration under this section on rotation through the roster alphabetically ordered by last name.

(b) If an arbitrator has a conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality, the arbitrator must disclose such conflict to the executive director. The executive director may determine whether the conflict merits assigning the next arbitrator on the roster. Either party may petition the executive director to have an assigned arbitrator removed due to a conflict of interest that may reasonably be expected to materially impact the arbitrator's impartiality. If their petition is granted by the executive director, the executive director must assign the next arbitrator or panel of arbitrators on the roster.

(c) The arbitrator or panel of arbitrators shall decide the grievance, and the decision is binding subject to the provisions of chapter 7.04A RCW.

(d) The parties may not participate in, negotiate for, or agree to the selection of an arbitrator or arbitration panel under this section. Employers and law enforcement personnel, through their certified exclusive bargaining representatives, do not have the right to negotiate for or agree to a collective bargaining agreement or a grievance arbitration selection procedure that is inconsistent with this section.

(14) The commission must post law enforcement grievance arbitration decisions made under this section on its website within 30 days of the date the grievance arbitration decision is made.

(15) The arbitrator selection procedure for law enforcement grievance arbitrations established under this section supersedes any inconsistent provisions in any other chapter governing employee relations and collective bargaining for law enforcement personnel.

**Sec.**  RCW 41.56.122 and 2019 c 230 s 11 are each amended to read as follows:

((~~A~~)) Subject to section 1 of this act, a collective bargaining agreement may provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement.

**Sec.**  RCW 41.56.125 and 1975 1st ex.s. 296 s 23 are each amended to read as follows:

((~~In~~)) Except for law enforcement personnel grievance arbitrations subject to section 1 of this act, in addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: PROVIDED, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: PROVIDED FURTHER, That the provisions of chapter 49.08 RCW shall have no application to this chapter.

**Sec.**  RCW 41.56.100 and 2010 c 235 s 801 are each amended to read as follows:

(1) A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative. However, a public employer is not required to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution, or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure, and authority to the board created by chapter 41.06 RCW.

(2) Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. This subsection does not apply to negotiations and mediations conducted between a school district employer and an exclusive bargaining representative under RCW 28A.657.050.

(3) If a public employer implements its last and best offer where there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract.

(4)(a) Public employers of law enforcement personnel may not enter into a collective bargaining agreement that prevents the implementation of, alters, or suppresses a city or county ordinance or charter establishing civilian review of the discipline of law enforcement personnel. Any provision that is contrary to this subsection is void and unenforceable.

(b) For the purposes of this subsection, "law enforcement personnel" means any public employee or volunteer having as a primary function the enforcement of criminal laws in general or any employee or volunteer of, or any individual commissioned by, any municipality, county, state, or combination thereof, agency having as its primary function the enforcement of criminal laws in general as distinguished from an agency possessing peace officer powers, the primary function of which is the implementation of specialized subject matter areas. For the purposes of this subsection, "primary function" means that function to which the greater allocation of resources is made.

**Sec.**  RCW 41.56.905 and 1983 c 287 s 5 are each amended to read as follows:

The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015 and section 1 of this act, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control.

**Sec.**  RCW 36.65.050 and 1984 c 91 s 5 are each amended to read as follows:

((~~If~~)) Subject to the requirements of RCW 41.56.100 and section 1 of this act, if the city-county government includes a fire protection or law enforcement unit that was, prior to the formation of the city-county, governed by a state statute providing for binding arbitration in collective bargaining, then the entire fire protection or law enforcement unit of the city-county shall be governed by that statute.

**Sec.**  RCW 41.80.020 and 2015 3rd sp.s. c 1 s 318 are each amended to read as follows:

(1) Except as otherwise provided in this chapter, the matters subject to bargaining include wages, hours, and other terms and conditions of employment, and the negotiation of any question arising under a collective bargaining agreement.

(2) The employer is not required to bargain over matters pertaining to:

(a) Health care benefits or other employee insurance benefits, except as required in subsection (3) of this section;

(b) Any retirement system or retirement benefit; or

(c) Rules of the director of financial management, the director of enterprise services, or the Washington personnel resources board adopted under RCW 41.06.157.

(3) Matters subject to bargaining include the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits. However, except as provided otherwise in this subsection for institutions of higher education, negotiations regarding the number of names to be certified for vacancies, promotional preferences, and the dollar amount expended on behalf of each employee for health care benefits shall be conducted between the employer and one coalition of all the exclusive bargaining representatives subject to this chapter. The exclusive bargaining representatives for employees that are subject to chapter 47.64 RCW shall bargain the dollar amount expended on behalf of each employee for health care benefits with the employer as part of the coalition under this subsection. Any such provision agreed to by the employer and the coalition shall be included in all master collective bargaining agreements negotiated by the parties. For institutions of higher education, promotional preferences and the number of names to be certified for vacancies shall be bargained under the provisions of RCW 41.80.010(4). For agreements covering the 2013‑2015 fiscal biennium, any agreement between the employer and the coalition regarding the dollar amount expended on behalf of each employee for health care benefits is a separate agreement and shall not be included in the master collective bargaining agreements negotiated by the parties.

(4) The employer and the exclusive bargaining representative shall not agree to any proposal that would prevent the implementation of approved affirmative action plans or that would be inconsistent with the comparable worth agreement that provided the basis for the salary changes implemented beginning with the 1983-1985 biennium to achieve comparable worth.

(5) The employer and the exclusive bargaining representative shall not bargain over matters pertaining to management rights established in RCW 41.80.040.

(6) Except as otherwise provided in this chapter, if a conflict exists between an executive order, administrative rule, or agency policy relating to wages, hours, and terms and conditions of employment and a collective bargaining agreement negotiated under this chapter, the collective bargaining agreement shall prevail. A provision of a collective bargaining agreement that conflicts with the terms of a statute is invalid and unenforceable.

(7) This section does not prohibit bargaining that affects contracts authorized by RCW 41.06.142.

(8) Section 1 of this act applies to uniformed personnel.

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