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SENATE BILL 5738

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State of Washington                      52nd Legislature                      1991 Regular Session

By Senators Anderson and Nelson.

Read first time February 19, 1991. Referred to Committee on Education.

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

1 to the welfare and well-being of the citizens of the state of  
2 Washington. To promote the dedicated and uninterrupted public service,  
3 an effective and adequate means of settling disputes is provided.

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

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

1 effectuation of the purposes and policy of this chapter. Mediation  
2 procedures shall be completed before July 15th of the year in which the  
3 contract will expire.

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

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

1 thirty days after his appointment, which recommendations shall be  
2 advisory only.

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

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

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

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

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

24 NEW SECTION. Sec. 3. (1) If an agreement has not been reached  
25 following a reasonable period of negotiations and mediation but in no  
26 event later than July 15th of the year in which the contract expires,  
27 and the executive director of the commission, upon the recommendation  
28 of the assigned mediator, finds that the parties remain at impasse,  
29 then an interest arbitration panel shall be created under subsection

1 (3) of this section to resolve the dispute. However, if both parties  
2 to the dispute, through a written agreement, agree to continue to work  
3 under terms that are mutually agreed upon until a new contract is  
4 signed, the provisions of this section may be waived.

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

7 (3) Within five days following the issuance of the determination of  
8 the executive director, each party shall name one person to serve as  
9 its arbitrator on the interest arbitration panel. The two members so  
10 appointed shall meet within five days following the appointment of the  
11 later appointed member to attempt to choose a third member to act as  
12 the neutral chair of the interest arbitration panel. Upon the failure  
13 of the arbitrators to select a neutral chair within five days, the two  
14 appointed members shall use one of the two following options in the  
15 appointment of the third member, who shall act as chair of the panel:

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

19 (b) Either party may apply to the commission, the federal mediation  
20 and conciliation service, or the American arbitration association to  
21 provide a list of five qualified arbitrators from which the neutral  
22 chair shall be chosen by the parties. Each party shall pay the fees  
23 and expenses of its arbitrator. The fees and expenses of the neutral  
24 chair shall be shared equally between the parties. Other costs of the  
25 arbitration proceedings shall be borne by the commission.

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

29 (5) An informal hearing shall be held. Each party shall have the  
30 opportunity to present evidence and make argument. No member of the

1 interest arbitration panel may present the case for a party to the  
2 proceedings. The rules of evidence prevailing in judicial proceedings  
3 may be considered, but are not binding. Any oral testimony or  
4 documentary evidence or other data deemed relevant by the chair of the  
5 interest arbitration panel may be received in evidence.

6 (6) The proceedings shall be recorded.

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

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

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

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

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

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

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

- 19 (1) The constitutional and statutory authority of the employer;
- 20 (2) Stipulations of the parties;
- 21 (3) Negotiations between the parties before arbitration;
- 22 (4) The public interest and the financial capability of the school  
23 district;
- 24 (5) The interests and welfare of the employee group;
- 25 (6) Changes in the cost of living;
- 26 (7) The existing conditions of employment of the employee group and  
27 those of similar groups;

1 (8) The salaries, fringe benefits, and other conditions of  
2 employment prevailing in the state labor market; and

3 (9) Such other factors that are normally or traditionally taken  
4 into consideration in the determination of wages, hours, and conditions  
5 of employment.

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

11 NEW SECTION. **Sec. 7.** If the representative of either or both the  
12 educational employee and the employer refuse to submit to the  
13 procedures set forth in RCW 41.59.120 and section 3 of this act, the  
14 parties, or the commission on its own motion, may invoke the  
15 jurisdiction of the superior court for the county in which the labor  
16 dispute exists and such court shall have jurisdiction to issue an  
17 appropriate order. A failure to obey such order may be punished by the  
18 court as contempt of court. A decision of the interest arbitration  
19 panel shall be final and binding on the parties, and may be enforced at  
20 the instance of either party, the interest arbitration panel, or the  
21 commission in the superior court for the county where the dispute  
22 arose.

23 NEW SECTION. **Sec. 8.** If any provision of this act or its  
24 application to any person or circumstance is held invalid, the  
25 remainder of the act or the application of the provision to other  
26 persons or circumstances is not affected.

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