

2 **SHB 1316 - H AMD 218**

3 By Representative Cole

4

5 On page 2, after line 6, insert the following:

6 "Sec. 3. RCW 41.59.120 and 1975 1st ex.s. c 288 s 13 are each
7 amended to read as follows:

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

1 budget is adopted that year by the legislature, whichever is later.

2 (2) If the mediator is unable to effect settlement of the
3 controversy within ten days after his or her appointment, either party,
4 by written notification to the other, may request that their
5 differences be submitted to fact-finding with recommendations, except
6 that the time for mediation may be extended by mutual agreement between
7 the parties but shall not be extended later than July 15th of the year
8 in which the contract is to expire, or seventy-five days after the
9 state operating budget is adopted that year by the legislature,
10 whichever is later. Within five days after receipt of the aforesaid
11 written request for fact-finding, the parties shall select a person to
12 serve as fact-finder and obtain a commitment from that person to serve.
13 If they are unable to agree upon a fact-finder or to obtain such a
14 commitment within that time, either party may request the commission to
15 designate a fact-finder. The commission, within five days after
16 receipt of such request, shall designate a fact-finder in accordance
17 with rules and regulations for such designation prescribed by the
18 commission. The fact-finder so designated shall not be the same person
19 who was appointed mediator pursuant to subsection (1) of this section
20 without the consent of both parties.

21 The fact-finder, within five days after his appointment, shall meet
22 with the parties or their representatives, or both, either jointly or
23 separately, and make inquiries and investigations, hold hearings, and
24 take such other steps as he may deem appropriate. For the purpose of
25 such hearings, investigations and inquiries, the fact-finder shall have
26 the power to issue subpoenas requiring the attendance and testimony of
27 witnesses and the production of evidence. If the dispute is not
28 settled within ten days after his appointment, the fact-finder shall
29 make findings of fact and recommend terms of settlement within thirty
30 days after his appointment, which recommendations shall be advisory
31 only.

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

38 (4) The costs for the services of the fact-finder, including, if
39 any, per diem expenses and actual and necessary travel and subsistence

1 expenses, and any other incurred costs, shall be borne by the
2 commission without cost to the parties.

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

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

12 (7) Any fact-finding procedures under this section shall be
13 completed by July 15th of the year in which the contract will expire,
14 or seventy-five days after the state operating budget is adopted that
15 year by the legislature, whichever is later.

16 NEW SECTION. Sec. 4. (1) If an agreement has not been reached
17 following a reasonable period of negotiations and mediation but in no
18 event later than July 15th of the year in which the contract expires,
19 or seventy-five days after the state operating budget is adopted that
20 year by the legislature, whichever is later, and the executive director
21 of the commission, upon the recommendation of the assigned mediator,
22 finds that the parties remain at impasse, then an interest arbitration
23 panel shall be created under subsection (3) of this section to resolve
24 the dispute. However, if both parties to the dispute, through a
25 written agreement, agree to continue to work under terms that are
26 mutually agreed upon until a new contract is signed, the provisions of
27 this section may be waived.

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

30 (3) Within five days following the issuance of the determination of
31 the executive director, each party shall name one person to serve as
32 its arbitrator on the interest arbitration panel. The two members so
33 appointed shall meet within five days following the appointment of the
34 later appointed member to attempt to choose a third member to act as
35 the neutral chair of the interest arbitration panel. Upon the failure
36 of the arbitrators to select a neutral chair within five days, the two
37 appointed members shall use one of the two following options in the
38 appointment of the third member, who shall act as chair of the panel:

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

4 (b) Either party may apply to the commission, the federal mediation
5 and conciliation service, or the American arbitration association to
6 provide a list of five qualified arbitrators from which the neutral
7 chair shall be chosen by the parties. Each party shall pay the fees
8 and expenses of its arbitrator. The fees and expenses of the neutral
9 chair shall be shared equally between the parties. Other costs of the
10 arbitration proceedings shall be borne by the commission.

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

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

21 (6) The proceedings shall be recorded.

22 (7) The interest arbitration panel has the power to administer
23 oaths, require the attendance of witnesses, and require the production
24 of such books, papers, contracts, agreements, and documents as may be
25 deemed by the panel to be material to a just determination of the
26 issues in dispute. If any person refuses to obey a subpoena issued by
27 the interest arbitration panel, or refuses to be sworn or to make an
28 affirmation to testify, or any witness, party, or attorney for a party
29 is guilty of any contempt while in attendance at any hearing held under
30 this section, the interest arbitration panel may invoke the
31 jurisdiction of the superior court in the county where the labor
32 dispute exists, and the court has jurisdiction to issue an appropriate
33 order. Any failure to obey the order may be punished by the court as
34 contempt.

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

38 (9) The neutral chair shall consult with the other members of the
39 interest arbitration panel, and, within twenty days following the

1 conclusion of the hearing, the neutral chair shall make written
2 findings of fact and a written determination of the issues in dispute,
3 based on the evidence presented. In making the written findings of
4 fact and a written determination of the issues in dispute, the neutral
5 chair may consider but shall not be bound by any offers made by the
6 parties to the dispute.

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

10 (11) The determination shall be final and binding upon both
11 parties, subject to review of the record by the superior court upon the
12 application of either party within thirty days solely upon the question
13 of whether the decision of the interest arbitration panel was arbitrary
14 or capricious.

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

20 NEW SECTION. **Sec. 6.** In making its determination, the interest
21 arbitration panel shall be mindful of the legislative purpose
22 enumerated in RCW 41.59.010 and as additional standards or guidelines
23 to aid it in reaching a decision, it shall take into consideration the
24 following factors:

- 25 (1) The constitutional and statutory authority of the employer;
- 26 (2) Stipulations of the parties;
- 27 (3) Negotiations between the parties before arbitration;
- 28 (4) The public interest and the financial capability of the school
29 district;
- 30 (5) The interests and welfare of the employee group;
- 31 (6) Changes in the cost-of-living;
- 32 (7) The existing conditions of employment of the employee group and
33 those of similar groups;
- 34 (8) The salaries, fringe benefits, and other conditions of
35 employment prevailing in the state labor market; and
- 36 (9) Such other factors that are normally or traditionally taken
37 into consideration in the determination of wages, hours, and conditions

1 of employment.

2 NEW SECTION. **Sec. 7.** During the pendency of the proceedings
3 before the interest arbitration panel, existing wages, hours, and other
4 conditions of employment shall not be changed by action of either party
5 without the consent of the other but a party may so consent without
6 prejudice to his or her rights or position under this chapter.

7 NEW SECTION. **Sec. 8.** If the representative of either or both the
8 educational employee and the employer refuse to submit to the
9 procedures set forth in RCW 41.59.120 and section 4 of this act, the
10 parties, or the commission on its own motion, may invoke the
11 jurisdiction of the superior court for the county in which the labor
12 dispute exists and such court shall have jurisdiction to issue an
13 appropriate order. A failure to obey such order may be punished by the
14 court as contempt as provided in chapter 7.21 RCW. A decision of the
15 interest arbitration panel shall be final and binding on the parties,
16 and may be enforced at the instance of either party, the interest
17 arbitration panel, or the commission in the superior court for the
18 county where the dispute arose.

19 NEW SECTION. **Sec. 9.** Sections 4 through 8 of this act are each
20 added to chapter 41.59 RCW.

21 NEW SECTION. **Sec. 10.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected."

25 **SHB 1316** - H AMD
26 By Representative Cole

27

28 On page 1, line 2 of the title, after "obligations;" strike all
29 material through "41.59 RCW;" and insert "amending RCW 41.59.120;
30 adding new sections to chapter 41.59 RCW;"

31 EFFECT: Adds timelines for collective bargaining for teachers. If
32 bargaining is not completed by July 15 of the year the contract

1 expires, the issues are submitted for binding interest arbitration.
2 Procedures for the interest arbitration panel are established, with
3 penalties if the parties refuse to submit to arbitration.

--- END ---